

Christchurch City Council

Draft Long Term Council Community Plan

Submission by: Neil Construction Ltd

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1. Remissions

There should be provision for remissions from development contributions.

The current Development Contributions Policy (Our Community Plan 2004/14 Volume 3) authorises the Council to consider remission of reserves contributions in appropriate circumstances, such as: Development of reserves, Surface water management and Esplanade reserves and strips.

We consider this authorisation should remain as it enables the Council to recognise that developers at times, make an effective contribution greater than required under the Development Contributions Policy through undertaking development of reserves. This extra cost to developers needs to be acknowledged through reduction in reserve contributions.

The use of remissions enables the Council to achieve other community outcomes sought under the LTCCP, such as a safer community, environmental protection e.g. water quality, and an attractive and well-designed city. Other benefits resulting from a development can be encouraged by Council's actions in relation to the level of contributions required e.g. a reduction in reserves contributions where land is being used for dual purposes, firstly to treat stormwater prior to it being placed into a waterway or Council system and secondly beyond the 1 in 5 year event for recreation (either passive or active). The 2004/14 LTCCP remissions policy recognised 20% of these areas had a dual purpose and where specific design guidelines were met such as minimum areas, dimensions, road frontages, etc. remissions were granted.

A particular area where remissions are very appropriate is the development of elderly persons housing due to the reduced need for reserve type facilities for older people. The proposed contribution for reserves do not provide any remissions for such developments.

We understand most development contribution policies in New Zealand, including the latest round of draft LTCCPs, contain remissions policies, indicating that these Councils recognise that there are situations where requiring payment at the highest level of contribution is not fair and will inhibit obtaining of community outcomes. Without remissions there is no incentive to enhance reserves above the minimum standard required to vest, that being grassing only. Resident groups would be forced to 'lobby' for enhancement works to be undertaken at a later time.

The authors of the LTCCP obviously consider there should be opportunity to have contributions reassessed in light of extraordinary circumstances. As a reassessment is not possible without the formal ability to consider a remission it is critical that remission provisions be included in the 2006-16-development contributions policy, including the remissions provided for in the current DCP.

Requested amendment

- 1 Insert the Remission provisions for reserves in the current Development Contributions Policy in the draft Development Contributions Policy, in particular remissions for elderly persons housing needs, and
- 2 Provide a general discretion to consider remission of contributions for network infrastructure and community infrastructure on a case-by-case basis in order to facilitate achieving community outcomes and other Council policies.

2. Surface Water Management

The draft DCP fails to take into account the contribution of surface water management undertaken by developers within subdivisions and developments.

We presume that the contribution for surface water management is for the detention, treatment and disposal of stormwater within Council's reticulated surface water management network. It is accepted that a development should address the matter of stormwater treatment and disposal arising from that development. Three matters need to be clarified with regard to this contribution. These are:

- that those developments that fully address all aspects of stormwater treatment and disposal on site are not liable for the contribution, as there is no clear linkage between the form of the development and the need to provide surface water management off-site;
- that a remission should be applicable for those developments that provide appropriate detention and treatment of stormwater prior to disposal to ground, a piped network, waterway or open drain as this can often achieve as good as, if not better, surface water quality management than occurred under livestock farming. In addition the peak flows are able to be controlled to avoid flooding in the lower catchment; and
- that the remission in regard to land provided for the treatment, retention and disposal of stormwater is provided for in the calculation of reserve contributions.

The draft policy is unclear as to whether contributions towards surface water management are required for those developments, both residential and non-residential, that either address all aspects of stormwater treatment and disposal within the boundaries of the site or do not discharge to a Council reticulated network. Appendix 2 contains a statement noting that developments discharging into a piped network, waterway or open drain within or upstream of the urban areas identified are subject to the surface water management development contribution. This statement infers that if the discharge is not to a piped network, waterway or open drain that no contribution is payable. This would be inline with the draft Policy's statements concerning the fairness of the contributions payable for a development. Developments that are not required to pay a surface water management contribution should be more clearly identified within the Development Contributions Policy.

