

5 May 2006



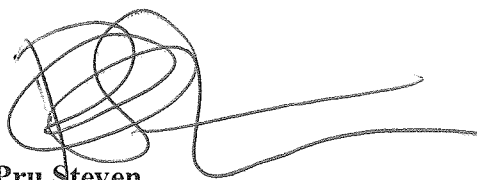
Christchurch City Council
Tuam Street
Christchurch

LTCCP Submissions

We **enclose** submissions on the LTCCP on behalf of our various clients as follows:

- 1 Carter Group
- 2 Apple Fields Limited
- 3 Canterbury Land Trust Limited
- 4 Canterbury Land Trust Holdings Limited
- 5 Clearwater Land Holdings Limited
- 6 Clearwater Hotel 2004 Limited
- 7 Property Ventures Limited
- 8 Humboldt Limited
- 9 Trans Tasman Properties Limited

Yours faithfully
Goodman Steven Tavendale & Reid



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**SUBMISSION ON THE 2006-2016 CHRISTCHURCH CITY COUNCIL
LONG TERM COUNCIL COMMUNITY PLAN**

Submitters Name Carter Group

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Christchurch

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We **do** wish to be heard in support of this submission

SUBMISSIONS

A The new contributions are unfair

- 1 **The Carter Group accepts in principle the need for a local authority to obtain development contributions linked to increasing growth in the requirement for services brought about by growth that is directly attributable to development activity.**
- 2 **It is submitted** however that the proposed policy is the result of previous financial administration that has included budget blowouts, and minimal rate increases, so that far too great a levy on property development is now proposed. The Council has elected to target a small section of the community.
- 3 There is **little appreciation** amongst staff and councillors of the impact that the new policy will have on new developments, the cost of new homes, growth in business, and the flow on effect to the community. Nor has there been any economic impact assessment of the effects of the policy as is required by section 201 LGA.
- 4 The application of the HUE equivalents for commercial development results in very significant increases (up to 100 fold) and a 20% increase in the **total cost** of the development. which intuitively, cannot be right? The increases are simply **too high and the consequences cannot be under-estimated.**
- 5 An example of the application of the new policy is attached to this submission, and is compared to the current policy. The market will not bear these instantaneous increases and they will result in projects being shelved and some people going bankrupt.. If the developer/investor is not able or willing to absorb the costs, the policy will discourage development in the city, favouring adjoining districts. The draft policy is inconsistent with the Council's objective which is *"to ensure that the levels of such contribution does not generally act to discourage development... "*.

Relief Sought

- 6 **The submission is** that as a **first** preferred relief, the policy should be withdrawn. As a **second** preferred relief there should be a ‘rollover’ of the existing policy and a deferral of the new policy for **at least** a year or longer so as to allow a review of the proposed provisions.
- 7 **Also, in any event, the** policy should be consistent with policy in the surrounding areas.
- 8 The reasons are further explained in this submission and include that:
- There has been insufficient consultation.
 - The policy is complex and has **significant** ramifications.
 - Not all of the supporting information is available to enable meaningful comment on it.
 - There are clearly issues with the document that have not been fully worked through by persons at the Council who will have to administer it.
 - It has all been too rushed, and has not been properly explained or justified.

B **The Consultation Process has been inadequate**

- 9 **It is submitted** that the consultative process has not reflected the importance of the issues, or taken account of the fact that there are no appeal rights for those dissatisfied with the outcome of this process, or when a contribution is assessed. **The submission is** that the consultation process has been flawed in a number of respects. These are further explained.

C **There has been insufficient time for consultation**

- 10 **It is submitted** that the Council should have allowed more than the minimum statutory period of one month for the consultation process due to the significance of the policy and the complexity of the issues.
- 11 Council officers have presented an overview of the policy to developer/investors, although their presentation has only skimmed the surface and only alerted people to the issues. Many queries have been made to council officers about how it works and why, within a very short space of time, and mostly they have been unable to respond. This significant document is being rushed through the process with too much haste.
- 12 Some problems identified with the definitions and terms which will be changed through the submission process by submissions made by the Council to its own plan. However, developer/investors will have no formal right to make cross submissions on these changes.
- 13 Because some of these definitions and terms of critical to the policy, **the submitter reserves the right to make further submissions** at the hearing on **all** explanations

and/or changes sought by the Council or recommended in officer reports, or arising from other submissions.

D The methodology for determining charges has not been readily accessible

14 **The submitter does not know** the basis for the calculations in the case of each project/activity as the provisions of the Act to provide reasonable access to the fully methodology and calculations have not been met.

