

Submission on draft 2007 Amendments to the Long Term Council Community Plan (LTCCP) 2006–16

Re Amendments to the Development Contributions Policy

Introduction

- 1. **Submitter: LYTTELTON PORT COMPANY LIMITED (LPC)**
- 2. LPC was formed in 1988 to manage the port of Lyttelton (**Port**). The company is presently owned by a number of local authorities and institutional and private shareholders. The Christchurch City Council (**Council**) through its trading arm, Christchurch City Holdings Limited, has a majority shareholding.
- 3. LPC provides international shipping services to more than 30 countries, services a large part of the South Island, and has well established coastal links with other New Zealand ports.
- 4. LPC is likely to redevelop some of the existing Port areas in the future to expand the Port's operation to meet the growth or change for its services. This could include new or extended wharves or reclamations. LPC also owns some "*undeveloped*" land to the east of the Port that may be used for Port expansion.
- 5. Any improvement or expansion of the Port's facilities may incur development contributions under the Development Contributions Policy (**DCP**).
- 6. LPC supports restricting reserve development contributions to residential development and non-residential subdivision and leisure facilities development contributions to residential development only.
- 7. However, LPC is concerned that the DCP does not recognise that development of the Port is fundamentally different from other non-residential development. The Port is part of the transport network and it responds to demand for its services rather than creating it.
- 8. LPC therefore opposes the potential for the same level of development contributions being charged to development of the Port as to any other non-residential development in Christchurch.

Reasons for submission in opposition

Distinguishing improvements/expansion at the Port

- 9. The Port is fundamentally different from other commercial entities, and improvements/expansion at the Port can similarly be distinguished from other non-residential development.
- 10. The Port is crucial to the economic well being of the entire South Island. Import and export goods are accumulated in the Port in far greater quantity than anywhere else in the South Island – between 40 and 45 percent of all international cargoes for the South Island pass through the Port. It provides a vital link for manufacturers, importers, and exporters in Canterbury and other South Island regions.
- 11. The Port is part of Christchurch's transport chain in the same way the network of local roads is. It is an essential link between national and international markets and the growing economic activity in the Canterbury region and the South Island.

12. Section 197 of the Local Government Act 2002 (**LGA**) states that "*network infrastructure*" means the provision of roads and other transport and the Port is part of that network.
13. The definition of "*infrastructure*" in section 2 of the Resource Management Act 1991 (**RMA**) includes "*facilities for the loading or unloading of cargo or passengers carried by sea, including a port related commercial undertaking as defined in s2(1) of the Port Companies Act 1988.*" The Port is clearly "*infrastructure*".
14. The special role of the Port is also recognised by the Council in a number of documents.
 - a. The Urban Development Strategy for Christchurch (2006) (**Urban Strategy**) describes the Port as a "*key infrastructure node*" in Christchurch's business infrastructure (paragraph 6.19.3). Further at paragraph 6.26.1 regarding transport, the Urban Strategy states that "*Lyttelton Port and Christchurch International Airport are key import and export hubs for the area, region and the South Island. There is a need to ensure that efficient transport access to, from and between these two facilities is maintained and enhanced if possible.*"
 - b. Chapter 27 (Lyttelton Port Zone) of the Banks Peninsula District Plan recognises the importance of the Port to the economy, and Objective 1 of that Chapter is "*to enable the efficient operation, use and development of Lyttelton Port, as a major sea link for New Zealand.*"
 - c. The importance of the link is also recognised in the Regional Policy Statement (**RPS**). In particular, Objective 2 and Policies 3 and 4 in Chapter 12 (Settlement and the Built Environment) of the RPS acknowledge that the Port forms part of a national and regional network and that constraints on, or impediments to, its efficient use and development may have adverse effects on the regional community.
15. The DCP does not mention the Port at all, in stark contrast to other Council planning documents (other than by implication on page 38 concerning special assessments and under private developer agreements on page 45).
16. The Port's function as part of the South Island's transport network means that development or expansion of the Port is not in reality "*development*" as defined by section 197 of the LGA.
17. LPC *responds* to the demand of businesses wanting to use the Port as part of their transport chain – it does not *create* demand in the way described in the DCP.
18. Even so, given development at the Port is not distinguished in the DCP from other non-residential development, it appears the Council may view any expansion as a section 197 "*development*" and impose development contributions on that basis.
19. LPC also notes that the Port has its own stormwater management system consented by Canterbury Regional Council and so would not place any demand on a Council stormwater system should one be developed in the future.

Details of concerns

20. It is submitted that there are a number of significant difficulties in applying the generic non-residential development contribution charges of the DCP to the Port. These are detailed in the following paragraphs.
21. Most importantly, and as stated above, applying the same development contribution charges to the Port as other non-residential development does not recognise that

development at the Port is development of a crucial part of the South Island's transport network to cope with demand for its services.

