3. FINANCIAL CONTRIBUTION – ENVIRONMENT COURT DECISION

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Corporate Plan Output: Environment Court Appeal	

The purpose of this report is to provide an update on relevant matters to consider when making decisions about reserve contributions. It begins with a brief summary of the existing statutory framework and practice regarding collection of contributions. It then summarises the findings of the recent Environment Court decision, Esplanade Investments Ltd and Christchurch City Council. It concludes with a brief analysis of the implications of the decision for our current assessment and decision making practice.

CURRENT FRAMEWORK

The Resource Management Act does not enable Council to collect financial contributions through the provisions of its Proposed City Plan until those provisions are operative. The Christchurch City Council is some way away from this point as it chose not to take its notified Proposed Plan financial contribution provisions forward. Instead, the issue is being reconsidered and a variation will be notified at some stage in the future proposing alternate provisions.

The Resource Management Act also includes Transitional provisions to ensure that Councils can continue to take financial contributions until such time as the Proposed Plan provisions become operative. If the Transitional Plan includes provisions of a certain type (detailed in section 108 of the Act), then reserve contributions can be charged as a condition of any resource consent. If it does not include such provisions then the transitional provisions of Sections 407 and 409 of the Resource Management Act apply. These enable such collection to proceed in accordance with some saved provisions of the Local Government Act until the Proposed Plan provisions become operative. It is under Section 407 (for subdivision) and 409 (for development) that the Council has been collecting reserve contributions.

Where it does collect any contributions, it must specify how much is owed and when it shall be paid, as a condition of a resource consent. In deciding how much to charge, or whether to charge at all, it must consider a range of matters, as was clarified in legal advice obtained by Council in January 1999. Council also has a policy specifically relating to reserve contribution reductions, to which it has regard.

On a number of occasions over the last few years, these conditions have been challenged through Section 357 objections to conditions of resource consent. The reasons given by objectors for waiver or reduction of contributions were often similar from case to case. Some were to do with a subjective assessment of how much should, or should not, be paid, others were to do with the legal validity of charging at all. The appeals heard earlier this year were the first to get as far as the Environment Court. As we are bound by such decisions the findings therefore provide us with some certainty and direction for future assessment and decision making.

ESPLANADE INVESTMENTS AND CHRISTCHURCH CITY COUNCIL – FINDINGS FROM THE ENVIRONMENT COURT

The Esplanade Investments case relates to the 49 apartment and neighbourhood tavern development at Cave Rock, Sumner. The Council charged $135,000 to the applicant and this was objected to by the applicant. The Council heard the objection and dismissed it. This decision was appealed.

The appeal was heard in April of this year. The Court dismissed the appeal and concluded, on the evidence presented, that it would have charged $145,200 if it had assessed the contribution. A copy of the appeal decision is attached.

The main points which will assist Council decision-making are summarised below:

- Our City Section of the Transitional Plan **does not** contain provisions of the type contemplated by Section 108 of the RMA, so **we are** legally entitled to continue to levy contributions under Sections 407 and 409 of the Act.

- There is no requirement to show additional demand for reserves before charging contributions, although whether or not the proposal creates additional demand for reserves may well be a relevant factor in the exercise of discretion as to the level of any contribution.

- There are a range of methodologies for assessing land value with strata titles. Comparative sales is a valid method when there are existing examples of sales of similar tenure. The residual method used by Council was accepted as an appropriate method for assessing land value.

- Development and subdivision can be cumulative so Council can make up at a second stage any contributions it did not charge at the first stage.

- We should not have regard to Section 284 of the Local Government Act as it has been repealed and not saved by the Transitional provisions of the RMA.

- The detailed evidence of the Parks Unit was considered adequate to demonstrate "that there is a need for (future) reserves and a cumulative demand now". The need for funds for reserves which are reasonably necessary and foreseeable was accepted. The Court considered a contribution was justified by the evidence at the maximum level of 7.5%, although it gave some reductions in recognition of the fact the units were already existing, given the existence of a public access through the site and the contribution the developer made to landscaping.

- The Court did not consider that the location of the development across the road from a recreational reserve or in an area of extensive reserves was relevant to the extent you would reduce a levy. It is the total city situation which needs to be examined. The decision indicated close proximity to a reserve or the presence of abundant reserves in a neighbourhood may be a reason to increase a levy, and it considered that at least it should be neutral.

- Some credit was given for landscaping and planting, but not for the open space which substituted in part for the outdoor living space required by the City Plan but not provided on site.

- A higher contribution than charged was fair and justified given:

  - the high intensity of the development
  - the need to take into account the cumulative effects on demand
  - the relatively low figure paid per unit compared with freehold allotments, and
  - the reasonable plans of the Council for further reserves in Christchurch City.

CONCLUSIONS

While this case was one relating to a subdivision, many of the principles discussed in the case appear to be equally applicable to developments. In general terms the Court has upheld as fair and reasonable and within statutory powers, the charging of the contribution of $135,000. In so doing Council can feel confident in the future that the following basic principles relating to our existing practice are sound:

- Where a charge is made on a development, a further top-up charge can be charged on a subdivision where necessary, and vice versa.

- Sections 407 and 409 are the relevant transitional provisions which guide any assessment of financial contributions at this time.

- The information held within the Parks Unit demonstrates adequately that there is a need for future reserves and a cumulative demand now.

The Council has been challenged on numerous occasions over the last few years with regard to the legality of charging financial contributions and the extent of any such charge, where it is made. While it was felt that the methods of assessment used for calculating contributions were appropriate, fair and reasonable, this decision provides Council with some confidence that this is the case.

Chairman's
Recommendation: That the information be received.