

13. PROPOSED VARIATION 8 FINANCIAL CONTRIBUTIONS TO BANKS PENINSULA DISTRICT COUNCIL PROPOSED DISTRICT PLAN

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PURPOSE OF REPORT

1. This report discusses Banks Peninsula District Council (BPDC) initiated Variation 8 Financial Contributions and seeks that the variation and the associated section 32 assessment be accepted by the Council for public notification.

EXECUTIVE SUMMARY

2. The purpose of the plan change is to amend provisions in the Proposed Banks Peninsula District Plan (PBPD) for requiring financial contributions from resource consent applicants as conditions of resource consents. It remedies a current potential for confusion, inconsistency and inefficiency arising from overlap between the provisions in the PBPD for financial contributions under the Resource Management Act 1991 (RMA) and development contributions and the Council's Development Contributions Policy pursuant to the Local Government Act 2002 (LGA).
3. The Christchurch City Council has adopted in 2007, after extensive public consultation, a Development Contributions Policy as part of its Long Term Council Community Plan (LTCCP). That policy sets the circumstances and amounts of contributions to be levied on developers under the LGA. Development contributions can only be used by the Council for the activity for which they are collected, being those capital expenditure works that are specified in the LTCCP. In contrast, financial contributions may be levied in the form of cash or land or a combination of both, under the RMA. The purpose of financial contributions is to off-set or mitigate adverse effects from a new development on the natural and physical environment, including impacts on infrastructural services. They are levied by way of conditions on resource consents under Section 108 of the RMA. The imposition of financial contributions in a resource consent must be authorised by a district plan or proposed district plan, which must specify the purpose of the contribution and how the level of contribution will be determined.
4. It is the Council's intention that the majority of its contributions will be levied as development contributions through the LTCCP. There is a need however, for financial contributions to be provided for through the District Plan to address matters that fall outside the scope of the LGA, and consequently the LTCCP, provisions.
5. At present, the PBPD contains policy and rules pertaining to both development contributions and financial contributions. The proposed Variation removes the overlap between the Development Contributions Policy and the Proposed Plan so as to improve efficiency, clarity and certainty. The proposed Variation enables financial contributions to still be required under the RMA in four areas that are not possible under the LGA, which are for:
 - (a) road name plates;
 - (b) financial contributions in lieu of car parking;
 - (c) esplanade reserves or strips in circumstances other than subdivision
 - (d) network infrastructure to service new development if provision of that infrastructure has not been planned under the LGA process.
6. Additionally, existing provisions pertaining to possible contribution reductions where cultural or natural heritage is protected as part of a development have been retained as there does not appear to be sufficient justification for removing them at this stage. The outcomes of the heritage reviews may determine otherwise, in which case these provisions could then be reviewed further.

FINANCIAL IMPLICATIONS

7. Variation 8 forms part of the agreed and current financial year district plan work programme in which internal officers and external consultant cost have been budgeted.

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Do the Recommendations of this Report Align with 2009-19 LTCCP budgets?

8. Yes. Covered by existing unit budget.

LEGAL CONSIDERATIONS

9. There is a legal process for preparing Council initiated variations to be incorporated in a Proposed Plan.
10. The process, mentioned above, is familiar to the Council and should create no particular risks or liabilities if followed correctly. It is noted that pursuant to amendments made to the RMA in 2009 (Simplifying and Streamlining Amendment Act), rules in a variation do not take effect immediately upon public notification unless an application is made to the Environment Court requesting this. This Proposed Variation will therefore only have statutory relevance once decisions on submissions and further submissions have been released by the Council.

ALIGNMENT WITH STRATEGIES

11. Aligns with LTCCP 2009-2019, p192: Prioritised programme of plan changes is prepared and approved by the Council on an annual basis; and
12. Aligns with a prioritised work programme, matched to staff capacity and availability, to be presented for Council approval annually by 30 June of the following financial year.