22. Charging LPC development contributions for an expansion of the Port's facilities will likely result in "*double dipping*" by the Council where development contributions are also collected from the new or expanding businesses that generate the demand for more Port services.
23. Further, most vehicles (and trucks in particular) travelling to and from the Port use the state highway network rather than Council owned local roads. However, any development contributions charged to LPC for transport are set at the same rate as for a development affecting primarily local roads and the funds can only be spent on works to local roads.
24. Charging LPC transport development contributions for expansion of the Port is therefore contrary to the stated purpose of the DCP that the person who creates additional demand on Council services and infrastructure pays for the capital investment needed to meet that demand.
25. The provision for Special Assessments and Private Developer Agreements do not remedy these flaws in the DCP's application to the Port.
26. Both Special Assessments and Private Developer Agreements appear to be intended to increase development contribution requirements from those set in the DCP. No mention is made of special projects that create less demand than anticipated by the DCP.
27. Further, the DCP explicitly states that it "*does not provide for any remissions or reductions to be applied for or granted*" (section 3.4.3). One reason given for this is that it leads to less transparency and more complexity in the administration process.
28. A straightforward remissions policy applied to particular, special, activities and appropriately consulted on would not lack transparency or create administrative difficulties. Other local authorities have incorporated remissions policies for various activities in their DCPs (such as the North Shore City Council 2006-16 LTCCP which includes a remission for retirement villages).
29. With a policy excluding remissions in all circumstances, the DCP provides no way of remedying any unfairness or unreasonableness in the application of development contributions. This is contrary to the Council's purpose to require developers to make a *fair* contribution towards the expansion of services.
30. Also problematic is section 3.3.5 of the DCP that allows the Council to require works over and above what is needed as a result of the development and then if these are provided by the developer at a cost exceeding the set development contribution the Council "*may, at its discretion, reimburse the developer.*"
31. In effect, a developer could be subsidising other future developments that eventually utilise the capacity of the additional works carried out. This is contrary to the purpose of the DCP and could be considered *ultra vires* the Council's powers.
32. In addition to these difficulties, the DCP makes no provision for Council decisions on the amount of development contributions levied to be reviewed other than through judicial review in the High Court, a process that would be prohibitively costly to many.
33. Overall, the DCP is simply not specific enough and this results in exaggerated and unfair development contributions charges being incurred by LPC for any expansion of Port facilities.

34. It appears that the Council has not properly taken account of the matters listed in section 101(3) of the LGA in light of the unique position of the Port when determining the funding sources for each activity.

Time for consultation

35. Finally, LPC is concerned that the Council chose to allow only the statutory minimum of one calendar month for consultation on the draft amendments to the LTCCP given the complexity of the document. LPC is also concerned that the Council has indicated further changes will be made to the LTCCP following the High Court decision in *Neil Construction Ltd & Ors v North Shore City Council* (CIV 2005-404-4690) which will not be made available for consultation.

Action sought

36. LPC requests that the Council take the following action:

- a. Exclude any development or expansion of Port facilities from development contribution charges; or
- b. In the alternative but without prejudice to the above, include in the DCP
 - i. policy recognition of the Port's important position as a key infrastructure node and import and export hub (connecting the State Highway and Rail networks with ship transport); and
 - ii. suitable remissions or reductions in development contributions for development at the Port that acknowledge the differences of this kind of development. This could be achieved by including a provision making any improvements, expansion or redevelopment at the Port an "extraordinary circumstance" justifying a Special Assessment or a specific remissions policy applying a lower HUE value to the Port's operations.
- c. Regardless of the outcome on one of the above, remove the Council's discretion regarding reimbursement of over-payment by developers for works carried out that is outlined in section 3.3.5.; and
- d. Make provision in the DCP for a review mechanism for Council's decisions on development contribution charges for individual developments; and
- e. Allow a further period for interested parties to review submissions and any further changes made to the draft amendments or the LTCCP itself before the draft amendments to the LTCCP are accepted by the Council.

