

TO: Our Community Plan  
Christchurch City Council  
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Christchurch 8003

**LONG-TERM COUNCIL COMMUNITY PLAN – 2007 AMENDMENTS -  
SUBMISSION PURSUANT TO SECTION 84 LOCAL GOVERNMENT ACT 2002**

Christchurch International Airport Limited (*CIAL*) makes the following submission on the draft Long-Term Council Community Plan 2007 Amendments (*LTCCP*) to the Draft Development Contributions Policy (*the Policy*).

**Issue 1: Section 106(1)(2) of the LGA 2002**

- 1 Development contributions were introduced into the LGA 2002 to assist territorial authorities to fund capital expenditure on additional capacity in infrastructure and facilities required to meet the increased demand for community facilities resulting from growth. This is explicit in the LGA 2002 – see for example section 106(2)(a) which expressly requires the CCC to **summarise and explain** the capital expenditure identified to meet the demand **resulting from growth**.
- 2 The Oxford Dictionary's meaning of "*resulting from*" is:

"A consequence, effect or outcome. ..."
- 3 This means it is a requirement of CCC to establish a causal relationship between the growth and the need for capital expenditure.
- 4 This means that CCC has an obligation to separate capital expenditure resulting solely from growth from expenditure required to meet the demands of existing users or past growth, i.e. "*catch up*" and to justify the assessed growth element of any capital project.
- 5 The LTCCP itself appears to implicitly acknowledge this at a Policy level as the introduction at 1.0 provides several references to additional demand as the result of growth, for example:

"Significant changes between the 2004-14 DCP and the original 2006-16 DCP were:

- determination that, insofar as possible, all the costs of growth related to development should be met by the development community; [our emphasis]."

6 However, the LTCCP goes on to note at 1.6 that the supporting information for this policy is available on line (CCC website) in relation to:

- Development contributions growth model;
- Schedule of growth-related capital expenditure;
- Workings supporting the growth allocation of capital expenditure projects;
- Catchment maps (both city-wide and local), for a more details view; and
- Methodology for determining development contribution charges.

7 However, this link was not accessible, and as a result CIAL has not been able to assess that information.

8 In any event, any such information should be contained within the LTCCP itself to ensure efficiency and certainty. Therefore CIAL submits that the LTCCP is deficient in that it does not meet the requirement under section 106(2)(9) to explain the capital expenditure identified to meet the demand resulting from growth.

9 CIAL seeks that the Policy be redrafted to include information such as:

- 9.1 an assessment of the current state of existing assets;
- 9.2 current levels of service being delivered and target levels linked to growth;
- 9.3 a transparent and detailed assessment showing the current programme of works their reason, priority and cost;
- 9.4 and most importantly a transparent explanation of how CCC has assessed the relationship between anticipated growth and the work CCC states is required to meet that growth.

10 Until the Policy is redrafted to provide this fundamental information CIAL maintains that the LTCCP does not meet the requirements of the LGA 2002.

**Issue 2: North Shore decision**

11 In *Neil Constructed Ltd & Ors v North Shore City Council* (CIV 2005-404-4690) the High Court made several significant observations in relation to a Council's obligations in drafting development contribution policies.

- 12 The Court observed, at paragraph 46, that development contributions are “tied to the expenditure required of a Council for capital works to support infrastructure incurred by a development...”. Under the LGA, the development must generate a demand for infrastructure (paragraph 109) and there must be “a causal connection between the development and its effect in requiring additional or increased capacity. A development which either alone or cumulatively with another development does not have the effect of requiring additional assets or, increased capacity may not be made subject to development contributions” (paragraph 115).
- 13 This is an important point in light of CIAL’s submission Issue 7 that CIAL does not require much of the infrastructure or services that other developments require such as stormwater, wastewater collection and water supply. This needs to be appropriately recognised in the policy.
- 14 The North Shore City Council was found to be in error of the LGA in drafting its development contributions policy. CIAL submits CCC is also in error of the LGA. It does not address the concept of economic efficiency and the causative approach to development contributions, including failing to consider the distribution of benefits and equitable and proportionate allocation.

### **Issue 3: Unique position of CIAL**

- 15 The core business of CIAL is to operate as an airport. Its primary role is to provide infrastructure to safely and efficiently enable the arrival and departure of people and goods to and from the city. In this sense it is simply an existing part of the transport infrastructure. At its simplest it operates as a conduit of people who will depart from or eventually arrive at a destination elsewhere in respect of which a development contribution will have been paid, e.g. residential subdivision, hotel and retail.
- 16 The uniqueness of the airport is now recognised in the Resource Management Act 1991 which has recently included the airport in its definition of “*infrastructure*”. Christchurch International Airport has also been recognised by the High Court as a local, regional and national resource.
- 17 CIAL performs a unique role in the City. CIAL seeks that development of its core infrastructure explicitly be recognised in the LTCCP as a special case in relation to the requirement for payment of development contributions. By core infrastructure CIAL refers to assets such as the terminal, car parks runways, taxiways and hangars as differentiated from other development on airport owned land such as premises leased by third party operators.

18 The primary reason for this submission is that CIAL is in itself providing essential infrastructure in the public interest.

19 CIAL seeks that the core infrastructure of CIAL be recognised in the LTCCP as a special category with its own provisions relating to the payment of development contributions.

