Resource Management Act 1991

Proposed Selwyn District Plan

Township & Rural Volume

Report on Submissions on the Selwyn District Proposed District Plan as Notified, Variation 1 to the Township Volume of the Proposed District Plan (Township Vol) and Variation 30 – Financial Contributions

To:	Hearings Panel
From:	Andrew Mactier, Policy Planner
Hearing Dates:	16th and 17th of October Month 2008

Note: Any recommendations contained within this report do not constitute Council decisions until accepted.

Attachments

Appendix I	Summary of Submissions on the Notified PDP and Variation 1 – General Support for the Proposed District Plan as Notified
Appendix II	Summary of Submissions on the Notified PDP and Variation 1 – Submissions Addressed in Section 6.2 – General Provisions for Financial Contributions
Appendix III	Summary of Submissions on the Notified PDP and Variation 1 – Environmental Damages Provisions and Maximum Amount of Financial Contributions Payable
Appendix IV	Officers Report 49 – Report on Financial Contributions
Appendix V	Recommendation of Hearing Panel – Variation 1 and Officers Report 49
Appendix VI	Changes to the District Plan (Township Volume) as a Result of Recommendations
Appendix VII	Changes to the District Plan (Rural Volume) as a Result of Recommendations

This report analyses submissions made on the notified PDP and Variation 1 to the Rural Volume of the PDP along with submissions made on Variation 30 to the Proposed District Plan (PDP). The report is prepared under Section 42A of the Resource Management Act 1991 ('the Act'). The purpose of the report is to assist the Hearing Panel in evaluating and deciding on submissions made on Variation 1, Variation 30 and the notified PDP and to assist submitters in understanding how their submission affects the planning process. The report may include recommendations to accept or reject points made in submissions and to make amendments to the District Plan. These recommendations are the opinions of the Reporting Officer only. The Hearing Panel will decide on each submission after hearing and considering all relevant submissions, the Officer's Report and the Council's functions and duties under the Resource Management Act 1991.

1. Introduction

My full name is Andrew Noble Shane Mactier. I am employed as a policy planner with the Selwyn District Council. I have been asked to prepare a report on the submissions made on the PDP relating to the notified Volumes (Township and Rural) of the PDP, Variation 1 – Financial Contributions and Variation 30 – Financial Contributions. This report:

- Provides a brief summary of Financial Contributions;
- Provides an overview of submissions to the notified PDP on financial contributions and on Variation 1 to the PDP;
- Provides an overview of Variation 30;
- Describes the plan provisions which are being addressed;
- Provides a summary of the submissions and the relief sought;
- Assesses the submissions and further submissions made on the PDP and Variations 1 and 30 relating to the addition, deletion, or modification of policies, rules or other methods; and
- Lists any recommendations to accept, accept in part or reject submissions and any resulting amendments to the District Plan (shown underlined or strikethrough).

2. Procedural Matters

On the 28th of May 2008, Council resolved to approve those parts of the PDP not affected by submissions or appeals or unresolved designation issues, and deemed that the Plan would become operative on the 10th of June 2008. In response to a number of submissions about the format of the rules in the Plan as notified, Council made a decision to completely reformat the rules section of the Plan (Decision 1.5). This substantially altered the form and layout of the rules in the District Plan which was made operative to that of the PDP as

notified. As such, discussion on particular provisions and recommended amendments will use the reformatted provisions of the Operative District Plan.

3. Notified Proposed District Plan and Variation 1 – Financial Contributions

The notified Township and Rural Volumes of the Proposed District Plan (PDP) made somewhat different provisions regarding financial contributions. The Township Volume of the PDP was notified in December 2000 while the Rural Volume was notified in September 2001. Council notified Variation 1 to the Township Volume of the PDP on Friday September 7th 2001 so as to bring the financial contribution provisions of the Township Volume of the PDP in line with the financial contribution provisions contained in the Rural Volume.

As a consequence of the three opportunities thus created, the Council received a significant number of submissions and further submissions. These submissions were considered in Officers Report 49 (OR 49) which recommended that many of the submissions should be accepted. Due to deficiencies in the Proposed Plan methodology for determining what part of the maximum level of financial contributions is to be borne by a subdivider or developer, the Hearing Panel for Financial Contributions recommended that the Council:

> *(a) Reconsider the financial contributions provisions of its Proposed Plan with a view to the promulgation of a Variation; and*
>
> *(b)Defer further consideration of the submissions identified in OR 49 until submissions to that Variation are heard.*

This recommendation resulted in the notification of Variation 30 – Financial Contributions on the 12th of January 2008. The submission and further submission period closed on the 12th of May 2008. As a result of recommendation 49.1, and pursuant to Clause 16B of the First Schedule to the Act, all submissions on both the Township and Rural Volumes of the PDP and submissions on Variation 1 to the PDP become submissions to Variation 30.

4. Overview of Financial Contributions

The Council has historically required those whose developments place new demands on the District's reserves and infrastructure services to make a fair contribution toward the necessary expansion of those services. The notified Proposed District Plan (PDP) provides a range of provisions and references within both the Rural and Townships Volumes which deal with financial contributions.

Financial contributions help promote the sustainable management of natural and physical resources in terms of Section 5 of the Resource Management Act 1991 ("the Act"). The term

financial contributions is defined in Section 108(10) of the Act, as including land or money which is required to be paid as a condition on a resource consent; or in a rule for a permitted activity (no resource consent is needed). Financial contributions can be taken to recover the costs of:

- Providing utilities and community facilities.
- Maintaining or enhancing reserves or other areas with special values.
- Mitigating effects of activities on the environment.

If these costs are not funded through financial contributions, they are funded through general rates. Therefore, the purposes for which financial contributions are taken and the proportion of costs which are funded through financial contributions is an important part of the Council's financial planning.

5. Overview of Variation 30

The Local Government Act (LGA) 2002 provides for the Council to establish new policy covering development contributions and the Council has taken up this opportunity under the Long Term Council Community Plan (LTCCP). Development contributions are a fiscal tool to identify and allocate, fairly and equitably, the cost of growth. A development contribution shifts the burden for providing land or funds for certain infrastructure from the territorial authority and its ratepayers, to the person who causes the need for that infrastructure. It is an issue of fairness and equity, to ensure that growth does not create a burden on existing ratepayers who have not themselves created the need for that infrastructure.

The Council's 2006-2016 LTCCP has incorporated provisions relating to the taking of development contributions (the Development Contribution Policy). The Council's Development Contribution Policy came into effect on the 1st of July 2006 and has been successfully utilised by Council since this date. This Policy has been through the necessary public process and has been approved. The Development Contribution Policy contains provisions to take contributions for:

- Network Infrastructure (water, sewerage, stormwater, roading)
- Community Infrastructure (e.g. libraries)
- Reserves

The Development Contribution Policy does not cover esplanade strips/esplanade reserves as these are covered by financial contributions under the RMA and do not fall within the scope of the LGA. The LGA also does not cover the issue of avoiding, remedying or mitigating the environmental damage that an activity may cause. As such, Variation 30 retained policy relating to this issue within the PDP.

