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11 May 2007

Freepost 178  
Christchurch City Council –Annual Plan  
P O Box 237  
CHRISTCHURCH  
Email: [ccc-plan@ccc.govt.nz](mailto:ccc-plan@ccc.govt.nz)

Dear Sirs

**RE: CCC 2007-17 LTCCP SUBMISISON**

Please find attached our company's submission on the 2007-17 amendment to the 2006-16 LTCCP.

The writer is well aware of the background to the current amendment through my involvement and membership of the Council initiated Working Party to review the 2006-16 DC Policy.

The proposed amendment incorporates significant improvements from the 06 DC Policy as adopted by Council in 2006 however given the time available to the working party and desire for CCC to have a clear position by a particular date, the working party were not able to conclude what it had started and reach a position of general satisfaction of all matters.

It is on this basis the following submission is made on matters that I as a member of the working party feel were not concluded or canvassed satisfactorily, or in some instances have come to light since the working parties report was provided to Council.

Further I became aware of errata to the draft on 8<sup>th</sup> May through a chance discussion. I am concerned this erratum was not publicised and is relevant to my submission. I am concerned other parties will not be aware of these errata that should be and appropriate consideration given to reverting to the Policy as drafted.

I wish to be heard in support of my submission.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Hamish Wheelans', with a long horizontal line extending to the right.

Hamish Wheelans, Gillman Wheelans Limited

## 1.0 CAUSAL NEXUS

Causal Nexus is a significant term set in legislation and required to be proven by Councils in writing the DC Policy.

Councillors are aware of the North Shore case and decision that was released post the working parties report. The decision gave guidelines to Councillors about how DC's must be based on actual effects caused by development related growth. Catchments were a significant matter in determining effects of growth.

No doubt Councillors would have received legal advice regarding the decision, Council's Policies, compliance with the legislation and methods to alter the proposed Policy where appropriate.

In the absence of access to that advice or staff recommendations, the following matters raised require consideration of causal nexus and where in my opinion such nexus is questionable and open to challenge.

### 1.1 Reserve Expenditure

The following items have been obtained from staff relating to expenditure planned for Parks and Reserves over the coming 10 years. I consider there is a lack of Causal Nexus between expenditure items and growth. They are a small compilation of expenditure items. Many more could be listed.

<b>Expenditure Item</b>	<b>Total Expenditure</b>	<b>Growth Portion</b>
Regional Park post & cable fencing	\$50,000	\$50,000
Regional Park Farm Fencing	\$40,000	\$40,000
City Wide rock protection fencing	\$20,000	\$20,000
Inner City Riverbanks Avon	\$1,500,000	\$1,500,000
Botanical Gardens Entry Pavilion	\$10,325,407	\$2,065,081
City-wide toilet upgrades	\$689,900	\$689,900

Although the sums in the above examples are not significant they clearly are examples where that should be viewed as maintenance or enhancements, not as a result of growth but increase in level of service or demands placed on services due to natural growth or tourism related growth in the case of the Botanical Gardens.

### 1.2 Waste Water Collection, Treatment & Disposal

Under previous Council Policies, Council had very specific catchment related cost share schemes such as Alpine View, Aidanfield, etc. These costs shares had a defined catchment with developments within those catchments contributing financially at the time of development. This Policy was transparent and appropriate and should be retained. It is inappropriate for greater catchments to contribute towards these costs share schemes when there is no infrastructure or financial benefits offered.

The current Policy and proposed amendment removes those specific catchments for a city wide approach.

Clearly where a causal nexus is required, and past policies provided for cause and effect, justification for an approach based on convenience is not defensible. Examples of specific catchments proposed to be incorporated into catchment wide levies include Governors Bay R&R Pumping, Shalamar Drive Sewer, Little River Reticulation, Mt Pleasant sewer extension,

Residents of Christchurch City or growth areas beyond those defined catchments enjoy no benefits of the works in such catchments. There can be no cross boundary benefits therefore there is no justification for cross boundary subsidies or averaging.

### 1.3 Banks Peninsula

The justification for the inclusion of Banks Peninsula into the DC Policy of Christchurch City must be based on causal nexus, not affordability.

Few would disagree that there are substantial benefits for greater Christchurch assisting communities on the Peninsula meeting requirements for clean water, appropriate disposal of sewer and roading networks that are maintained. However, these benefits must be funded by rates or other methods of revenue rising if the nexus is not clearly defined and proven as caused by growth.

## 2.0 GENERAL MATTERS

### 2.1 Timing of Assessment and Payment – Section 3.1.2

- The ‘Applicable Policy’ section states “If a complete application is received by Council on or after 1 July 2007 then the DC will be assessed in accordance with this policy. The word complete has the potential to cause disagreements as Officers could justifiably say an application was not complete if and RFI is sought on the application. The RFI could be for trivial matters. I suggest the words “a complete” be replaced with “an application that includes information reasonable foreseeable”.
- Under the ‘Assessment’ section, the second to last paragraph provides Officers with the discretion to defer collection on future stages of a large subdivision to the time of construction of that stage. In instances where the increase demand has not occurred until the development is complete, such charges should not be required to be paid. Council will reassess the levies every 12 months including additional interest if recoveries are not achieved as anticipated. If the demand has not occurred, the levy cannot be charged.
- The ‘Payment’ section does not provide for developers electing to make payment of DC’s by requesting an invoice in advance of a uplifting of 224c, Code Compliance Certificate or Authorisation for Service Connection. There may be instances where a Developer elects to make an early payment for certainty of cash flow, affordability, etc. Once paid, the levies must not be reassessed.
- The ‘Payment’ section appears to create confusion. This confusion needs to be resolved as it will become significant issue as the transitional period expires. It may also assist if the term Assessment or Initial Assessment was provided in the Glossary of Terms. It is the writers understanding as follows:
  - a. Application made under relevant Policy of the time, today being the 2006-16 Policy;
  - b. The assessment is provided by Council at the Consent stage with the assessment based on the Policy applicable at the date of consent, which could be a previous Policy;
  - c. If the assessment is not paid within 12 months of the assessment (the Consent date) the levies can be reassessed using the current HUE’s however still applying them under the relevant Policy at the date of application, i.e. payment may occur in 2008 with the relevant HUE’s at that time however the applicant would retain the benefits of the 2006-16 Policy transitional discounts.