15 The LGA states that "*the full methodology that demonstrates how the calculations for the contributions were made*" must be readily available under the Act (s101) However, the Methodology document is marked 'Confidential' and can only be used **within the confines of the offices** of the Christchurch City Council and **cannot be copied, transmitted or handed to third parties** without the express and written permission of the authors, SPM Consultants Ltd.

16 The document will not be released unless a confidentiality agreement is entered into with the authors of the document. The grounds have not been convincingly made out. The confidential nature of the Methodology document has implications for the hearing process. It is not easily understood by an untrained person so if an expert is to review the methodology, a confidentiality agreement will be required, and the evidence from that person (which will need to refer to the contents of the document) may have to be in **public excluded**.

17 What implications does that have for the consultation process which is intended to be **open, and transparent**? The restricted availability of the document is also not consistent with the principle referred above that the Council provide **information in a manner and format that is appropriate to the preferences and needs of those persons**:

18 **The submission is** that access to all **relevant** documents should be unrestricted so that all persons making submissions, and/or their consultants have ready access to it.

E There has been insufficient explanation of the application of the methodology

19 Other documents contain the **results** of the various calculations, and set out the apportionment to 'growth' as opposed to, renewal etc. The calculations that lead to these results have not been made available.

20 The submitter does not know for instance, how the Council has treated deferred works in its calculations? The policy refers to a funding period on Page 59 of not less than 10 years and an asset use for life of 30 years, whichever is the lesser. The submitter would like to know whether if the 30 years was extended out (e.g. for an infrastructure asset like sewage works) whether the contribution would be considerably less? Because there has been no ready access to the methodology **and the calculations**, the submitter cannot submit meaningfully on whether the figures are reasonable.

F There is a lack of causal nexus between new development and the contribution to fund growth

- 21 **It is submitted** that the supporting material **does not** demonstrate the direct link (**causal nexus**) between the development and the contribution to fund new or upgraded infrastructure; that cross subsidies between existing ratepayers to new residents and vice versa have been avoided.
- 22 The supporting material **does not** establish a **fair breakdown** of cost in the case of works relating to a related catchment or area that are purely to serve growth needs or to serve the existing population as well, taking account of the off-setting factors such as where the driver for the capital cost relates (in part) to improved level of service for existing residents where prior levels are below the desired standard, and/or the costs relate to deferred works. For many of the activities e.g. water and wastewater a City-wide approach is taken, and no explanation is given for this approach, which requires developer/investors in one part of the City to fund completely, unrelated capital expenditure.
- 23 This approach cannot be justified for wastewater disposal, which is isolated in a piped network system. While upgrades of the treatment system should 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; and various of the road improvements, for instance, the upgrades to the Ferry Road network

G Contributions for upgrades to the roading network are too high, and should not be levied on a city wide basis

- 24 Related to the submission above, **the submission is** that the basis for the **transport contributions** needs to be reconsidered. These will be levied from growth in the residential **and** non-residential arena for upgrades to the road network. The policy is unreasonable because the contribution is taken city wide without any consideration of whether the improvements will lead to a benefit to the community as whole as compared to any identifiable part of the community and/or the period over which the benefits are expected to occur. There is also an element of double dipping because some trips associated with new residents will include trips associated with new commercial development as well.

H The basis for HUE equivalents for non-residential development is too vague and unfair

- 25 **It is submitted** that converting non-residential land uses into dwelling equivalents is not an appropriate means to apportion the cost of growth and leads to anomalies. It implies that growth in the commercial and industrial sector is directly proportional to growth in resident population. In some cases there will be a relationship but in general other factors will have a stronger bearing.
- 26 There is also a real discrepancy between the contribution for non-residential developments based on gross floor area and the corresponding calculation for residential developments based on HUEs. An example is for inner city Hotels with a standard 35square metre hotel room (including hallways) in terms of transport demands the HUE equivalent is .4 per room.

27 Bearing in mind that this levy is based upon the need for city wide roading improvements this ratio is too high because it is unlikely that visitors will use the road network anywhere near half as much as a household unit. For water supply there is no basis for the rate. Obviously a shop without any basins would have a different demand than a coffee shop although the policy does not allow any differentiation.

28 **The submission is** that the approach is much too broad and needs to be better investigated and defined and that it should have no effect until this occurs.

I Renewal not fairly dealt with

29 At page 60 in the definition of '**Renewal**' – the document refers to the portion of project expenditure that has already been funded through depreciation of the existing assets. Renewal is not recovered by the development contributions.