With the Development Contribution Policy in place under the LGA, there is no longer a need for reciprocal provisions within the District Plan relating to the taking of financial contributions. It is important that these provisions be removed from the District Plan so as to avoid confusion in the use of the two documents and to avoid the appearance of double counting in the taking of contributions. The purpose of Variation 30 is to remove the unnecessary references and provisions from the District Plan and make associated amendments.

6. Assessment of Submissions on Notified Proposed District Plan and Variation 1

Submissions on the Township and Rural Volumes of the PDP, including submissions on Variation 1 have been categorised into the following groups for assessment:

(a) General support for the PDP as notified

(b) General provisions for financial contributions

- (i) General support or opposition
- (ii) Application of financial contributions to Network Utility Operators
- (iii) Payment of Financial Contributions at subdivision or land use
- (iv) Maximum Amount Payable
- (v) Use of discretion

(c) Works and Services

- (i) Taking Financial Contributions in Land
- (ii) Provisions for Infrastructure and Utilities

(d) Reserves

- (i) General
- (ii) Reserve contributions in Rural areas and Business zones
- (ii) Amount of reserve contributions

(e) Financial Contributions to Mitigate Environmental Effects

(f) Definitions

The vast majority of submissions on the notified PDP and Variation 1 either supported the inclusion of provisions relating to financial contributions or, where they opposed them, sought amendments to various aspects of the provisions as notified. Exceptions to this are:

(a) General submissions supporting either the provisions in the PDP as notified or supporting Federated Farmers who in turn support the provisions of the PDP on which they have not made a specific submission; and

Submissions relating to provisions dealing with:

(b)(iv) Maximum Amount Payable; and

(e) Financial Contributions to Mitigate Adverse Effects on the Environment

Submissions dealing with (a) General submissions are addressed in Section 6.1 while submissions dealing with topics (b) (i), (ii), (iii) and (v), (c), (d), and (f) are addressed in section 6.2. Submissions relating to (b)(iv) Maximum Amount Payable and (e) Financial Contributions to Mitigate Adverse Effects on the Environment are dealt with in Section 7.2. For conciseness, the full list of submitters on topics (a) through (f), with the exception of those topics to be dealt with in Section 7.2 is attached in **Appendix I** (topic (a))and **Appendix II** (topics (b) to (f)).

6.1 General Submissions

A summary of the submissions on this topic are attached in **Appendix I**. These submissions were lodged supporting either the provisions in the Rural Volume of the PDP as notified or supporting Federated Farmers who in turn support the provisions of the PDP on which they have not made a specific submission. Consequently, these submissions became submissions on every provision of the PDP. They are accepted or rejected depending on whether changes were recommended to each provision.

Recommendation 1

That the Council:

1. **Accepts** these submissions and further submissions as they relate to parts of the Rural Volume of the PDP where no amendments are recommended.

2. **Rejects** these submissions and further submissions as they relate to parts of the Rural Volume of the PDP where amendments to consequential amendments are recommended.

Reasons for Recommendation

The reasons are as recorded under the recommendation on specific provisions of the PDP.

Amendments to the District Plan

As recorded under the recommendations on specific provisions of the PDP.

6.2 Financial Contributions – Topics (b) – (f)

A summary of these submissions is attached in **Appendix II**. These submissions either supported the inclusion of provisions relating to financial contributions or, where they opposed them, sought amendments to various aspects of the provisions as notified.

The purpose of Variation 30 is to remove all financial contribution provisions from the PDP. The Local Government Act (LGA) 2002 provides for the Council to establish new policy covering development contributions and the Council has taken up this opportunity under the Long Term Council Community Plan (LTCCP). With the Development Contribution Policy in place under the LGA, there is no longer a need for reciprocal provisions within the District Plan relating to the taking of financial contributions. It is important that these provisions be removed from the District Plan so as to avoid confusion in the use of the two documents and to avoid the appearance of double counting in the taking of contributions.

In terms of topic (f) – Definitions, North Canterbury Federated Farmers (submission 40.14) sought an amendment to the definition of 'development'. The definition for development notified in the PDP was the same as that contained in the Local Government Act 1974. The submitter opposed the definition and sought the removal of three specific bullet points relating to 'fencing', 'draining and earthworks and other similar developments'. Variation 30 has subsequently deleted the definition for 'development' for the purpose of determining financial contributions and replaced it with a definition for 'development' for the purpose of determining development contributions.

Therefore, the recommendation is that all submissions on topics (b) through (f) and contained in **Appendix II** be rejected.

Recommendation 2

That the Council:

Rejects all submissions and further submissions as they relate to specific provisions on topics (b) through (f) for financial contributions or financial contributions generally.

Reasons for Recommendation

The Council is removing financial contribution provisions, including the definition for 'development' for the purpose of determining financial contributions from the District Plan, instead relying on development contributions levied under the Councils Development Contributions Policy contained in the Long Term Council Community Plan.

Amendments to the District Plan

Nil.

7. Submissions on Variation 30 & Outstanding Submissions on the Notified PDP and Variation 1 to the PDP

As noted above, the Council is utilising development contributions to fund infrastructure requirements related to growth. Therefore, there is no longer a need for reciprocal provisions within the District Plan relating to the taking of financial contributions for these purposes. The purpose of Variation 30 is to remove unnecessary references and provisions relating to financial contributions from the District Plan.

In assessing submissions on Variation 30, an assessment of outstanding submissions on the notified PDP and Variation 1 to the PDP on topics relating to the maximum amount of financial contributions payable and financial contributions to mitigate adverse effects on the environment shall also be addressed. Submissions on Variation 30 and those submissions on the Township and Rural Volumes of the PDP and Variation 1 have been categorised into the following groups for assessment:

(a) Submissions supporting or opposing Variation 30 in its entirety; and

(b) Submissions on Environmental Damages Policies and submissions on maximum amount of financial contributions payable; and

(c) Submissions on the Environmental Compensation Policies

7.1 Submissions in Support of or Opposition to Variation 30

Submitter	Sub. Point	Summary		Decision Requested
356 Christchurch City Council Support	**356.1**	Entire variation	By removing all financial contribution provisions from the Proposed Selwyn District Plan in favour of the development contribution provisions within Selwyn District Council's Development Contribution Policy, Variation 30 is consistent with: • Christchurch City Council's approach • the Urban Development Strategy (Settlement pattern key approach; Integrated Land Use, Infrastructure and Funding action).	Remove all financial contribution provisions from the Proposed Selwyn District Plan in favour of the development contribution provisions within Selwyn District Council's Development Contribution Policy.
	Further Sub.	*363F*	*TrustPower Limited*	*Oppose*
	356.3	Withdrawal of Submission Points	The submitter wishes to withdraw provisions 18 and 28 on pages 20 and 30 of their submission dated 7/12/2001 on the financial contributions provisions of the Proposed Selwyn District Plan (Rural Vol). (This submission was received at the time of the Proposed Selwyn District Plan being notified).	Withdraw provisions 18 and 28 on pages 20 and 30 of the previous submission dated 7/12/2001.

