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

Pru Steven
Partner

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SUBMISSION ON DRAFT LTCCP

Name of submitter: APPLE FIELDS LIMITED
C/- Goodman Steven Tavendale & Reid
PO Box 442
Christchurch
Attention: Pru Steven

Phone: 03 353 0722

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

SUBMISSIONS

A The new contributions are unfair

1 **It is submitted** that the policy is the result of previous financial administration, that has included budget blowouts, and minimal rate increases, to the effect that the Christchurch City Council is now faced with substantial "catch-up" capital expenditure in order to upgrade existing infrastructure and to expand certain facilities. The Council is misguidedly seeking to recoup the cost of these works through a capital levy on property development, rather than through the usual medium of rating procedures. Although the latter approach would result in an increase in the rates of all ratepayers, what is now proposed targets a small section of the community on the perverse logic that they have brought about an expansion in the demand for such services. The development process is nothing more than the means by which ratepayers come into possession of their properties, which in turn results in ratepayers using the utility services provided by the Council. If a capital development levy is also imposed upon the properties bought by such ratepayers then they are paying more than other ratepayers for the Council's services.

2 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. The assumption underlying the proposal is that the Council must remain as the sole supplier of such services. The imposition of a capital levy on certain classes of ratepayers not only has the effect of locking such ratepayers to the Council's services but also excludes the entrance into the market of new suppliers who would survive by providing alternative or cheaper services. This has a detrimental effect on efficiency and innovation and may lock in environmentally unsustainable services. It also places an ongoing funding burden on the Council, and consequently ratepayers, and inexorably, leads to anti-competitive behaviour. For Christchurch to attract business and jobs it must have a flexible and competitive infrastructure. The debate surrounding the funding of the upgrade and expansion must be accompanied by a rigorous and objective analysis of the efficiency and consequences of all the alternative approaches. This is required by the pertinent legislation and in terms of general competition law.

3 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? Even for smaller scale development the increases are simply **too high.**

4 The market may not bear these increases. 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..."***

5 **The submission is** that the policy should be **deleted** or as a second alternative and least preferred relief, at the least there should be a 'rollover' of the existing policy and a deferral/suspension of the new policy for **at least a year or longer** so as to allow a review of the proposed provisions. The submission is that the Council should **defer making this policy** operative until a further critical review of the policy is carried out.

6 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

7 **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 dissatisfied with the outcome of this process, or when a contribution is assessed

8 It is submitted that the Council's responsibility is particularly acute because the Council is effectively the monopoly supplier of the services such as waste water and water supply.

9 In addition to the obligations under the LGA the Council has a heightened responsibility to demonstrate through the consultation process that the charges are efficient and that they are not set at a higher level than they would be in a competitive market. **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.

D The methodology for determining charges has not been readily accessible

14 Section 83(1) sets out the special consultative process in the case of the formulation of a LTCCP. It states that consultation must be undertaken in accordance with the following principles:

a that persons who will or may be affected by, or have an interest in, the decision or matter should be provided by the local authority **with reasonable access to relevant information in a manner and format that is appropriate to the preferences and needs of those persons**:

15 There has been a totally inadequate supply of information so as to enable any meaningful comment to be made on the draft policy. Without all the information, the consultation process is ineffective. **The submitter has requested one document described as supporting information and has been told that it is not available (because it is not finished) and was referred to in error.**

16 **The submitter does no 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.

17 The more fundamental concerns relate to the methodology for determining the development contribution charges. The Local Government Act requires development contributions to be assessed in a transparent and fair manner. Information pertaining to the methodology is required under the Act by virtue of section 101(3) which provides that:

If development contributions are required, the local authority must keep available for public inspection **the full methodology that demonstrates how the calculations for those contributions were made.**
....

18 Pursuant to sub section (5) it must be readily available:

The places within its district or region at which the local authority must keep the information specified in subsections (3) and (4) available for public inspection are-

(a) **the principal public office of the local authority; and**

(b) **such other places within its district or region as the local authority considers necessary in order to provide members of the public with reasonable access to the methodology, provisions, or plan.**

19 However, he 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.

20 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) will have to be in **public excluded.**

21 What implications does that have for the consultation process which is intended to be **open, and transparent**? **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. In the age of digital communications and photo copying the Council can not be said to have provided reasonable access to the relevant documentation by asking submitters to line up at a counter in order to read the only available copy.

22 The restricted availability of the document is 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**:.

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

23 Having inspected the document itself at the Council offices, it contains a paucity of information and falls short of what is required under the Act. It explains the costing methodology and funding model from a purely accounting perspective but a reader has to search elsewhere to see how the calculations have been made in the case of the various projects and activities included within the scope of the development contribution policy.

24 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.

25 It is not possible to say that the statutory requirement to '**demonstrate**' how the calculations have been carried out in the case of each of the projects/activity catered for in the LTCCP has been met.

26 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.

27 **The substantial increase in contributions required under the draft DCP will have significant effects on the amount and type of development that will occur under such a regime It has not been demonstrated that the policy is justified under the present statutory regime.**

28 Under s 103(3), a revenue and financing policy adopted under s 102(4)(a) must show how the local authority has, in relation to the sources of funding identified in the policy, **complied with s 101(3)** Section 201(1) specifies a number of other matters to be included in summary form in a local authority's development contributions policy, in addition to the matters set out in section 106.

29 The combination of these clauses shows a clear intent that the components that make up the basis of development contributions must be clearly specified, and in particular the distribution of benefits and effects of development contributions are required to be specified and justified. The draft policy fails to meet these requirements under the LGA 2002 in the following ways:

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

30 **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.

31 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.