## 2.2 Determining the Number of HUE's per Activity - Section 3.2.1

- Step 1 states “Where the site being developed will **not** (*my emphasis*) be within the area of service in respect of ...surface water management, on completion of the development no HUE assessment will be made for that activity at that time.” Considering stormwater, the reverse would indicate that where a development occurs where there is an outfall to a Council network, a HUE assessment will be made. If this is taken further to a scenario where a residential or commercial development requires complete stormwater treatment and disposal on-site as a condition of subdivision consent or discharge consent, there is no connection to a council network, even though it is available. In this instance, clearly no assessment should be made as causal nexus to off-site effects do not occur.

## 2.3 Schedule of DC Charges for Network & Community Infrastructure – Section 3.2.5

- As referred to in section 1 of this submission, I submit that the proposed catchments are based on convenience and not on causal nexus.
- It is accepted that some infrastructure works benefit a greater area and catchments are less clear, for instance transport and leisure however wastewater collection can easily be broken into catchments based on gravity networks.
- Banks Peninsula is grouped into City Wide catchments where expenditure is proposed on the Peninsula such as sewer upgrades however where no works are proposed, catchments are specific with no levy payable. This does not appear consistent.

## 2.4 Private Developer Agreements – Section 3.3.3

- I support the use of PDA's to achieve positive outcomes for the City Infrastructure and Reserves.
- Paragraph 3 states “A PDA cannot be entered into if the Consent has already been granted.” I submit this is inappropriate and the sentence should be deleted. There may be many instances during the exercising of consent where unforeseen matters occur that justify a PDA such as finding Council plans are inaccurate requiring upgrades or where further works are sought by Council in association with subdivision works. This statement clearly removes the ability to enter into a PDA.

## 2.5 Refund of Development Contributions – Section 3.4.4

- Paragraph 3 states “Any refunds will be issued to the current consent holder and/or title holder for the development to which they apply.”
- In the instance where a subdivision proceeded however Council did not provide say Community Infrastructure (Library) the refund should not be made to the title holder as this will be a party who did not pay the levy in the first instance and may be a 2<sup>nd</sup>, 3<sup>rd</sup>, or later owner of that title. The levy must only be repaid to the applicant.

### **3.0 RATIONALE**

#### 3.1 Distribution of Benefits – Section 6.2

- Paragraph one states “Existing owners, however, gain no direct benefit from, and should not be required to fund through rates, the addition of capacity to existing networks that adequately meet their needs.
- We know from the North Shore case that the ‘straw that breaks the camels back’ which is what this paragraph is indicating is an incorrect use of the DC Policy. Works benefit the greater community.

#### 3.2 Costs and Benefits – Section 6.3

- Paragraph 1 refers to the use of catchments aiding transparency however as submitted in 2.3 above, that transparency does not occur with city-wide catchments or the integration of Banks Peninsula based on affordability rather than causal nexus.

### **4.0 CALCULATION OF DC’S**

#### 4.1 Calculation Table – Table 8.1

- Step two must provide for the modified shared drivers bringing into such calculations terms such as natural growth, intergenerational benefits, etc.
- Step six provides for external audit. This was a key recommendation of both the Working Party and LECG. I am concerned the audit has not occurred and will not for the 2007-17 amendment to the 2006-16 Policy. The early years are the most important for auditing to ensure the correct methodology is being used and understood by staff.

#### 4.2 Cost Allocation Methodology – Section 8.3

- As mentioned in 4.1, additional cost drivers must be added to ensure staff adequately consider those drivers when allocating costs.

## 5.0 SUMMARY

5.1 In summary, the key matters of this submission are as follows:

- Causal Nexus is the key principle that must be adhered to in deciding whether an individual development is the cause of capital expenditure or an extension to work that is required due to a number of factors. The cost applied to “Growth” cannot be based on the straw that breaks the Camels back. The cost must be adequately shared between those who benefit, who will include the greater community and next generations.
- Cost allocation must be caused by growth. DC’s cannot be collected for maintenance or enhancements such as regional park post and wire fencing.
- Catchments must be based on cause and effect, not convenience which will aid in transparency of charges.
- The applicant must be able to elect to pay earlier than uplifting the 224c, Code Compliance if they so choose to reduce cash flow risk.
- Where developments do not connect to Council Networks, even where they are available, the levy should not be charged as there is no cause and effect.
- PDA’s must be accessible at any time during the consent/development process where Officers deem them appropriate for the benefit of Council, the applicant and the Community.
- Refunds of DC’s where Council has not undertaken the works must be repaid to the applicant, not the title holder at the time.
- Council must accept that the distribution of benefits is greater than indicated in the Policy as Justice Potter stated in the North Shore Decision.
- Natural Growth must be acknowledged as a shared driver in the cost allocation methodology.
- External audits are paramount to ensure the model is being understood, policies followed and correct levies applied by staff.