Submitter	Sub. Point	Summary		Decision Requested
358 Transit New Zealand Oppose	**358.1**	Entire variation	The submitter opposes the Council's decision to remove all transport related financial contributions for roading infrastructure. The submitter states that a robust mechanism is required to prevent incremental deterioration of roading infrastructure through the cumulative impacts of a number of developments. They also state that the Variation introduces a lack of certainty with regard to the requirement for development contributions as a means of mitigating the adverse effects on roading infrastructure, as a result of development.	Reject the deletion of financial contributions from the Proposed District Plan.
	Further Sub.	*3601F*	*Broadfield Estates Ltd*	*Oppose*
	Further Sub.	*361F*	*Gillmans Limited*	*Oppose*
	Further Sub.	*362F*	*BHL Trust*	*Oppose*
	Further Sub.	*363F*	*TrustPower Limited*	*Oppose in part*
	358.2	Township, Part 3, Rule 5 Subdivision for Living and Business	Insert additional words "for road infrastructure upgrades." to rule 1.1.14	Retain the wording on page 368 and amend to read: Financial Contributions, 1.1.14 Any financial contributions payable for road infrastructure upgrades.
	358.3	Township, Part 3, Rule 5 Subdivision for Living and Business	Specific to the table labelled - Access, Reserve and Utility Allotments. Insert into rule 2.1.9 "for road infrastructure upgrades."	Retain the wording on page 372 and amend to read: Financial Contributions, 2.1.9 Any financial contributions payable for road infrastructure upgrades.
	358.4	Township, 4.4 Development Contributions Issues	The submitter supports the inclusion of a requirement for development contributions for roading and other transport infrastructure. The impacts of development on the roading network can be both local and strategic, including the impact on connecting intersections. Insert "with exception for roading in limited circumstances." into paragraph 1. Insert new paragraph 3.	Amend the wording of 4.4 Development Contributions Policy pages 206-214 to read: Accordingly, the Council's requirements for land and/or cash for the provision of growth related reserves and for network and community infrastructure are contained within the Development Contribution and such contributions are no longer taken under the District Plan with exception for roading in limited circumstances. New paragraph 3 to read: The exception to this is where improvements are required to the State Highway, which is managed by Transit New Zealand. In that situation the Council cannot take developer contributions to mitigate these effects and financial contributions maybe required in lieu of development contributions being taken.

Submitter	Sub. Point	Summary		Decision Requested
	358.5	Rural, 2.2 Physical Resources, Section 2.1	Under Issues 1 - Safe and Efficient Use of Transport Network, Residential Growth the text should clarify that both developer contributions and financial contribution can be used. Insert into the Development Contribution policy "However, when appropriate, financial contributions may be taken in lieu of developer contributions in respect of works potentially required by other controlling authorities to mitigate the effects of that development.."	Amend the wording of the issues of the Development Contributions Policy in the Township Volume page 85 to read: The Council anticipates recovering the majority of it funds for road upgrades form rates income or LTNZ subsidies. However, the LTCCP Development Contribution Policy provides for development contributions to be taken in specific situations development itself requires the upgrade of the roading network adjacent to the development. However, when appropriate, financial contributions may be taken in lieu of developer contributions in respect of works potentially required by other controlling authorities to mitigate the effects of that development.
	358.6	Rural, 2.2 Physical Resources, Section 2.1, II Strategy	Allow for financial contributions to be taken instead of developer contributions. Insert "...for roads that require to be upgraded in lieu of a development contribution."	Retain the wording of Section 2.1 Transport Networks (Road, Rail and Airfields), II Strategy, Page 87 and amend to read: A policy to take financial contributions for roads that require to be upgraded in lieu of a development contribution.
	358.7	Rural, 2.2 Physical Resources, Section 2.1, II Policy 2	When addressing the Council's ability to take contributions towards upgrades to transport networks, insert the text "towards the cost of any upgrade to the State Highway" into Policy 2.	Retain the wording of Section 2.1 Transport Networks (Road, Rail and Airfields), Policy 2, pages 88-89 and amend to read: b) Enable the Council to take financial contributions towards the cost of any upgrade to the State Highway. NOTE: the upgrading of State Highways is undertaken by Transit New Zealand to their own standards.
	358.8	Rural, 2.2 Physical Resources, Section 2.1, II Policy 2)	In the explanation and reasons to Policy 2 insert the text "The exception to this is where improvements are required to the State Highway, which is managed by Transit New Zealand. In that situation the Council cannot take developer contributions to mitigate these effects and a financial contributions maybe required in lieu of development contributions being taken."	Amend the wording of the Explanations and Reasons on pg 89 to read: Developments can affect the classification of a road by increasing the volume of traffic. When development changes the volume or type of traffic on a road, the LTCCP Development Contribution policy enables the Council to take T development contributions to pay for the road upgrades (see section 4.2). This may include the forming of any unformed legal road to provide access to a property. The exception to this is where improvements are required to the State Highway, which is managed by Transit New Zealand. In that situation the Council cannot take developer contributions to mitigate these effects and a financial contributions maybe required in lieu of development contributions being taken.
	358.9	Rural, 2.2 Physical Resources, Section 2.1, II Policy 2	Allow for financial contributions in addition to development contributions policy as a method. Insert "Financial Contribution".	Amend the wording of (ii) Policies and Methods, Roads, Policy 2 to read: Methods • Road hierarchy ▪ Appendix 9 • District Plan Rules ▪ Vehicle Manoeuvres; ▪ Subdivision; • LTCCP ▪ Development Contribution Policy ▪ Financial Contribution
	358.10	Rural, 2.2 Physical Resources, Section 2.1, II Policy 7	Retain Policy 7 and include the word "network" with regard to utilities.	Retain the wording of (ii) Policies and Methods, Roads, Policy 7 and amend to read: Policy 7 to take financial contributions: a) For the costs of supplying dwellings with network utilities.