32 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 Policy is inefficient

33 The policy is inefficient as it disregards relevant economic theory The model is preoccupied with the Council's perception of what is equitable with respect to payment by so called new residents to the City and has no regard at all to economic efficiency. .The Council has not shown why it is more allocatively efficient to fund

from development contributions in preference to other broad based tax (eg general rate) for some projects/activities.

34 The model makes various erroneous assumptions for instance, that existing capacity is being efficiently used and therefore that the estimated new capacity including the growth component is necessary.

35 It also wrongly supposes that all new commercial development, for instance, industrial activity that depends on growth in markets external to the district may have little relationship to the district's population growth. Secondly, the expenditure could relate to upgrading of facilities to accommodate the growth in demand but in respect of efficient pricing funding would not generally discriminate between new and old customers.

36 The submitter questions whether all the proposed works are necessary, for example world trends and technology are moving towards decentralisation of sewer and stormwater treatment, with both being treated on site rather than transported to a central point where they become an environmental problem.

37 Can the Council be sufficiently certain that this expenditure will be necessary and the items in question required in the future, for example will not the use to which people put libraries change with the growth in information technology? Has the impact of the historical advance of technology been factored in?

H Assumptions relating to growth

38 In fact new development and subdivision will comprise a significant proportion of existing residents who are relocating with their surrendered capacity being taken up by new entrants. New entrants will contribute to the cost of growth related to so called existing ratepayers without any reciprocal arrangement.

39 Developers could choose whether they wished to make their own arrangement while if they wished to join the council system the question of cost recovery should be competitive.

40 The Council's projections does not allow for third party supply of services, for instance, developers could use existing water rights to supply households with water, provide sewage treatment and build roads. Third party provision of utilities is becoming commonplace. Such provision should help to avoid the Council effectively establishing a monopoly.

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

41 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.

42 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.

43 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. Having inspected the document itself at the Council offices, it contains a paucity of information and falls short of what is required under the Act. It explains the costing methodology and funding model from a purely accounting perspective but a reader has to search elsewhere to see how the calculations have been made in the case of the various projects and activities included within the scope of the development contribution policy.

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

44 **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.

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

K Renewal not fairly dealt with

46 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.

47 **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**.).

48 By this it is meant that residents of new subdivisions pay directly or indirectly the cost of contributions while at the same time paying rates that include recovery for the decline in the service potential of assets. The so called new entrant pays again for the use of the asset funded by the development contribution while also contributing to depreciation of assets used by so called existing residents

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

49 **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.

50 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.

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

52 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.

M Upgrades to the roading network

53 Transport contributions will be levied from growth in the residential and non-residential arena for upgrades to the road network. The policy is unreasonable to the extent that 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 individuals; and/or the extent to which the actions or inactions of a particular individual or group contribute to the need to undertake the activity and/or the period in or over which the benefits are expected to occur.

54 The transport rates are too high. There is also an element of double dipping here to the extent that trips associated with new residents will include trips associated with new commercial development.

N Leisure facilities

55 The Community Infrastructure (Leisure facilities) varies significantly between areas, again without justification (350% variance between lowest and highest). Only 2 projects are listed in Appendix 3 and Appendix 4 with these facilities serving the greater area). Sectors should not pay for the upgrade on one facility that benefits a greater area. This cost is being inflicted on developers because they cannot be held financially accountable for people using the library or taking swims in the Council pool (eg 10 years after subdivision) as they have no control over peoples' actions.

56 **The submission is** that leisure facilities should not be funded through the development contribution policy.

57 In the case of swimming pools, he plan as a whole contemplates that many local pools are to be closed. The Council has obviously decided to rationalise existing facilities and the changes proposed are therefore not all required to service growth. Money used to operate these pools will be saved. The land will be able to be sold. The plan makes provision for the sale of land

O Timing of assessment of contribution unclear and unreasonable

58 **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.

59 **The submission is** that the policy should be clarified and should .define what can be charged at a resource consent stage; at building consent time and at service connection time, respectively.

60 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.

61 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.

62 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.

63 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

64 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.

P **There should be provisions for remissions from development contributions.**

65 **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.

66 **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.

67 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.

68 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.

69 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 then the installation of sealed pipe networks.

70 **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.

71 The submission is also that a uniform reserves policy could undermine the amenity that a developer may wish to achieve from a marketing perspective. There are many examples of developers providing excellent amenity/environmental packages that far and away exceed what the Council could hope to achieve by way of a uniform reserves policy eg **Clearwater.** Developers are more likely to provide superior subdivisions **when there is adequate supply of zoned land** and they are forced to provide excellent standards of amenity for competition reasons.

Q Provisions relating to the refunding of contributions should be amended

72 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.*"

73 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?

74 **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).

75 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.

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

76 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.

S **Provisions relating to Extraordinary Assessments are uncertain**

77 **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.

78 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**.

79 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.

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

T **Lack of Transitional Provisions is unfair**

81 **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 there is no rationale for this.

82 **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.

83 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.

84 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.**

85 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.

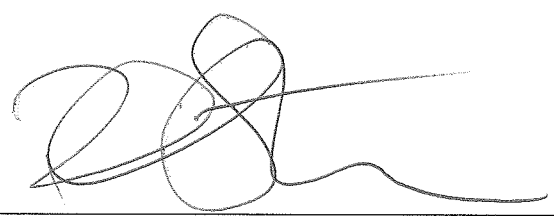
86 The subdivision may have been underway for some time, with funds budgeted for and set aside for payment to satisfy liabilities calculated under the current policy. To apply the new policy is unfair and unreasonable.

87 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.

88 **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.



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