CONSULTATION FULFILMENT

13. The intention to continue taking financial contributions through the Proposed Banks Peninsula District Plan is identified in the LTCCP 2009-2019. Considerable consultation has been undertaken on the preparation of Development Contributions Policy of the LTCCP under the Local Government Act.
14. Proposed Variation 8 also reflects in part points raised in the submissions and further submissions lodged on the existing financial contributions provisions of the Proposed District Plan.
15. No additional consultation has been undertaken with parties external to the Council. A meeting with Lyttelton, Port of Christchurch is scheduled to discuss the proposed variation.

STAFF RECOMMENDATION

It is recommended that the Council resolves to:

- (a) Adopt the related section 32 assessment for the purposes of public notification pursuant to the First Schedule of the Resource Management Act 1991.
- (b) Adopt Variation 8 Financial Contributions to the Banks Peninsula District Council Proposed District Plan for the purposes of public notification pursuant to the First Schedule of the Resource Management Act 1991.

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BACKGROUND

Existing Provisions

16. The Proposed Banks Peninsula District Plan was publicly notified in 1997. The Proposed Plan included provisions for financial and development contributions. Submissions and further submissions were lodged on the financial contributions provisions. Some of these submissions identified significant concerns with the approach taken.
17. In addition to concerns on the approach taken identified in submissions, and prior to a hearing being held to hear them, changes were made to the Local Government Act which had a significant effect on how council's could deal with financial contributions/development contributions. Following a public consultation process under the reformed Local Government Act 2002, the City Council determined that the primary mechanism for the taking of development contributions would be via the Long Term Council Community Plan (LTCCP) and specifically Development Contributions Policy within the LTCCP. The taking of financial contributions via resource consent conditions was to be restricted to those matters that are not anticipated and provided for in the LTCCP Development Contributions Policy. This meant that the financial contributions provisions as notified in the Proposed Banks Peninsula District Plan were outdated and would require amending by way of a Plan Variation. Consequently, the submissions and further submissions on the Chapter 32 Development Contributions of the Proposed Plan have not been heard.
18. The submissions and further submissions on the existing provisions are deemed to still be "live" and will automatically be carried through to become submissions on the Proposed Variation. Following notification of the Variation, any submitter may lodge an additional submission and any other person will also be able to submit on the Proposed Variation through the public notification process.

Description of the Proposed Variation

19. It is the Council's intention that the majority of its contributions will be levied as development contributions through the LTCCP. There is a need however for financial contributions to be provided for through the District Plan to address matters that fall outside the scope of the Local Government Act, and consequently the LTCCP, provisions.
20. The Proposed Variation seeks to remove confusion and overlap that currently exists between the Council's Development Contributions Policy under the LTCCP and the financial contributions policy under the Proposed Plan. The Variation removes all references to development contributions in the Proposed Plan, except where the Variation contains an explanation of the relationship of the Plan with Development Contributions Policy.
21. The Proposed Variation enables financial contributions to still be required under the Resource Management Act 1991 in four areas that are not possible under the Local Government Act 2002, which are:
 - (a) For road name plates;
 - (b) For financial contributions in lieu of car parking;
 - (c) For esplanade reserves or strips in circumstances other than subdivision;
 - (d) For network infrastructure to service new development if provision of that infrastructure has not been planned under the LGA process.
22. Additionally, existing provisions pertaining to possible contributions reductions where cultural or natural heritage is protected as part of a development have been retained as there does not appear to be sufficient justification for removing them at this stage. The outcomes of the heritage reviews may determine otherwise, in which case these provisions could then be reviewed further.