Submitter	Sub. Point	Summary		Decision Requested
	358.11	Rural, 2.2 Physical Resources, Section 2.1, II Policy 7	Policy 7 should be retained and the text "Transit New Zealand" should be inserted into the explanations and reasons for policy 7 to clarify who the roads are vested to.	Amend the Explanations and Reasons of Policy 7 to read: In some areas, roads may need to be sealed or upgraded. Where the roads, are vested in Transit New Zealand, the Council has to take financial contributions if it wishes to recover the costs of this work.
	358.12	Rural, 2.4 Growth of Rural Area, 4.1 Policies and Methods	Reinstate policies 12a and 12b, regarding how and when financial contributions shall be paid.	Retain the wording of (ii) Policies and Methods, Policies 12(a) and 12(b), page 175: Policy 12(a) Require any financial contributions owing to be paid at the time an allotment is created whenever practical; and 12(b) If financial contributions are not paid at this time, ensure an appropriate mechanism is used to inform people that financial contributions have not been paid.
	358.13	Rural, 2.4 Growth of Rural Area, 4.1 Policies and Methods	Under the explanations and reasons for Policies 8-11 insert the text "There are unexpected financial contributions in respect of road network." to the list of requirements and issues surrounding building a dwelling.	Amend the wording of (ii) Policies and Method, Policies 8-11, Explanations and Reasons, page 175-176, and amend to read: Explanations and Reasons: The District Plan...find that: • The allotment is too small; or • It does not have an adequate building square or sunlight; • There are unexpected development contributions for reserves and network and community infrastructure; or • There are unexpected financial contributions in respect of road network.
	358.14	Rural, 2.4 Growth of Rural Area	Clarify the taking of development contributions by inserting the text "with exception for roading in limited circumstances." into sentence 3 and adding a new paragraph explaining how Council should take land and/or cash for roading infrastructure.	Amend the wording of Issues, Objectives and Policies, 4 Growth of Rural Area 177-186. Amend sentence 3 to read: Accordingly, the Council's requirements for land and/or cash for the provision of growth related reserves and for network and community infrastructure are contained within the Development Contribution and such contributions are no longer taken under the District Plan with exception for roading in limited circumstances. Add new paragraph 3: The exception to this is where improvements are required to the State Highway, which is managed by Transit New Zealand. In that situation the Council cannot take developer contributions to mitigate these effects and a financial contributions maybe required in lieu of development contributions being taken.
	358.15	Rural, 2.4 Growth of Rural Area, Policy 1	Allow for the taking of financial contributions in lieu of development contributions when State Highway improvements are required.	Amend the wording of Policy 1, Explanations and Reasons pages 177-186 to add a new paragraph: The exception to this is where improvements are required to the State Highway, which is managed by Transit New Zealand. In that situation the Council cannot take developer contributions to mitigate these effects and a financial contributions maybe required in lieu of development contributions being taken. Also amend the wording of Methods, pages 177-186 to read: • LTCCP - Development Contributions; • District Plan Rules - Subdivision, Financial Contributions

Submitter	Sub. Point	Summary		Decision Requested
	358.16	Rural, Part 3, Rule III Building	Keep the reference in the table to Financial Contributions and the rules, objectives and policies that are affected.	Retain the wording of Rule III Buildings, page 239: 1.23 & 18.1, Financial Contributions, 4.2, Objectives 1 & 2, policies 1 to 11.
	358.17	Rural, Part 3, Rule IV Roading	Keep the rules referring to financial contributions payable under Rule X - Subdivision.	Retain rules on pages 245 and 246: 2.2.6 and 3.2.5
	358.18	Rural, Part 3, Rule IV Roading	Allow for financial contributions to be paid where development contributions have not been paid. Insert "where a development contribution has not otherwise been paid.".	Retain the wording of District Plan Rules, Rule IV Roading page 250 and amend to read: Financial Contribution 1.17 Any financial contributions for road payable under Rule X Financial Contributions are paid where a development contribution has not otherwise been paid.
	358.19	Rural, Part 3, Rule IV Roading	Allow for Financial contributions to be retained in the rules and reference tables.	Retain the wording of rule: Financial Contributions 7.1 Any activity which does not comply with Rule 1.17 shall be a discretionary activity. 18.1 & 7.1, Financial Contributions, 4.2, Objectives 1 & 2, policies 1-4 & 8-11.
	358.20	Rural, Part 3, Rule X Subdivision, Notes	Insert the word "improved" into note 15.	Amend the text under Part 3, District Plan Rules, Rule X Subdivision notes to read: 15. Development contributions under the LTCCP Development Contribution Policy will be taken where network infrastructure, community infrastructure or reserves have to be constructed, expanded or improved as a direct result of growth from development.
	358.21	Rural, Part 3, Rule X Subdivision	Insert the words "for road infrastructure".	Retain the wording of District Plan Rules, Rule X Subdivision, page 335-336 and amend to read: Financial Contributions for road infrastructure.
	358.22	Rural, Part 3, Appendix 18	Allow for the use of financial contributions by inserting the words "...where works or monetary contribution is required by a road controlling authority..." and "...for road infrastructure including connecting intersection,..." and "...where a development contribution has not otherwise been paid."	Retain, District Plan Rules, Appendix 18 page 481 and amend to read: Financial Contributions until such time as the proposed plan is notified, the rules to allow the Council to take financial contributions where works or monetary contribution is required by a road controlling authority to recover up to 100% of the costs of any work required for road infrastructure including connecting intersection, as a result of the proposed residential or business development, where a development contribution has not otherwise been paid.
	358.23	Rural, Part 3, Appendix 21	Reinstate financial contributions for situations where a development contribution has not been paid.	Retain the wording of Part 3, District Plan Rules, Appendix 21, page 493-496 and amend to read: 4.1.3 The payment of any financial contribution under Rule X(1) or X(3); where a development contribution has not otherwise been paid. Financial Contributions 4.2.6 Any financial contributions payable under Rule X, Rule 1 and 3, where a development contribution has not otherwise been paid... Subdivision is a controlled activity with matters of control limited to nuisance effects associated with forming sections and laying services, utilities, easements and monitoring. Matters of control are also excluded in limited situations where road upgrades are required by another road controlling authority such as Transit New Zealand... 4.1.3 The payment of any financial contribution under Rule X(1) or X(3); where a development contribution has not otherwise been paid.

Submitter	Sub. Point	Summary		Decision Requested
	358.24	Township, Part 2.3, Physical Resources	Allow for financial contributions to be taken in lieu of development contributions for other controlling authorities.	Amend the wording of the Issues of the Development Contributions Policy in the Township Volume page 64 to read: However the LTCCP Development Contributions Policy...However, when appropriate, financial contributions may be taken in lieu of developer contributions in respect of works potentially required by other controlling authorities to mitigate the effects of that development.

7.1.1 Submissions

The above submissions were lodged on Variation 30 and were either in general support of or general opposition to the removal of provisions relating to financial contributions. Christchurch City Council's submission (356.1) supports the removal of all financial contributions from both volumes of the PDP in favour of the development contribution provisions within Selwyn District Council's Development Contribution Policy.

TrustPower's further submission 363F opposed the submission of the Christchurch City Council (356.1) to remove ALL (submitter's emphasis) financial contributions from the Proposed Plan in favour of development contributions. TrustPower highlighted the difference in the application of financial contributions and development contributions, arguing that financial contributions are needed to offset any significant adverse effects resulting from activities which cannot be avoided, remedied or mitigated. For this reason, TrustPower considers it highly important that financial contributions be retained for this purpose.

