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DEVELOPMENT CONTRIBUTIONS UNDER LGA

PALMERSTON NORTH CITY COUNCIL USES THE LOCAL GOVERNMENT ACT 2002 TO ESTABLISH ITS NEW DEVELOPMENT CONTRIBUTION POLICY WHICH WILL ASSIST IN THE FUNDING OF INFRASTRUCTURE REQUIRED BY GROWTH OF THE CITY.

A CONTRIBUTIONS POLICY

Council introduced a new financial contributions policy under the RMA in 1995 as part of its notified proposed District Plan. However, these provisions were challenged by an appeal to the Environment Court and were withdrawn as a result in March 2002. Subsequently, for some years now Council has applied contributions under the transitional provisions of the RMA using LGA 1974. Since the Environment Court ruling, Council has sought to develop a new contributions system. During investigations into a new system, an alternative legal framework under which Councils can take contributions was introduced. This new legal framework was the LGA 2002. A development contributions policy under the LGA 2002 provided an alternative to obtain contributions to fund infrastructure required due to growth of the City. Council adopted a Development Contributions Policy (the policy) on 1 July 2004 under its Long Term Council Community Plan (LTCCP). The following are some of the key underlying features of the policy:

- The policy primarily employs a future focussed approach based on Council's expectations for development over a 20 year time period;
- Capital development budget forecasts from Council's Asset Management Plans are a key input into calculating contributions across all new developments;
- The policy assumes an integrated and cumulative approach to infrastructure network development.

OBJECTIVES OF NEW POLICY UNDER THE LGA PROVISIONS

Council sought to achieve some key principles and objectives in preparing a development contributions policy that would address some of the limitations it had experienced under the RMA. How the policy met these key principles and objectives under the LGA provisions is explored further in this section of the article.

Administrative Flexibility to Update and Review the Policy Regularly

The LGA enables regular reviews of the policy as part of the triennial review of Council's LTCCP. Having the policy review process regulated will ensure, to a greater degree, the continued relevance of the policy. Regular review of the policy will enable adjustments to be made that reflect changes in projected infrastructure works, costs, and changes in expectations over time. In addition to this, combining a review of the contributions policy with a review of other major Council policies and plans under the umbrella of the LTCCP will mean that the associated administrative costs can be better optimised.

Links with Council's Asset Management Plans

Operation of the policy under the LTCCP allows Council the opportunity to better align its Asset Management Plans with contributions, thereby creating a greater degree of synergy between the two. Asset Management Plans are now critically linked to the policy process in the Council's case.

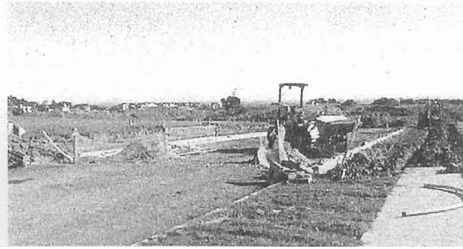
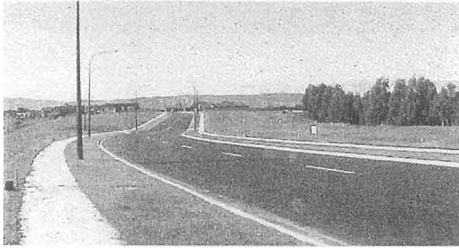
The new development contributions framework requires Council to be clear and directive about where, when, and what type of growth it expects, and how it proposes to create infrastructure networks to effectively cater for that growth. This means that Council will now be more accountable for the infrastructure spending it undertakes.

Accounts for Cumulative Effects of Development

From an asset management perspective, rarely is an infrastructure network created for a single development in isolation from all other developments. Asset managers have previously been left with the difficult job of balancing the creation of an efficient infrastructure network catering for many developments while collecting contributions in a piecemeal, development-specific way. Playing 'catch-up' in this sense has hindered Council's attempt to adequately plan for, and provide infrastructure in the most efficient and cost effective way.

The policy allows a clear link between individual developments and cumulative effects on infrastructure to be realised. Therefore, more

The Palmerston North City Council, like many other local authorities, has in the past 18 months been digesting the Local Government Act 2002 (LGA) requirements regarding development contributions. This legislation offers Council an alternative framework to that provided by the Resource Management Act 1991 (RMA), for the application of Council levies on development. In evaluating the options available to Council, the policy development team has endeavoured to understand both the potential improvements associated with a change in policy direction under the LGA to meet the objectives for a new contributions policy, as well as some of the limitations.



efficiently targeted contributions can be established. This ensures that ratepayers are not left carrying the additional financial burden associated with a contributions system that cannot adequately identify and allocate these costs appropriately.