30 **The submission is** that the policy is unreasonable in that depreciation of existing assets only came in the last 10 years and there were a lot of assets that didn't have a depreciation account. The concern is that if depreciation had been properly accumulated from the date the asset was put in then there would be a lot less to pay now. Developer/investors will make an up front lump sum payment, and they will also be required, along with other ratepayers, to fund depreciation of the assets directly funded by the developer/investor which is effectively **double dipping**.

J Developer/investors are being required to pay for deferred works or improvements to LOS where benefits flow to existing communities

31 **The submission is** that there has been no apportionment for deferred works and/or improvements to the levels of service, or to meet statutory requirements. The growth apportionment is the only cost driver used in the calculation of the development contribution. This is of some significance in the context of the large sum of money to be spent on the whole of the Christchurch Wastewater Treatment and Disposal System, the largest item of capital expenditure contemplated under the LTCCP.

32 The current facility is in need of an upgrade due to the need to meet higher environmental (statutory) standards imposed through current conditions of the resource consents, because the Council is no longer able to discharge into the estuary and it cannot meet conditions of consent particularly in periods of high rainfall.

33 Some upgrades to components of the system amount to **deferred works** or are driven by a need to **improve existing levels of service**.

34 As well, although a significant component of the cost of the whole facility is apportioned to growth, absent growth, it is submitted that an upgrade of that facility will be required because of cost drivers not attributable to growth.

K Credits are inadequate/unclear

35 At Page 11 under 'Principles for assessment of historic credits' (second bullet point) it states that "*a full credit towards the development contribution for reserves will also apply in respect of any such existing residential unit replaced*".

- 36 **The submission is** that this provision should be amended so that there is also a credit for titles and that the credit should not be confined to reserves, but should extend to include all components to the development contribution.
- 37 Under the third bullet point; there is confusion where the development involves a **mix** of non-residential and residential on the site, as to how the credit will be assessed which needs to be clarified. Also if the site contains a non-residential development (on a living zoned site) and is to be developed for residential the policy needs to be clarified to explain how will the credit be assessed? **The submission is** that these provisions need to be clarified before the submitter can make further comment.
- 38 Under the fifth bullet point, it states that “for any existing household units where a historic credit will be available within a period of 5 years...” **The submission is** that the 5 year period is too short and should be 20 years.
- 39 Under the seventh bullet point, the policy does not define what is meant by ‘any undeveloped residential lot’, and there is no ordinarily understood meaning that can be given. Therefore, not knowing exactly what the Council was intending to achieve, we cannot make any submission on it. However, **the submission is that** this provision would be more easily understood, and would be justified if amended so that it reads “**For any vacant lot to be used for residential use...**”.
- 40 Under the eighth bullet point, again the policy does not define what is meant by ‘any undeveloped residential lot’, and there is no ordinarily understood meaning that can be given. Therefore, not knowing exactly what the Council was intending to achieve, we cannot make any submission on it. However, **the submission is that** this provision would be more easily understood, and would be justified if amended so that it reads “**For any vacant lot to be used in whole or in part for non-residential use...**”
- 41 **The submission is** that the policy should be amended at page 12 Clause 2.4.2 under actual credits (first line) the policy should be amended to add **or provided** after “a service activity have previously been assessed and paid”, and this should also apply to the second line which it says “development or financial contributions paid” **or provided** should be added.
- L Exclusion of policy in the case of an increase in the GFA of any existing residential unit**
- 42 **The submission is** that the policy of not requiring “*any development contribution in respect of applications to enlarge the GFA of any existing residential unit*”. This is unfair because the development is to accommodate growth.
- M Timing of assessment of contribution unclear and unreasonable**
- 43 **The submission is** that provisions relating to the **timing** of assessment and payment of development contributions are unfair and should be amended. (See section 6). The policy is that the Council will assess and require payment upon the granting of a land use or subdivision consent, a building consent or at the time of an authorisation for a service connection.