Currently it is a requirement of the Council that the first flush associated with a greenfields development is detained and treated prior to discharge to Council's system. Some developments require discharge consent from Environment Canterbury, and that as part of that process the development has to treat and detain stormwater within the boundaries of the site prior to discharge. There is no acknowledgement within the draft Policy that many developments are already providing detention and treatment of stormwater prior to discharge. Neither is there any recognition of the different needs of stormwater management within greenfield and brownfield areas. Developments will be paying twice for the same matter, if they are required to provide detention and treatment and then have to pay a contribution towards the same matter. This is not consistent with the Policy's stated aim of fairness. A remission from the surface water management contribution should be provided for those developments that detain and treat surface water prior to discharging to Council's system. Conversely, should no remission be provided, there should not be a requirement by the City Council for developments to detain and treat the first flush discharge. This should be the responsibility of City Council through ICMP's in order to comply with the PNRRP of the CRC.

The current Development Contribution Policy (2004/14) provides remissions from reserve contribution where a development addresses surface water management. In many circumstances the land used for the purposes of surface water management is often provided in combination with reserve land. The combination of surface water management land and reserve land often provides for additional areas of passive recreation, enhances amenity values of the area, and may, given the circumstances, provide for the enhancement and naturalisation of waterways. It is acknowledged that many of these matters have a purely local impact, however some Community Outcomes and other Council policies are also met through developments addressing matters of surface water management. Remissions were previously granted to encourage the naturalisation of waterways rather than the installation of sealed pipe networks.

It is considered important that this remission is reinstated in the same or similar form, alternatively the surface water management policy should be reviewed to allow the use of enclosed pipe networks to convey stormwater.

Requested amendments:

That the LTTCP and /or draft DCP is amended in the following manner:

- 1 Add the following to point 6.3 in the DCP:

Where a development provides detention and treatment fully within the boundaries of the site and the post-development flows are equal or less than the pre-development flows from the site, and of similar or better quality, then no surface water management contribution will be required.

- 2 In point 6.6.3 that the following statement added to provide clarity:

A reduction in the surface water management contribution is available where a development provides detention, and treatment prior to discharge to a piped network, waterway or open drain.

Or

That Council no longer require developments discharging into Council's system to detain and treat first flush stormwater.

- 3 Reinstate the remission policy from the current DCP (2004/14) in relation to surface water management and reserve contributions.
- 4 Provide a definition or explanation in some manner of what constitutes the reticulated surface water management network.

3 When development contributions paid

The Development Contributions Policy should state clearly when contributions are to be paid.

Subdivision consent contributions have always been required to be paid prior to receiving section 224 certification. The draft DCP states, "The Council will assess and require payment ... upon granting ... a resource consent (subdivision or land use)..." . This is a significant departure to the current policy and requiring payment cannot be justified without demand on the services. Payment on uplifting the s224 certificate is appropriate.

There is no clear statement in 6.1 to staged subdivision development as to when contributions will be required in relation to each stage. Contributions should not be required to be paid on future stages at the initial consent stage as there is no demand for the services being paid for at this point.

Requested amendment

Require payment of contributions for subdivision when section 224 certificate obtained and in the case of staged subdivisions when section 224sobtained for each stage.

4. Extraordinary Assessments

The Council's powers in 4.4 Extraordinary Circumstances are uncertain and unreasonable, and should be removed.

The Council has reserved a discretion in 4.4 of the Development Contributions Policy reserves to enter into special arrangements with developers with regard to the provision of infrastructure where a special need is identified. We consider it is appropriate to have a discretion to enter into voluntary agreements by developers. This clause however states that if Council considers that a specific development will have a greater impact than envisaged in the "averaging policy implicit in the methodology" that a special assessment will be called for.

Additional information will be requested (potentially through s92 requests under RMA) and presumably a higher contribution will be required. We consider such an approach to be uncertain and unreasonable because it is not clear when and how this power would be exercised. This power may in fact be ultra vires the LGA 2002. It may also be ultra vires RMA to request information on network utility matters when no resource consent is required for these matters.

Such a power should not be contained in the DCP, or if it is to be retained then there should be an equivalent power to apply for a reduction in contribution where a development has less impact than assumed in the averaging methodology.