Pro-Active Planning and Funding for Future City Infrastructure Works

By having a degree of certainty surrounding the expected funding to come from contributions, Council can better plan to fund future capital works. The policy gives Council the opportunity to better align its infrastructure capital expenditure programmes with the mechanisms available to fund those works.

The policy encourages Council to be proactive in anticipation of the future infrastructure costs associated with expected development, and apply contributions accordingly. This forward oriented approach enables Council to plan for the provision of infrastructure networks more efficiently because the total effects of growth are taken into account and the relative costs of funding the network are adequately planned for and met by development.

KEY CONSIDERATIONS FOR A DEVELOPMENT CONTRIBUTIONS POLICY UNDER THE LGA

Potential for Expectations to be Incorrect

There are risks associated with adopting a future oriented approach because it is based on assumptions and projections about where, when and how much growth is expected, and what the associated infrastructure costs will be. Calculating development contributions based on expected growth and infrastructure costs will inevitably result in some error when actual costs are compared to expectations retrospectively. However, these risks are minimised by the frequent opportunity for policy reviews and updates under the LGA.

Relationship to the RMA Consent Process

Construction of the policy under the LGA framework has resulted in a change in the relationship between the resource consent process and collection of development contributions. The application of contributions under the LGA essentially occurs in an independent process parallel to the resource consent process. However, there are still crucial links between the two processes.

Contributions under the LGA can no longer be

specified as a condition of resource consent. This means that consideration and granting of resource consents can occur independently of any requirement for development contributions. However, under the LGA, notification of the requirement of a development contribution is now achieved through an advice note on a resource consent.

Withholding the granting of resource consent can no longer be used to enforce contributions payment under the LGA. However, the enforcement mechanisms available to Councils include the withholding of the issue of certificate of title, the code of compliance certificate, or service connection. The issuance of each of these is inherently linked to RMA provisions.

Although the operation of the development contributions policy now lies outside resource consent conditions, the existence of a contributions requirement will still be notified, and enforced, through RMA provisions, and as such, the two will be inextricably linked.

Transparent Process for Developers to Seek a Remission

Apart from internal review processes written into a development contributions policy, the LGA framework does not provide appeal rights to developers. The only recourse available is judicial review. Judicial review is not a merits review and is limited to established, well recognised grounds for intervention of the High Court. This may lead to perceptions that developers have less control over the contributions processes, and a concern about natural justice and the rights of the developer to present their case. However, internal review processes may alleviate some of these concerns. Such concerns were raised through Palmerston North City Council's own consultation process on its policy, and as a result, additional internal review procedures have been established. At the heart of the issue for developers is the need to have in place a transparent process to allow them to put forward their unique case. For Council, there is the need to avoid undue administrative burden, and a process that does not undermine the intent of the policy. As such, Council has sought to achieve a balance between providing fair opportunity for internal review, whilst avoiding unnecessary administrative paralysis through a remissions process that sets out clear criteria and procedures for remissions applications.

Top left: Road link for Ruapehu Drive, Aokautere. Centre: Road being developed in Cashmere Drive, Aokautere. Right: Development and building activity of greenfield area in the Kelvin Grove suburb.

CONCLUSION

Palmerston North City Council has been one of an increasing number of local authorities adopting the framework of the Local Government Act 2002 in its application of contributions on new development.

Use of the LGA framework for creating a development contributions policy still enables Council to manage the effects of growth, as it did under the RMA, but with more flexibility, and at a holistic level. Closer alignment with other Council documents and processes will ensure that contributions better reflect the true current costs of infrastructure required for growth. The LGA increases local authorities' ability to collect and justify, in a more transparent framework,

reasonable contributions from development towards infrastructure provision.

Ultimately time will tell how successful the new policy is, but Council's policy development team are confident that the principles and objectives that were sought in the development of a policy have been adequately met by using the LGA framework.

The full Palmerston North City Council Development Contributions Policy is freely available to readers seeking more detail from the Council website at www.pncc.govt.nz

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