- 44 **The submission is** that the policy should be clarified and should define what levies can be charged at a resource consent stage; at building consent time and at service connection time, respectively.
- 45 If a subdivision or land use consent is sought (and assuming there is sufficient information for a full and proper assessment) all components to the levy other than the service connection component will be assessed and paid for at this stage. The developer/investor's obligation should be satisfied as to the contribution assessed at that stage although this is not clear.
- 46 The policy contemplates that there will only be a reassessment if on any subsequent application for consent or service authorisation the **nature of activities** has changed from that envisaged at the time the previous development contribution was paid, and that any difference debited or credited. Although that aspect is not opposed, **the submission is** that there is a need for greater certainty in the policy that a reassessment of an earlier contribution will **not** be made when the authorisation for the service connection is sought.
- 47 As well, the policy should clarify what is meant by "authorisation" for a service connection. If i.e. a sewer connection (or other service connection) is shown on the building consent and the building consent is granted that grant should be deemed to include a grant of an application for authorisation for the relevant connections **even if** notice is later required when the connection is physically to be made. **The submission is** that to assist in clarification of this matter, the policy should be amended.
- 48 Under clause 6.3, by way of proviso, it states that the Council will be entitled to collect a contribution in respect of any subsequent application for consent or service authorisation for any development where the amount of the development contribution assessed for the same purpose is more than the development contribution provided pursuant to any prior consent or authorisation for that development. **The submission is** that this clause be deleted.
- 49 At Page 25 Clause 6.2 states that Payment of Development Contributions is required 12-months following the issuing of assessment. **The submission is** that this is much too short a timeframe and should be extended to at least 3 years, particularly given the significant size of some contributions.
- N There should be provisions for remissions from development contributions**
- 50 **The submission is** that there should be a reduction in reserves contributions where land is being used for dual purposes, i.e. to treat stormwater prior to discharge, where beyond the 1 in 5 year event it is available for recreation.
- 51 **The submission is** that the remissions policy from the 2004/14 LTCCP is included which recognises that 20% of these areas serve a dual purpose. remissions were granted.
- 52 The policy is unclear as to whether contributions towards surface water management are required for those developments that address all aspects of stormwater treatment and disposal within the boundaries of the site or do not discharge to a Council reticulated network.

53 Currently it is a requirement of the Council that the first flush associated with a development is detained and treated prior to discharge to Council's system. Discharge consents granted by Environment Canterbury, usually require that development treat and detain stormwater within the boundaries of the site prior to discharge.

54 There is no acknowledgement that many developments are already providing detention and treatment of stormwater prior to discharge. Developers/investors will be paying twice for the same matter which is unfair. Remissions are currently granted to encourage the naturalisation of waterways rather than the installation of sealed pipe networks.

55 **The submission is** that those developments that are not required to pay a surface water management contribution should be more clearly identified; that where a development provides detention, treatment and disposal of stormwater fully within the boundaries of the site, **no** surface water management contribution will be required.; that there should be a **reduction** in the contribution where a development provides detention, and treatment prior to discharge to a piped network, waterway or open drain.

O Provisions relating to the refunding of contributions should be amended

56 Clause 6.6.4 sets out when a refund of cash or land must be refunded in line with section 209 of the LGA however it also includes a statement the Council will only refund a contribution if a project does not proceed *unless the activity for which the development contribution was taken is not provided.*"

57 It is unclear as to when it will apply. In what circumstances can it be said that the Council has delivered 'the activity' so that it can claim a right to keep a contribution?

58 **The submissions is** that this qualification on refunding contributions **should be deleted** because it is unlawful to the extent that the **use of development contributions money** must be used "*for, or towards, the capital expenditure of the reserve, network infrastructure, or community infrastructure for which the contribution was required*"(S 204).

59 At Page 26 in the second to last paragraph it states that "*any refunds will be issued to the current consent holder for the development to which they apply*". It is not at all clear what this means. If reassessments are to occur, and a refund is due, the person who paid the original levy (i.e. the developer/investor) should get that refund. **The submission is** that this aspect of the policy should be clarified.

P Timing of payment where land is subdivided should be when 'the benefit accrues'

60 The policy will bring the timing forward so that the assessment is made and payment is required at the time the subdivision consent is issued instead of when the section 224 certificate issues. That is unfair and contrary to sound funding principle reflected in section 101 that the costs of any expenditure should be recovered at the time that the benefits of that expenditure accrue. Requiring payment cannot be justified without

demand on the services. **The submission is** that current policy of requiring payment on the uplifting of the 224 certificate is appropriate and should be reinstated.

Q Provisions relating to Extraordinary Assessments are uncertain

61 **Clause** 4.4 reserves a discretion to enter into special arrangements with Developer/investors with regard to the provision of infrastructure where a special need is identified. The submission is that the reservation of this discretion for Council to enter into agreements with Developer/investors is **supported** and there will be many circumstances where it will be appropriate that the application of the policy should apply.

62 However it also 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. In that case, the actual contribution **will be at the discretion of the Council.**

63 The policy contemplates that additional information will be requested particularly in relation to high traffic generating activities such as large retail developments. Presumably a higher contribution will be required. There is no objection or appeal right available to the developer/investor if there is a dispute as to the application or the policy, or the resulting assessment that is made.

64 **The submission is** that this approach provides no certainty at all to a developer/investor, and is entirely unreasonable, if not unlawful.