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Potential Issues

23. The policy approach for taking financial contributions that is put forward in the Proposed Variation is based in part on a review of approaches adopted in other recently developed financial contribution district plan provisions around the country. That review revealed that there is no common or typical approach to the taking of financial contributions. For every district plan looked at there was a slightly different approach and each approach had its own advantages and disadvantages.
24. The chosen approach is one that is relatively flexible and does not stipulate calculation formulas in the District Plan rules. The reason for recommending this approach is that it is envisaged that financial contributions for services and infrastructure that are not covered by the LTCCP will be calculated using the same formulas as are outlined in the LTCCP. Whilst it would be possible to copy the LTCCP formulas into the Proposed Plan, if the LTCCP formulas were subsequently amended under the Local Government Act, a plan variation or change would then be required to the Proposed Plan to bring it back into step with the LTCCP.
25. In order to avoid this scenario, the recommended approach for Proposed Variation 8 does not specify formulas for calculating contributions. Some submitters may be uncomfortable with this approach, perceiving that there will be a lack of certainty and transparency for developers. Whilst some other Councils have successfully adopted the flexible, no-formula approach to financial contributions in district plans, it is difficult to predict how the Christchurch and Banks Peninsula residents and developers will perceive the proposal.
26. With regards to the taking of esplanade reserves or strips in circumstances other than subdivision, there are no rules currently in the Proposed Plan that enable Council to do this. However, there is an existing statement in the Chapter 31 Subdivision of the Proposed Plan that indicates such rules are contained in Chapter 32 Development Contributions of the Proposed Plan. The inclusion of new rules in Chapter 32 for the taking of esplanade reserves or strips in circumstances other than subdivision is considered to be a correction of an existing error in the Plan. Other parties may however perceive the rules as an unwelcome extension of Council's existing powers.

THE OPTIONS

27. Three main options are considered in the Section 32 assessment, as well as sub-options within these. The primary options are:
 - (a) Do nothing;
 - (b) Non-regulatory methods; or
 - (c) Regulatory options.

Do Nothing

28. "Do nothing" would mean retaining the current out of date Plan provisions that overlap with LTCCP provisions. The existing provisions create confusion and uncertainty and to a large extent are generally of little practical assistance to the sustainable management of Banks Peninsula.

Non-Regulatory Methods

29. The Resource Management Act (Section 108) stipulates that financial contributions may only be required as a condition of resource consent if it is for a purpose specified in the District Plan and the level of contribution is determined in the manner described in the District Plan. There are limited opportunities for non-regulatory methods by which financial contributions may be taken that will be universally successful. These include Council initiatives to require or take into consideration environmental compensation and other methods intended to persuade developers to make "voluntary" contributions. It is considered that if the Council opts for a more "negotiated" response the existing Proposed Plan will still have to be revised from its current out of date state.

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30. One non-regulatory option that is open to the Council is to remove all reference to financial contributions from the District Plan and only enable contributions to be taken as development contributions under the LTCCP. While this option is likely to find favour with some, it would potentially impose a financial burden on the City Council for the servicing of development that has not been anticipated under the LTCCP.

Regulatory Options

31. Regulatory options could include:
 - (a) *Clarify existing terminology and references to remove confusion and overlap between development contribution policy and financial contributions*
32. As the existing Proposed Plan provisions were written before the Council's Development Contributions Policy was developed under the LTCCP, there is a great deal of overlap and confusing use of terminology. The overlaps create uncertainty and many of the existing Plan provisions are essentially unusable in their current format. This can only be rectified through a plan variation.
 - (b) *Retain existing financial contribution provisions for road name plates and contributions in lieu of car parking, but otherwise not enable financial contributions to be taken for unanticipated development;*
33. As with the non-regulatory option discussed in Paragraph 31, this would minimise financial impacts on developers and remove any possibility of uncertainty as to the level of financial contributions to be taken. However there would be a financial cost to the Council and consequently ratepayers as the Council would be required to fully fund the provision of infrastructure and services to unanticipated development.
 - (c) *Retain existing financial contribution provisions for road name plates and car parking and introduce new provisions to enable financial contributions to be taken for unanticipated development;*
34. This option would enable the Council to avoid or recoup the costs for the servicing of unanticipated development where the equivalent costs of development anticipated under the LTCCP would be normally be taken.
 - (d) *Creating numerical formulas for the calculation of financial contributions*
35. Outlining numerical formulas for the calculation of financial contributions would provide certainty and a degree of transparency for developers as to how the Council will determine the level of contribution to be taken. This is likely to be viewed positively by submitters. The disadvantage of this approach is that the formula may only be altered by way of a plan variation or change and may become inconsistent with LTCCP contributions formulas. Specified formulas can also lack the flexibility to fairly account for positive effects, shared benefits or proffered environmental benefits.
 - (e) *Specifying criteria and maximum amounts to guide the calculation of financial contributions*
36. This option maximises the Council's ability to account for positive effects, shared benefits or proffered environmental benefits and would eliminate the need to undertake plan changes or variations to keep calculation formulas in step with Development Contributions Policy. Submitters may view this approach as lacking in certainty and transparency.
 - (f) *Removing the existing reference to provisions for the taking of esplanade reserves or strips in circumstances that do not involve subdivision;*