Requested amendments:

1. That all but the first sentence of 4.4 Extraordinary Circumstances be removed.
2. That a reduction in development contributions can be applied for where a developer undertakes significant upgrade works to existing council infrastructure, which is not contained within the schedule of Capital Works within the LTCCP.

5 Compliance with LGA

The draft DCP fails to comply with the LGA 2002, which require a nexus between development and the associated growth component of Council projects sufficient to justify the levying of contributions.

The Local Government Act 2002 specifies:

- Contributions can only be required for "development" which is defined as subdivision or other development *that generates a demand for reserves, network infrastructure or community infrastructure* thereby requiring a nexus between development and reserves and infrastructure
- The funding needs of a local authority must be met from sources that are appropriate considering, amongst other matters, the distribution of benefits between the community as a whole, any identifiable part of a community and individuals (s101 (3)).
- Each source of funding, including development contributions, must be assessed in terms of the distribution of benefits (Section 102(3)).
- There must be an explanation of, and justification for, the way each development contribution is calculated. (Section 201(1)(a))
- There must be a clear statement of the significant assumptions underlying the schedule of contributions including an estimate of the potential effects (Section 201(1)(b))
- Development contributions must be used for the capital expenditure of the reserve, network or community infrastructure for which the contribution was required.

The combination of these clauses shows a clear intent and directive that the components that make up the basis of development contributions must be clearly specified, that there must be a clear and strong link between development and the capital expenditure proposed, and in particular the distribution of benefits and effects of development contributions are required to be specified and justified. We consider that the LTCCP and Development Contributions Policy fail to meet these requirements under the LGA 2002 in the following ways:

1. For many of the activities e.g. transport, water and wastewater, the City is effectively treated as a single entity. No analysis is supplied or explanation given for this crude approach, which requires developers in one part of the City to fund completely, unrelated capital expenditure. For example: contributions for non-specified water supply works at Moncks Spur are to be

paid for by developers in the north west and contributions for the Shalamar Drive Cost share are proposed to be funded by development at Bromley.

2. As the theoretical approach used by the DCP is based on "Areas of Demand" it is quite lax to revert to a universal approach of requiring the same contribution across the City. While there is some logic in combining certain traffic impacts because of the free movement between some areas of the City, this approach cannot possibly be justified for wastewater disposal, which is isolated in a piped network system. While upgrades of the treatment system would logically be shared amongst the majority of the City, pump stations and other infrastructure in many cases clearly serve defined catchments e.g. Belfast pressure main and pump station.

The approach of the draft DCP can be compared to the previous system of cost share areas where there was a clear nexus between the area served and the area funding the works. These cost share areas, such as Snellings Drain and Heathcote Valley should be retained rather than being brought into the "melting pot".

We therefore request that the following amendments to the draft Development Contribution Policy

That the works associated with growth for transport, water and sewage be reassessed and allocated to more specific Areas of Demand rather than the single large area for transport, waste and the two areas for water.

6 Growth model and Significant Assumptions

The draft DCP gives no explanation to indicate that the Growth Model is credible and accurate either for the whole of the City or for particular areas of demand or catchment areas.

No significant assumptions or explanations are provided to explain how projects have been allocated to between renewal, backlog and growth yet section 210(1)(b) requires these be specified.. Without an explanation of these and other assumptions in the growth model is not possible for the public to determine for example whether there are elements of deferred maintenance built into the levies payable or why the particular growth portions have been levied. An example of the latter is the Bus Exchange Expansion that has 90% of the cost of the project allocated to 'growth'. This allocation would appear to be out of proportion with the growth impact on the need for the expansion of the Exchange. The growing demand for the Bus Exchange is primarily from an increase in patronage by existing residents.

The DCP has an extremely brief statement of significant assumptions yet it is presumed that numerous very important assumptions underlie many aspects of the policy. These assumptions need to be made clear if the DCP is to satisfy the requirements of the LGA 2002. As a minimum, particular matters for which significant assumptions need to be stated are:

- What is assumed to be the demand generated by **non-residential activities** to achieve the formula for **household unit equivalents** contained in Appendix 5.
- What assumptions relating to generation of demand underlie the grouping of works/projects to areas of demand for water, leisure, reserves, wastewater collection, water supply and transport.
- What criteria are used in determining what constitutes and "*equitable assessment of funding requirements*" in 3.4 funding model.
- What assumptions are used to determine whether the *level of contribution does not generally discourage development* which is part of Council policy objective (1.2)
- What assumptions are used to determine how individual projects are placed into "*aggregated project category basis*" referred to in 1.2.1 2nd paragraph. How does this relate to Areas of Demand?