Christchurch City Council's submission (356.3) requested that provisions 18 and 20 on pages 20 and 30 of their submission from 7/12/2001 on the notified PDP (Rural Volume) be withdrawn. In making this submission, Christchurch City Council appear to have made an error in the requested provision number on page 30, which should read provision 28 rather than provision 20. Both of these submissions relate to financial contributions. Provision 18 addresses Policy 4 in section 2.3 Community Facilities and Recreation Areas in the Rural Volume of the PDP. Provision 28 addresses Policies 5 and 7(ii) in Part 2 Section 4.2 Financial Contributions, Reserves and Recreation. The submissions support the taking of financial contributions towards the cost of purchasing or upgrading reserves or recreational facilities (provision 18) and the collection of reserve contributions from residential development for reserves purposes and the protection of special landscape and ecological values (provision 28).

Transit New Zealand (Transit) made a range of submission (358.1 to 358.24), which opposed the removal of all transport related financial contributions for roading infrastructure

(submission 358.1). Transit state that *'a robust mechanism is required to prevent incremental deterioration of roading infrastructure through the cumulative impacts of a number of developments'*. They also state that *'Variation 30 introduces a lack of certainty with regard to the requirement for development contributions as a means of mitigating the adverse effects on roading infrastructure, as a result of development'*. Submissions 358.2 to 358.24 sought the inclusion of a range of amended provisions to the PDP to give effect to their submission.

Further submissions from Broadfields Estates Limited (360F), Gillmans (361F) and BHL Trust (362F) all opposed Transit's submissions in their entirety. Transit's submissions were opposed because the further submitters considered the taking of development contributions under the LGA for infrastructural purpose as being better able to provide for systematic, planned development needs. The further submitters also considered that the resource consent process provided the appropriate tools to avoid, remedy or mitigate adverse effects arising from particular developments. Finally, the further submitters opposed Transit's submission because Transit does not provide any methodology, formula or criteria by which financial contributions for roads perceived as additionally affecting the operation of state highways would be determined.

TrustPower made a further submission (363F) which opposed in part the Transit submission. TrustPower supported the principle of a financial contribution under the Resource Management Act to offset any significant adverse effects resulting from activities that cannot be otherwise avoided, remedied or mitigated. However, TrustPower opposed the Transit submission as the relief sought *'cannot be easily interpreted or applied in its current form'*, and *'Transparent and clear policies and methodology need to be developed in association with any reference to financial contributions to determine clarity in the criteria and circumstances where these may be applied and the determination of the quantum likely'*.

7.1.2 Assessment of Submissions

I shall deal first with the submissions by the Christchurch City Council. I accept that the submission of the Christchurch City Council (356.3) withdraws submissions 18 and 28. Therefore, no further assessment of these submissions is required.

I agree with submission 356.1 in part. Christchurch City Councils submission supports Variation 30 to the extent that all provisions relating to financial contributions are removed. However Variation 30 as notified did not remove all financial contribution provisions, retaining policies for the taking of environmental damages. Therefore, I agree in part with

submission 356.1, to the extent that it supports the removal of those financial contributions that are removed by Variation 30.

TrustPower made a further submission (363F) in opposition to that of Christchurch City Council. TrustPower argue that financial contributions are needed to offset any significant adverse effects resulting from activities which cannot be avoided, remedied or mitigated. The further submission of TrustPower is in effect requesting that the Council retains the Environmental Damages Policies in both volumes of the District Plan which provide for a financial contribution to offset significant adverse effects resulting from activities which cannot be avoided, remedied or mitigated. As will be discussed presently in Section 7.2.2, the Environmental Damages Policies are recommended to be deleted from the District Plan Therefore, I recommend that the further submission of TrustPower (363F) be rejected.

Transit made submissions which opposed the removal of all transport related financial contributions for roading infrastructure (submission 358.1) and requested that a range of provisions be retained to provide for the taking of financial contributions to offset the adverse effects of development on the State Highway network (submissions 358.2 to 358.24).

Financial contributions are one of a range of tools provided for under Section 108(2) of the Act that could be used to offset activities which cannot be avoided, remedied or mitigated. In addition to imposing conditions to take financial contributions, Section 108(2) of the Act, provides Council with a range of other mechanisms to offset any significant adverse effects resulting from activities which cannot be avoided, remedied or mitigated. This includes conditions relating to:

- the taking of bonds (s108(2)(b));
- for services and works to be completed (s108(2)(c)); and
- the placing of a covenant in favour of the consent authority (s 108(2)(d)).

In terms of Council imposing conditions relating to the taking of financial conditions, Section 108(10)(b) of the Act requires District Plans or Proposed District Plans to provide a methodology, formula or criteria to determine the form of the financial contribution payable and the amount to be levied. Variation 30 has provided no such method(s) to determine the level of contribution required and neither has the submission of Transit identified what the method(s) should be. Therefore, any person reading Transits submissions could not anticipate how the District Plan may be amended as a result of accepting the submissions and make a valid further submission.

I agree with the further submissions of Broadfields Estates Limited (360F), Gillmans (361F) and BHL Trust (362F) and TrustPower (363F).

As noted above, further submissions from Broadfields Estates Limited, Gillmans and BHL Trust all opposed Transit's submissions because they considered the taking of development contributions under the LGA for infrastructural purpose was better able to provide for systematic, planned development needs. They also considered that the resource consent process provided the appropriate tools to avoid remedy and mitigate adverse effects arising from particular developments. Finally, the further submitters opposed Transit's submission because Transit does not provide any methodology, formula or criteria by which financial contributions for roads perceived as additionally affecting the operation of state highways would be determined.

While TrustPower support the principle of taking financial contributions to offset significant adverse effects resulting from activities which cannot be avoided remedied or mitigated, they opposed the Transit submission in part as the relief sought *'cannot be easily interpreted or applied in its current form'*, and *'Transparent and clear policies and methodology need to be developed in association with any reference to financial contributions to determine clarity in the criteria and circumstances where these may be applied and the determination of the quantum likely'*.

As noted above, as Transit have not identified what the method(s) should be to determine the level of contribution required and any person reading Transit's submissions could not anticipate how the District Plan may be amended as a result of accepting the submissions and make a valid further submission, I recommend that the submission of Transit New Zealand be rejected and all further submission in opposition to their submission be accepted.

Recommendation 3

That the Council:

Accepts in part the submission of the Christchurch City Council (356.1).

Accepts the submission of the Christchurch City Council's submission (356.3), and the further submissions of Broadfield Estates Ltd (360F), Gillman Wheelans Ltd (361F), BHL Trust (362F) and TrustPower Limited (363.3F)

Rejects the submissions of Transit New Zealand (358.1 to 358.24) and the further

submission of TrustPower Ltd (363F)

Reasons for Recommendation

Submissions requested that the Council introduces methods to determine the form of the financial contribution payable and the amount to be levied. However, no submissions identified what the method(s) should be. Therefore, any person reading the submissions could not anticipate how the District Plan may be amended as a result of accepting the submissions, and make a valid further submission.