**Issue 4: Section 3.3.3 is insufficient**

20 Section 3.3.3 has made an attempt to recognise the uniqueness of CIAL. However, section 3.3.3 is totally meaningless and uncertain. For example:

20.1 while it does recognise that private developer agreements (*PDA*) may be considered for “some types of projects carried out by [CIAL]”, it is at the sole discretion of the Council whether a PDA will be entered into, as such, no certainty is afforded to CIAL;

20.2 there is no guidance as to what “some types of projects” would constitute;

20.3 in addition precisely what a PDA would provide for is unclear and there needs to be more certainty as to its contents. This is an important issue in light of the following submissions by CIAL which generally relate to a failure of the LTCCP to recognise or provide for the unique position of CIAL.

21 In addition, PDA's (as special assessments discussed below) appear to provide for increasing development contributions from that otherwise set out in the Policy.

22 This provision does not meet the sufficient requirement of recognition of CIAL.

**Issue 5: Special assessment – Extraordinary circumstances**

23 Linked to Issue 2 CIAL recognises that section 3.2 of the Policy acknowledges there will be extraordinary circumstances where the Council reserves a discretion to undertake a special assessment of development contributions where a development is not readily assessed in HUE's. An airport is given as an example of what may be an extraordinary circumstance. However, the Council still retains ultimate discretion to undertake such a special assessment and CIAL submits it should have certainty that it **will be** considered as falling within the definition as extraordinary circumstances.

- 24 In addition, the Policy appears to only apply to developments which have a significantly greater impact than envisaged by the LTCCP. It does not include a provision for developments which have a significantly less impact or demand than envisaged by the LTCCP.
- 25 CIAL considers the Policy should be amended to recognise CIAL's unique role and include in the extraordinary circumstances category a recognition that the core infrastructure associated with the airport is simply a mechanism to move people to and from other destinations within the City.
- 26 Therefore the extraordinary circumstances section should include specific recognition of the core infrastructure assets of CIAL and provide for a special case for development contributions for those core assets as a matter of certainty.
- 27 Whilst these are matters that could be covered by a PDA, the PDA in the LTCCP relating to PDA's are too uncertain to meet CIAL's concerns.

**Issue 6: Transitional provisional - Cashflow**

- 28 The Policy requires payment of those development contributions on invoice. This may be suitable for many developments but CIAL undertakes projects which can span over 5 years and require various consents to be obtained over that time. As such, the Policy does not recognise the situation of large infrastructure providers such as CIAL who develop in stages.
- 29 CIAL believes provision needs to be included for deferral of the payment of development contributions and for the Council to have a discretion to permit development contributions to be assessed at the time of consent being issued but paid through the life of any development rather than at the time of consent. 3.4.1 "postponement of development contributions" should be reworded to state that large projects such as CIAL's create a specific situation where payment may be postponed.
- 30 This is appropriate given that the impact of a development on infrastructure will not occur until code compliance certificates are issued, there seems little justification that significant interest costs should be incurred prior to any increased demand on infrastructure and the issue of the certificates.
- 31 Again this is a matter which would be dealt with in a PDA, however, there is nothing in section 3.3.3 to indicate that deferred payments are appropriate in a PDA.

**Issue 7: Lack of information on how Household Units Equivalent are calculated**

- 32 Section 3.2 sets out how to calculate a development contribution. It is not clear how HUE would be calculated in respect of CIAL developments.
- 33 For CIAL's commercial developments the policy needs to contain an explicit statement to the effect it is not subject to development contributions in respect of water supply and conservation, wastewater collection and surface water management. The only exceptions are transport and wastewater treatment and disposal. This needs to be reflected in Tables 3.2.1b and 5.2. There also needs to be information in relation to how those calculations for transport and wastewater treatment and disposal will be calculated.
- 34 Further information needs to be provided in relation to the methodology used.
- 35 Again, this is a matter that would appropriately be dealt with by a PDA however, the PDA policy is too uncertain.

**Issue 8: No remissions or reductions**

- 36 Section 3.4.3. states that the Policy does not provide for any remissions or reductions to be applied for or granted. It may be that a PDA can provide otherwise, but this is not clear or certain.
- 37 CIAL is of the view remissions or reductions are likely to be appropriate for CIAL given its unique role and limited demand on infrastructure. The issue with Section 3.4.3 is linked with all others in that the Policy does not adequately provide for fairness nor for CIAL's circumstances.

**Issue 9: No appeal or review procedure**

- 38 Section 3.4.2 states the Council does not consider it appropriate to provide any formal review process.
- 39 CIAL is concerned that decisions with significant financial impact can be made by Council officers exercising discretion under the Policy with no formal avenue for "*appeal*".
- 40 Given the significant potential impact of decisions in relation to the Policy, especially in relation to parties like CIAL who raise extraordinary circumstances, CIAL believes the Policy should provide for an appeals procedure whereby parties who are dissatisfied with the exercise of discretion can have the decision reviewed.

**Issue 10: Section 3.3.5**

- 41 This Section allows the Council to require a developer to provide additional 'extra-over' works in anticipation of future demand on those services beyond that of the development. CIAL's concern with this Section is that the Council retains the discretion to reimburse the developer for those costs over the development contribution. This is contrary to the purpose of the Policy and CIAL is of the view it could be considered ultra vires.

**Issue 11: No justification or methodology to justify differences in areas**

- 42 The Policy contains no justification or methodology to explain the differences in different geographical development contribution areas, and thus the set development contributions per HUE in table 3.2.5.
- 43 CIAL seeks that the Policy be redrafted to properly explain its methodology.

**Issue 12: Consultation**

- 44 CIAL is aware that the Council will make further changes to the Policy in light of the North Shore case. CIAL's concern is that such changes should be the subject of consultation.

**Signed** for and on behalf of Christchurch International Airport Limited by its solicitors and authorised agents Chapman Tripp Sheffield Young:

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Date: 11 May 2006

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