Requested amendments:

That the significant assumptions underlying the following matters be provided for public comment and Council consideration prior to inclusion in the Development Contributions Policy

- How the demand generated by **non-residential activities** is developed to achieve the formula for **household unit equivalents** contained in Appendix 5.
- Assumption regarding the generation of demand which underlies the grouping of projects to areas of demand for water, leisure, reserves, wastewater collection, water supply and transport.
- Criteria used in determining what constitutes and “*equitable assessment of funding requirements*” in 3.4 funding model.
- Assumptions used to determine whether the *level of contribution does not generally discourage development* which is part of Council policy objective (1.2).
- Assumptions used to determine how individual projects are placed into “*aggregated project category basis*” referred to in 1.2.1 2nd paragraph. How does this related to Areas of Demand?

7. Inclusion of Projects in Areas of Demand

There is a lack of clear statement about which projects are included in calculating the development contributions for each activity within each area of demand.

It is necessary that there be a clear statement within the LTCCP and/or the Development Contributions Policy (DCP) as to what constitutes the capital expenditure projects which make up the components of the development contributions for each activity within each area of demand. The reasons for this area:

1. Transparency of how levy/contribution is constituted. *For the public to have any confidence in the LTCCP it is vital to have transparency as to how levies etc are determined. The draft LTCCP has lists of projects and various discussions as to what constitutes “growth” but does not clearly state what projects for each activity are included in the contribution for each area of demand. Without this information it is difficult to have confidence that the contribution is appropriately calculated. Importantly, it is also necessary to breakdown the general listings to know whether in fact all the projects are sufficiently related to a development to justify contribution from that development.*
2. Section 6.3 of DCP pg25 states that the Council will not require a development contribution if:
 - a condition on a resource consent achieves the **same purpose**
 - a developer funds or provides the **same reserve, network infrastructure or community infrastructure**
 - Council has received funding from a third party for **those works**.*To determine whether this requirement not to pay a development contribution applies it is clearly necessary to determine what works or purpose the contribution is for.*
3. 6.6.4 3rd bullet point of the DCP on Page 26 requires the Council to refund cash or return land if the Council does not provide any reserves, network infrastructure or community infrastructure for which a development contribution was required. *To honour this refund it is necessary for the applicant and the Council to know what the contribution is for. From this knowledge it can be determined whether the applicant is entitled to a refund. It will also be necessary for this information to be at a level of detail to determine what component of that contribution relates to the specific project.*
4. 6.6.4 4th bullet point of the DCP on Page 26 requires the Council to refund cash or return land if the Council does not apply the money or use the land within 10 years of that contribution being received for any specified reserve purpose. *To honour this refund it is necessary for the applicant and the Council to know what the contribution is for. From this knowledge it can be determined whether the applicant is entitled to a refund. It will also be necessary for this information to be at a level of detail to determine what component of that contribution relates to the specific project.*

Requested amendments:

Include a clear statement and listing of identifiable capital expenditure which are the basis for each activity (reserve, water supply and conservation, wastewater collection, treatment and disposal,

surface water management, transport and leisure facilities) for each Area of Demand such that an applicant/developer can determine:

1. Whether the development contribution has been correctly formulated and calculated
2. Whether a development contribution is payable due to the works being achieved through a resource consent condition, through provision by the developer or through funding by a third party
3. Whether they are entitled to a refund due to the work not being provided by the Council.
4. Whether they are entitled to a refund due to the Council not having applied the money or used the land within 10 years of receipt.
5. Whether the works are sufficiently related to growth associated with the development such that requiring a contribution towards the works is fair and reasonable.

8. Level of Reserve Contributions

The Council should not take reserve contributions at a level of 7.5% of land value unless there is clearly a need for this level of contribution.