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37. The existing reference to District Plan provisions that do not actually exist is confusing. Removing the reference would remove the confusion, but would leave the Council unable to require an esplanade reserve or strip to be taken where a development does not involve subdivision. Situations where the Council may wish to take a reserve or strip might include a large building development adjacent to a lake or river that is likely to result in public access being restricted or the ecological values of the waterbody being adversely affected. The Council currently has no ability to take esplanade reserves or strips for development not involving subdivision and this option would to a large extent maintain the status quo.
- (g) *Creating new rules to enable the taking of esplanade reserves or strips in circumstances that do not involve subdivision.*
38. This option would resolve the existing inconsistency in the Plan that exists between Chapters 31 and 32. It would provide the Council with a method of addressing potential adverse effects on public access or ecological values of waterbodies and the coast. The taking of esplanade reserves or strips would not be compulsory. Landowners may perceive the provisions as being potentially onerous as they would potentially give the Council an ability to take reserves or strips for all land use development that might affect public access or ecological values of waterbodies.

THE PREFERRED OPTION

39. The preferred option is a combination of options (a), (c), (e) and (g), including:
- Clarification of financial contributions terminology used;
 - Amend all references to reserve contributions and development contributions to differentiate between contributions under the Development Contributions Policy and contributions under the Proposed District Plan;
 - Amend Chapter 32 Development Contributions to provide for Financial Contributions;
 - Amend Chapter 32 to clarify the circumstances in which esplanade reserves or strips may be required as a condition of resource consent for activities that do not involve subdivision;
 - Delete existing development and reserve contributions rules applying to works or services within Approved Development Programmes;
 - Amend the rule for development that creates new or additional demand for infrastructure or reserves to clarify the circumstances in which contributions will be taken;
 - Provide new criteria for calculating financial contributions and clarify the timing of payment of contributions; and
 - Retain existing provisions for the taking of financial contributions for road name plates and contributions in lieu of car parking.

Attachment 1 contains the amendments to the BPDP being proposed through variation 8.

CONSULTATION

40. The intention to continue taking financial contributions through the Proposed Banks Peninsula District Plan is identified in the LTCCP 2009-2019. Considerable consultation has been undertaken on the preparation of Development Contributions Policy of the LTCCP under the Local Government Act.
41. Proposed Variation 8 also reflects, in part, points raised in the submissions and further submissions lodged on the existing financial contributions provisions of the Proposed District Plan.
42. No additional consultation has been undertaken with parties external to the Council. However, a meeting with Lyttelton, Port of Christchurch is scheduled to discuss the Proposed Variation.

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43. As part of the process of public notification, a copy of the Proposed Variation will be sent to the Minister for the Environment, Ngai Tahu, Ministers of the Crown, Environment Canterbury and adjoining local authorities who may be affected by the Proposed Variation and any other parties the council considers appropriate in the circumstances. This, together with the general public notice that will enable all interested persons to lodge a submission and further submissions, will fulfil the Councils consultation obligations stipulated in the First Schedule of the Resource Management Act.