37. LPC wishes to be heard in support of its submission.

LYTTELTON PORT COMPANY LIMITED by its solicitors and authorised agents **LANE NEAVE**

Per: 

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Date 11/5/2007

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Submission on draft Annual Plan 2007/08 and Long Term Council Community Plan 2006-2016

Re Alternative Road Access to Lyttelton Port

Introduction

1. **Submitter: Lyttelton Port Company Limited (LPC)**
2. LPC was formed in 1988 to manage the Port of Lyttelton (**Port**). The company is presently owned by a number of local authorities and institutional and private shareholders. The Christchurch City Council (**Council**) through its trading arm, Christchurch City Holdings Limited, has a majority shareholding.
3. LPC provides international shipping services to more than thirty countries, services a large part of the South Island, and has well established coastal links with other New Zealand ports.
4. This submission concerns the draft Annual Plan (for 2007/08) and its relationship to the Long Term Council Community Plan 2006-2016 (**LTCCP**). It relates to the inclusion in the LTCCP of a proposal for construction of a new road for heavy traffic to access the Port's container area. The LTCCP states that funding of \$4.2m is allocated over the period 2007-2012 for this project.
5. No specific funding has been allocated for the alternative road project in the draft Annual Plan however LPC understands the Council may receive submissions supporting the alternative road and seeking either its inclusion, or provision for funding for it, in the Annual Plan.
6. LPC opposes the construction of a new road for heavy traffic to access the Port's container area for the reasons summarised later in this submission.

Background

7. The LTCCP provides at p.83 as follows:

" Lyttelton Port alternative access \$9.6 million has been allocated over the period 2007-2012 to build a new access road to the proposed marina and for the construction of a new road way for heavy traffic to access the Port container area."*
8. At p.18 of the LTCCP, there is a reference to the Council having given the "green light" to the listed projects including the alternative access road to the Port.
9. The draft LTCCP when distributed for consultation contained no reference to the alternative access road project and LPC's submission on the LTCCP did not refer to it.
10. The draft LTCCP did however provide for \$5.5 million in funding for "Lyttelton marina roading." Enquiries were made with the Council at that time and LPC was advised that the provision related to the upgrading of the existing Godley Quay, and not to a new access road.
11. Submissions were, however, made by parties supporting the alternative access road and seeking its inclusion in the LTCCP.

12. When the LTCCP was adopted by the Council, LPC found that provision for funding for the alternative access road had been added (as set out in paragraph 7 of these submissions).
13. LPC has since had a number of discussions with the Council about this issue.
14. LPC considers that the consultation process leading to the inclusion of the provision for the alternative access road did not meet the obligations set out in the Local Government Act 2002.
15. LPC understands that the most recent Council action in relation to this was a resolution passed at the extraordinary meeting of the Council on Friday 23 February 2007 reading:

"It was further resolved that staff be requested to report back to the Council on the possible utilisation of all or part of the \$4.2m currently budgeted for a new road way for heavy traffic to access the Port container area, to cover the cost of other Banks Peninsula capital works".

LPC concerns - alternative access road

16. LPC considers that the proposal for the alternative access road lacks justification and poses a significant threat to the operation, improvement and redevelopment of the Port. In particular, the alternative access road would cut through very productive Port land.
17. The alternative road is a costly project which will have significant impacts on the Port's business. The Port is adequately served by Norwich Quay and Gladstone Quay, which form part of State Highway 74.
18. The alternative access road would lead to a loss of flat land serving the inner harbour which would be detrimental to Port operations and options for redevelopment. Flat land adjacent to the waterfront is a scarce resource at Lyttelton and is the single most significant strategic constraint faced by the Port.
19. It is essential that all available land is available for Port operations, and that it is used efficiently, for the economic benefit of Christchurch, Canterbury and the South Island.
20. LPC understands that the existing route has capacity to satisfactorily fulfill its function as a State Highway.
21. Further, the current Port access road, Norwich Quay has always been a commercial thoroughfare. This character continues to be appropriate as the businesses fronting Norwich Quay are largely of a commercial and industrial nature.
22. Moving the Port access from Norwich Quay would have a detrimental effect on the character and development of London Street, Lyttelton's town centre.
23. Creating an alternative access road for access to the Port would also encourage the encroachment of sensitive land uses towards the Port and away from the town centre where they are mostly protected from the effects of Port operations. This movement would place the Port's operations under further pressure.
24. Development of potential Port-related tourist activities would not be affected by the continued use of Norwich Quay as a Port access route as they are likely to centre around the Western Harbour Redevelopment or the Magazine bay Marina, well away from Norwich Quay.
25. LPC wishes to work with the Council and the local community in relation to its operations and the concerns of the community, however, the alternative access road is a serious concern for LPC and would have a significant impact on the Port's operations and redevelopment options.

26. LPC acknowledges the Council's consideration of this issue and notes that no funding has been allocated for the alternative road access under the draft Annual Plan for 2007/08. In light of the circumstances surrounding this issue however, LPC wishes to publicly note its position and have the issue properly and publicly addressed.

Action sought

27. LPC requests that the Council take the following action:
- a. ensure that no funding is allocated for an alternative Port access road in the Annual Plan for 2007/08; and
 - b. that the Council commence the special consultative procedure to amend the LTCCP to delete all references to the alternative access road project and its funding.

28. LPC wishes to be heard in support of its submission.

**LYTTELTON PORT COMPANY
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Per: 

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Date 11 / 5 / 2007

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