In addition, Section 108(2) of the Act provides for a range of other mechanisms, in the form of conditions on resource consents, that Council can utilise to offset significant adverse effects resulting from activities which cannot be avoided, remedied or mitigated

Amendments to the District Plan

Nil

7.2 Submissions on Environmental Damages Policies and Maximum Amount of Financial Contributions Payable

Submitter	Sub. Point	Summary		Decision Requested
351 Transpower New Zealand Limited Provisional Support	**351.1**	Township, Part 2, 3.4 Policy 26 (new)	The explanation to the policy relates specifically to pollution and natural hazards. Similarly worded policies relating to pollution and/or natural hazards are already proposed for the inclusion in the District Plan. It is unnecessary and inappropriate to repeat the policy under the amenity heading when its text is largely unrelated to amenity matters.	The policy should be deleted or reworded to be more specific. And any consequential amendments.
	Further Sub.	*363F*	*TrustPower Limited*	*Support*
	351.2	Rural, Part 2, 3.4 Policy 10 (new)	The explanation to the policy relates specifically to pollution and natural hazards. Similarly worded policies relating to pollution and/or natural hazards are already proposed for the inclusion in the District Plan. It is unnecessary and inappropriate to repeat the policy under the amenity heading when its text is largely unrelated to amenity matters	The policy should be deleted or reworded to be more specific. And any consequential amendments.
	Further Sub.	*363F*	*TrustPower Limited*	*Support*

Submitter	Sub. Point	Summary		Decision Requested
357 **Submitter: TrustPower Limited** Provisional Support	**357.1**	Entire variation	The submitter wishes that the variation be approved, provided it is amended so that the submitters concerns are fully addressed. To include policies, rules, methods and criteria which meet the decisions requested below	• Adequately address the matters relevant to the exercise of the Council's discretion to require financial contributions including to take appropriate account the positive effects of development activities; • Reflect that financial contributions will not generally be required as a condition of consent, unless there is not other means to avoid remedy or mitigate significant adverse environmental effects; • Set out an appropriate methodology to be applied when determining the amount of any financial contribution; • Adequately explain the general purpose for which the contribution may be used; and • Are necessary to avoid confusion in the use of development contributions under the LGA and financial contributions under the RMA and to avoid double counting in the taking of contributions.
	357.2	Entire variation	The submitter states that in the event the amendments asked for in 357.1 are not implemented; the entire variation should be withdrawn.	That the variation is withdrawn.

7.2.1 Submissions

Submissions addressed in this section relate to the maximum amount of financial contribution payable and financial contributions to mitigate adverse effects of activities on the environment. Submissions on the notified PDP and Variation 1 to the PDP relating to these topics will also be assessed in this section. For conciseness, summaries of these submissions are included in **Appendix III.**

Submitters on the rules for financial contributions in the Township Volume of the PDP as notified objected to the provisions for financial contributions stating that they did not identify the form of the contribution or a method to determine the maximum amount payable. Variation 1, notified on 07 September 2001 made alterations to both the form and nature of the financial contribution provisions in the Township Volume. In particular, Variation 1 introduced the use of formulae to determine the level of financial contributions payable and identified the form which each contribution would take (land, money or both).

There were submissions both in support of and opposition to the concept of applying financial contributions to mitigate adverse effects of activities on the environment. North Canterbury Fish and Game Council (382.19) submitted against as applying environmental damages provisions is akin to a polluter pays philosophy. The submission was supported and opposed by various parties. Heinz Watties Australasia (419.27) suggested that financial contributions should be limited to works, services and reserve contributions and that adverse

effects on the environment can be addressed through the resource consent conditions or bonds. Te Runanga o Ngai Tahu (681.36 and 681.40) requested amendments to Policy 8 and Rule 3. The amendments were to apply the provisions specifically to damage to sites of cultural significance to Ngai Tahu. Several parties opposed the submission to Policy 8, while the submission on Rule 3 is opposed by BE Clark (F884).

Submissions on the Township Volume of the PDP as notified become submissions on both Variation No 1 and Variation 30 under Clause 16B of the First Schedule to the Act. It is unclear whether the submitters discussed above objected to the amended financial contribution provisions in Variation 30.

7.2.2 Submissions on Variation 30

With regard to submissions on Variation 30. Transpower New Zealand Limited (Transpower) made two submissions (351.1 and 351.2) Both submissions request that Policy 26 in Part 2, Peoples Health, Safety and Values, 3.4 – Quality of the Environment and Amenity Values (Township Volume) and Policy 21 in Part 2, Peoples Health, Safety and Values, 3.4 – Quality of the Environment and Amenity Values (Rural Volume) be deleted. These policies relate to the taking of a *'monetary contribution to help fund the costs of mitigating actual or potential natural hazards, pollution or other effects of an activity on areas beyond the boundary of the site'*. Transpower's submission opposes these policies to the extent that there is a lack of policy guidance as to how they might be applied. A further submission from TrustPower (363F) supports the Transpower submission.

TrustPower's submission (357.1) asked that the variation be approved, provided it is amended so that policies, rules, methods and criteria be developed and included in the Plan which in effect, determines the amount of financial contribution and sets out how and under what circumstances Council will take financial contributions. TrustPower's submission 357.2 asked that in the event that the relief sought in submission 357.1, that the entire Variation be withdrawn.

7.2.3 Assessment of Submissions

I shall first address submissions received on Variation 30 before addressing the 'historical' submissions on the notified PDP and Variation 1 to the PDP.

The submission of Transpower requested that Policy B3.4.27 in Part B, Peoples Health, Safety and Values, B3.4 – Quality of the Environment (Township Volume)[1] and Policy B3.4.20 in Part B, Peoples Health, Safety and Values, 3.4 – Quality of the Environment (Rural Volume)[2] be deleted as there is a lack of policy guidance as to how they might be applied. A further submission from TrustPower (363.1F) supports the Transpower submission.

As noted in the discussion in Section 7.1.2, when Council incorporates provisions for the taking of financial contributions into a District Plan or Proposed Plan it is required to also provide a methodology, formula or criteria to determine the form of the financial contribution payable and the amount to be levied. Variation 30 has provided no such method(s) to determine the level of contribution required and neither has any submitter or further submitter. Consequently, any person reading the submissions could not anticipate how the District Plan may be amended as a result of accepting the submissions, and make a valid further submission. Therefore, I recommend that the submissions of Transpower (351.1 and 351.2) and the further submissions of TrustPower (363.1F) should be accepted.

This is also the case with the submission of TrustPower (357.1). Consequently, I recommend that TrustPower's submission 357.1 be rejected and submission 357.2 be accepted in part, to the extent that policies relating to environmental damage in both volumes of he District Plan be withdrawn.