65 The submission is that if there is to be such a policy, the decisions must be available in a register open to the public with clear reasons for that so it can be equitably applied. If a discretion is given it needs to be in a register so it does not allow other people to get unfair advantage.

R Other Errors, Ambiguities need to be corrected

66 At Page 17 under Clause 3.7 relating to Reserve contribution, the policy states that *“where development contributions are sought for reserves, the charge is based on the value of land being developed”* It is unclear whether the reference is to the value of the land after it is developed or is the land valued before being developed. **The submission is** that the policy be amended to clarify that the valuation is of land **before** it is developed.

67 There are difficulties with the contributions for fire connections, which don't take any demand until there is a fire. The question is how or whether a contribution will be required where sprinkler systems are retrofitted into an existing building, or installed into a new building. **The submission is** that because it is unclear how the Council will levy fire connections the policy needs to be clarified.

68 On page 56, the categories of non-residential activities are set out for the purpose of the Transport component to the Non-residential HUE conversions. The submission is that the categories are not broad enough. For instance, it is unclear whether the Christchurch International Airport is a shopping centre or commercial premises. The

submitter reserves the right to make further submissions on this matter once this is clarified.

69 At Page 27 Clause 7.7 where it states that “*no new titles are created*”, **the submission is** that document should be amended to state “*no new title numbers*” are created.

70 Pages 58/59 contain definitions which need further consideration. There seems to be an artificial distinction between residential and non-residential in relation to a lot of contributions and the rationale for that is not explained. We reserve the right to further submit on this at the hearing.

S Lack of Transitional Provisions is unfair

71 **Of some significant concern**, Clause 2.3 “Existing applications” (Page 10 of the Policy) states that all applications lodged and granted on or after 1 July 2004 will be subject to the policy but this statement is ambiguous. We submit that the issue is that there is a need for complete certainty as the circumstances in which the new policy will apply to developments underway and/or in respect of which not all consents have been sought, and the extent to which all or components of the policy will apply.

72 **The submission is** that it is **grossly unfair and inequitable** to apply the new policy on the 1st July 2006 without any transitional provisions. The absence of transitional provisions is contrary to the presumption against retrospectivity.

73 Where a building consent application that includes **all relevant applications for service connections is not processed by 30 June**, the new policy will be applied. That has very dire consequences because of the size of the increase and is grossly unfair. A developer/investor will have planned the project for a considerable period of time prior to lodging the building consent application, and will have budgeted for a contribution based upon the current operative policy.

74 If the Council is able to process that application prior to 1 July, liability will be assessed under the current policy. If for reasons outside of the applicant’s control, the statutory timeframes are exceeded, and the application is not processed by 1 July, (say the Council is under-resourced, staff are sick, or on leave) **there is no justification** for applying the new contribution policy. However, Council staff has advised that **this will occur**.

75 Because of the Council’s policy, where there are developments underway and the section 224 has not issued prior to 30 June 2006, the Council’s policy would allow an assessment under the newly adopted policy although the developer/investor will have made provision only for an amount based upon the current policy.

76 The subdivision may have been underway for some time, with funds budgeted for and set aside for payment to satisfy liabilities calculated under the current policy. To apply the new policy is unfair and unreasonable.

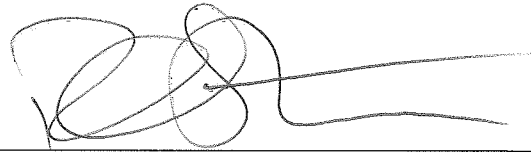
77 The policy also means all the purchasers of sections on residential subdivisions in the past who have not built their house will have to ‘top up’ what was paid in the original resource consent and the sum could be quite significant depending on the area, i.e.

\$10,000.00 - \$30,000.00. Adjacent neighbours who have built their house already would not be charged and this is unfair and inequitable.

- 78 **The submission is** that there needs to be a transition period before all these levies applied of at least. 5 years. The transitional provisions should apply in the case of development where not all consents/authorisations have been obtained by 1 July 2006 so that the **current policy** will continue to apply.

The submitter wishes to be heard at the hearings to be held between Thursday 25 May and Wednesday 7 June 2006.

Dated this 5th day of May 2006.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Person authorised by
Carter Group

Project Name	Waterloo Rd	Baigent Way	Baigent Way	Halswell Junction Rd	Hammersmith Drive	Dalziel Place (Northcoate)
Current Levies	10,485	18,938	1,972	59,907	1,676	1,425
Proposed Levies	97,315	131,701	459,399	1,707,423	388,664	320,302