There are no explanations nor significant assumptions which justify the automatic levying of the maximum 7.5% contribution, permitted under LGA 2002. Not all Councils choose to apply the contribution at this rate and most have remission policies to enable matters such as reserve development to be taken into account in deciding on the final level of contribution required.

Requested amendment

Reconsider the maximum level of reserve contributions and provide for remissions of these contributions as occurs in the current DCP

9 Economic and social effects of contributions

The draft DCP fails to specify an estimation of the effect of development contribution as required by the LGA 2002. (201(1)(b)).

A very significant effect relates to the substantial increase in contributions required under the draft DCP. This increase will have extensive effects on the amount and type of development that will occur under such a regime. For example, affordable housing undertaken by the City within the Central City area will incur the same contributions as any other household throughout the City which (depending on the value of the land) could be up to \$23,450 per unit (taken from presentation of CCC officers on LTCCP). These additional costs may result in the housing no longer being feasible.

Many projects whether large or small and whether residential, industrial commercial, education, community or otherwise will find the development contributions to be unaffordable and so development will not proceed. This is a significant effect that should, under section 201(1)(b) of the LGA 2002, be taken into account in determining the level of contributions.

Requested amendment:

That the Council assess the anticipated impact of the level and type of development contributions contained in the draft DCP on individual projects, on the various sectors of the Christchurch economy and on social, and economic well-being. Following this assessment, consideration is given to appropriate changes to the DCP to avoid adverse economic and social impacts. Any proposed amendments should then be re-notified for further consultation and submissions

10 Transport Contributions

The proposed new development contributions for growth related transport projects is not sufficiently explained or justified and should be given serious reconsideration and reassessment before being considered for adoption.

The Transport levy is not well explained in the draft DCP, and nor is the table in Appendix 5 (which specifies the levies for non-residential activities) clear as to how these levies are to be applied. The following are some of the questions raised by this contribution and its expression in the draft DCP:

- What are the significant assumptions in determining which transport projects are related to growth, and how is the growth portion determined?
- How were the land uses in the Transport table in Appendix 5 chosen, what is the significance of the **category** of land use, how does the % journey work in any calculation, and is there a contribution required for land uses that are not listed?
- What is the criteria for determining what is a “particularly traffic intensive activity” for the purposes of determining whether an extraordinary assessment (4.4) can be undertaken? Is it intensive for that area e.g. a commercial zone, is it intensive at a particular time of day, is it the type of traffic that is intensive e.g. heavy traffic?

11 Works and services and contributions

The DCP should ensure that the levying of contributions takes into account the services required through section 108 of the RMA so that there is only a single payment for these works or services.

Requested amendment:

Point 1.3 para 1 – after “...to connect it to existing infrastructural services...” add “except where such works are provided for in the LTCCP or could reasonably be expected to be included within Appendix 4 relating to planned growth”

12 Credits

How will the Council’s administrative system ensure that credits will be appropriately recorded to ensure that no double payment occurs for a subdivision/development.

How will development contributions paid by the developer be ‘credited’ to each individual lot to ensure that at Building Consent stage, that a particular lot is not charged again for further contributions (other than where contributions are reassessed and increased)

13 Sunset clause for consents being processed

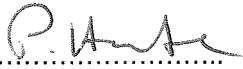
As a matter of fairness resource consents lodged under the existing contributions regime should not have to pay the new higher levels of contributions.

The costing and viability of a subdivision or development will have been determined prior to lodging a resource consent for that subdivision or development. It is considered unfair for developers to then be faced with a level of contributions far greater than planned. This could result in the project becoming unviable, with the developer having incurred the considerable (and now unnecessary) costs associated with planning and designing a development and lodging consents. Rational development of the City cannot occur if fundamental cost components are significantly changed “mid-stream” of the development process.

We therefore request that the following amendment be made

That the new contributions will only apply to resource consents, building consents and service connections, which have been lodged or formally requested after the date, the DCP comes into effect. That any contributions assessment made by the Council prior to 30 June 2006 remain valid for 12 months.

We wish to talk to our written submission at the hearings to be held between Thursday 25 May and Wednesday 7 June 2006.

Signature: 
On behalf of Neil Construction Ltd

Date: 4/5/2006