With regard to 'historical' submissions relating to the topic of Environmental Damages Policies. As with the discussion above, various submitters on the PDP as notified and Variation 1 sought the retention of financial contributions to mitigate adverse effects of activities on the environment. However, no submitters provided a methodology, formula or criteria to determine the form of the financial contribution payable and the amount to be levied. As noted above, any person reading the submissions could not anticipate how the PDP (or the operative District Plan as it is now) may be amended as a result of accepting the submissions, and make a valid further submission. As a result of this discussion, I recommend that 'historical submissions in support of removing Environmental Damages Policies be accepted and all submissions which sought amendments or which wished to retain the policies be rejected.

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[1] Previously Policy 26 in Part 2, Peoples Health, Safety and Values, 3.4 – Quality of the Environment and Amenity Values (Township Volume) in the PDP

[2] Previously Policy 21 in Part 2, Peoples Health, Safety and Values, 3.4 – Quality of the Environment and Amenity Values (Rural Volume in the PDP

With regard to 'historical' submissions relating to the topic of the maximum amount of any financial contribution payable. As a result of the above discussion and the recommended rejection of submissions by Transpower and TrustPower and the consequent withdrawal of all financial contribution policies from the District Plan (Recommendation 4), I recommend that 'historical' submissions on the topics of the Maximum Amount of Financial Contributions made on the notified PDP and Variation 1 to the PDP be rejected.

Recommendation 4

That the Council:

Accepts the submissions of Transpower New Zealand Ltd (351.1 and 351.2), Heinz Watties Australasia (419.27), all further submitters who opposed the submission of North Canterbury Fish and Game Council (382.19) as detailed in **Appendix III**, and the further submissions of TrustPower (363F).

Rejects the submissions of TrustPower (357.1), North Canterbury Fish and Game Council (382.19), Te Runanga o Ngai Tahu (681.36 and 681.40) and the further submissions of RJ Snoyink (F1014), JJ Snoyink (F 1013), EPA Canterbury (1037), and the New Zealand Historic Places Trust (F559) and **Accepts** all further submissions which opposed the submission of Te Runanga o Ngai Tahu (681.36 and 681.40) as detailed in **Appendix III**

Accepts in part the submission of TrustPower Ltd (357.2)

Reasons for Recommendation

When Council utilises provisions for the taking of financial contributions it is required by section 108(10)(b) of the Act to also provide a methodology, formula or criteria to determine the form of the financial contribution payable and the amount to be levied. Submissions received did not identify any methodology, formula or criteria. Therefore, any person reading the submissions could not anticipate how the District Plan may be amended as a result of accepting the submissions, and make a valid further submission.

In addition, Section 108(2) of the Act provides for a range of other mechanisms, in the form of conditions on resource consents, that Council can utilise to offset significant adverse effects resulting from activities which cannot be avoided, remedied or mitigated

Amendments to the District Plan

1. Amend Part B – 3 People's Health, Safety and Values, B3.1 – Natural Hazards, of the District Plan (Township Volume) by **deleting** Policy B3.1.9 (page B3-010) as follows:

~~**Policy B3.1.9**~~
~~To take a monetary contribution to help fund the costs of mitigating actual or potential natural hazards of an activity on areas beyond the boundary of the site.~~

~~Explanation and Reasons~~

~~Some activities can cause effects on land or waterbodies which are beyond the boundaries of the site where the activity is taking place. For example, activities which increase the risk of flooding or slips on other people's land. Where an activity runs the risk of ongoing effects on the environment, the Council usually requires the developer to enter into a bond, to ensure these funds are available should they be needed in the future. However, a monetary contribution may be more appropriate in some cases, for example, where works are required on other land from the outset.~~

2. Amend Part B – 3 People's Health, Safety and Values, B3.2 – Hazardous Substances, of the District Plan (Township Volume) by **deleting** Policy B3.2.8 (page B3-020) as follows:

~~**Policy B3.2.8**~~
~~***To take a monetary contribution to help fund the costs of mitigating actual or potential pollution of an activity on areas beyond the boundary of the site.***~~

~~Explanation and Reasons~~

~~Some activities can cause effects on land or waterbodies which are beyond the boundaries of the site where the activity is taking place. For example, activities which leach contaminants and pollute land and water supplies downstream. Where an activity runs the risk of ongoing effects on the environment, the Council usually requires the developer to enter into a bond, to ensure these funds are available should they be needed in the future. However, a monetary contribution may be more appropriate in some cases, for example, where works are required on other land from the outset.~~

3. Amend Part B – 3 People's Health, Safety and Values, B3.1 – Natural Hazards, of the District Plan (Rural Volume) by **deleting** Policy B3.1.10 (page B3-008) as follows:

~~**Policy B3.1.10**~~
~~To take a monetary contribution to help fund the costs of mitigating actual or potential natural hazards of an activity on areas beyond the boundary of the site.~~

~~Explanation and Reasons~~

~~Some activities can cause effects on land or waterbodies which are beyond the boundaries of the site where the activity is taking place. For example, activities which increase the risk of flooding or slips on other people's land. Where an activity runs the risk of ongoing effects on the environment, the Council usually requires the developer to enter into a bond, to ensure these funds are available should they be needed in the future. However, a monetary contribution may be more appropriate in some cases, for example, where works are required on other land from the outset.~~

4. Amend Part B – 3 People's Health, Safety and Values, B3.2 – Hazardous

Substances, of the District Plan (Rural Volume) by **deleting** Policy B3.2.6 (page B3-017) as follows:

~~**Policy B3.2.8**~~
~~***To take a monetary contribution to help fund the costs of mitigating actual or potential pollution of an activity on areas beyond the boundary of the site.***~~

~~Explanation and Reasons~~

~~Some activities can cause effects on land or waterbodies which are beyond the boundaries of the site where the activity is taking place. For example, activities which leach contaminants and pollute land and water supplies downstream. Where an activity runs the risk of ongoing effects on the environment, the Council usually requires the developer to enter into a bond, to ensure these funds are available should they be needed in the future. However, a monetary contribution may be more appropriate in some cases, for example, where works are required on other land from the outset.~~

5. Amend Part B 3 People's Health, Safety and Values, B3.4 – Quality of the Environment, Policies and Methods of the District Plan (Township Volume) by **deleting** Policy B3.4.27 (page B3-049) as follows:

~~**Policy B3.4.27**~~
~~***To take a monetary contribution to help fund the costs of mitigating actual or potential natural hazards, pollution or other affects of an activity on areas beyond the boundary of the site.***~~

~~Explanation and Reasons~~

~~Some activities can cause effects on land or waterbodies, which are beyond the boundaries of the site where the activity is taking place. For example, activities which increase the risk of flooding or slips on other people's land, or activities which may leach contaminants and pollute land and water supplies downstream. Where an activity runs the risk of ongoing pollution or other effects on the environment, the Council usually requires the developer to enter into a bond, to ensure these funds are available should they be needed in the future. However, a monetary contribution may be more appropriate in some cases, for example, where works are required on other land from the outset.~~

6. Amend Part B 3 People's Health, Safety and Values, B3.4 – Quality of the Environment, Policies and Methods of the District Plan (Rural Volume) by **deleting** Policy B3.4.20 (page B3-046) as follows:

~~**Policy B3.4.20**~~
~~***To take a monetary contribution to help fund the costs of mitigating actual or potential natural hazards, pollution or other effects of an activity on areas beyond the boundary of the site.***~~

~~Explanation and Reasons~~

~~Some activities can cause effects on land or waterbodies, which are beyond the boundaries of the site where the activity is taking place. For example, activities which increase the risk of flooding or slips on other people's land, or activities which may leach contaminants and pollute land and water supplies downstream. Where an activity runs the risk of ongoing pollution or other effects on the environment, the Council usually requires the developer to enter into a bond, to ensure these funds are~~

~~available should they be needed in the future. However, a monetary contribution may be more appropriate in some cases, for example, where works are required on other land from the outset.~~

7.3 Environmental Compensation

Submitter	Sub. Point	Summary		Decision Requested
356 Christchurch City Council	**356.2**	Environmental Compensation	By providing a new environmental compensation policy, Variation 30 is consistent with the Christchurch City Council's approach to environmental compensation.	Provide a new environmental compensation policy.
	Further Sub	*363F*	*TrustPower Limited*	*Oppose*
357 Submitter: TrustPower Limited Provisional Support	**357.1**	Entire variation	The submitter wishes that the variation be approved, provided it is amended so that the submitters concerns are fully addressed. To include policies, rules, methods and criteria which meet the decisions requested below	• Adequately address the matters relevant to the exercise of the Council's discretion to require financial contributions including to take appropriate account the positive effects of development activities; • Reflect that financial contributions will not generally be required as a condition of consent, unless there is not other means to avoid remedy or mitigate significant adverse environmental effects; • Set out an appropriate methodology to be applied when determining the amount of any financial contribution; • Adequately explain the general purpose for which the contribution may be used; and Are necessary to avoid confusion in the use of development contributions under the LGA and financial contributions under the RMA and to avoid double counting in the taking of contributions.

7.3.1 Provisions

Variation 30 introduces an environmental compensation policy into Part B – 4 Growth of Townships Section 4.2 Subdivision of Land (Township Volume) and Part B – 4 Growth of Rural Area, Section 4.1 Residential Density and Subdivision in the Rural Area (Rural Volume) of the District Plan. The acquisition of or protection of land with high landscape or natural values may often be impractical due to high land purchase costs. The Environmental Compensation policy is a tool that enables development proposals on land with high landscape or natural values and which might ordinarily be contrary to the objectives and policies of the PDP to proceed, provided the significant landscape or natural values are protected or there is a significant public benefit. It is important to bear in mind that environmental compensation does not form part of a proposals development contribution obligations under the Local Government Act 2002.

7.3.2 Submissions

The Christchurch City Council (356.2) has made a submission supporting the inclusion of the Environmental Compensation Policy into both the Rural and Township Volumes of the District Plan. The reason is that by providing a new environmental compensation policy, Variation 30 is consistent with the Christchurch City Council's approach to environmental compensation.

TrustPower made a submission on the whole of Variation 30 relating to the retention and inclusion of provisions which provide for financial contributions to offset significant adverse effects which cannot be avoided, remedied or mitigated. TrustPower's submission also states that they consider *'that the provisions of the Variation, **including the concept of the 'environmental compensation',** fail to sufficiently clarify the Council's powers and discretions so as to avoid confusion in the use of development contributions under the LGA and financial contributions under the RMA and avoid the double counting in the taking of contributions'.* I believe this is also a decision requested within the submission, but has not been allocated a submission number. I will refer to this submission as 257.1a

TrustPower (363F) has made a further submission opposing the Christchurch City Council submission. The reason given is that the concept of environmental compensation lacks clarity and fails to make sufficiently clear the Council's powers and discretions so as to avoid confusion in the use of development contributions under the Local Government Act and financial contributions under the Resource Management Act. In addition, TrustPower opposes Variatition 30 to the extent that there is no methodology provided to be used when determining the amount of any financial contribution when applying the environmental compensation policy.

7.3.3 Assessment of Submissions

Two distinct areas of concern have been expressed in the submissions of TrustPower in relation to the Environmental Compensation Policy:

i. Avoidance of confusion in the use of development contributions and financial contributions and to avoid double counting when Council takes contributions; and
ii. The lack of a methodology to be used when determining the amount of environmental compensation (i.e. an assumption that environmental compensation is the same as a financial contribution)

In terms of concerns of avoiding confusion in the double counting in the taking of development contributions or financial contributions. Variation 30 was promulgated because

Council has decided to move away from taking financial contributions and is instead relying on development contributions under the LGA. Council has been using development contributions successfully since the 1st of July 2006, when the Development Contributions Policy came into effect. The Environmental Compensation Policy is not intended as a replacement to development contributions; rather, they are in addition to any development contributions which may be required for any particular development.

In addition, Recommendation 4 has removed the remaining financial contributions provisions which may have contributed to potential confusion as to whether Council will be using development contributions or financial contributions. Therefore, I consider there is no opportunity for confusion in this matter.

In terms of providing a methodology to be used when determining the amount of any financial contribution when applying the environmental compensation policy. The Court has determined that environmental compensation is not a financial contribution if there is a net conservation benefit with a link to the proposal that creates the need for such compensation (see *Rutherford Family Trust v Christchurch City Council – EnvC C26/2003*).

The environmental compensation policy is a tool that enables development on land with high natural or open space values which might ordinarily be contrary to the objectives and policies of the District Plan to proceed, provided those natural or landscape values are protected or there is a public benefit. The environmental compensation policy is to be used in limited circumstances to provide a net conservation benefit i.e. development that is contrary to objectives and policies of the District plan can proceed if land with high landscape or natural value is protected or made available for public use.

As the exact nature of any proposals where the environmental compensation policy might be applied cannot be known prior to development, flexibility to provide for the full range of possible compensation scenarios is required. Therefore, the policy needs to be sufficiently flexible so that the factual circumstances for various development proposals can be assessed on a case by case basis and the appropriate level of environmental compensation determined.

Therefore, my recommendation is that the submission of the Christchurch City Council (356.2) is accepted and the submission and further submission of TrustPower (357.1 and 363F) be rejected.

Recommendation 5

That the Council:

Accepts the submission of the Christchurch City Council (356.2).

Rejects the submission of TrustPower Limited (357.1a) and the further submission of TrustPower Limited (363F).

Reasons for Recommendation

Retaining the environmental compensation policy promotes the sustainable management of natural and physical resources of the district where land with high landscape or natural values is protected or made available for public use.

Case law has shown that where there is a net conservation benefit with a link to a development proposal, then utilising the concept of environmental compensation cannot be considered to be a financial contribution. In addition, development proposals seeking to utilise the environmental compensation policy will still be liable to pay any development contributions required under the Council's Development Contributions Policy.

Amendments to the District Plan

Nil

Andrew Mactier
Policy Planner
Selwyn District Council

12 September 2008