REPORT

TO: Chief Executive

FOR: Council Agenda– 9 December 2009

FROM: Andrew Mactier – Policy Planner

DATE: 27 November 2009

SUBJECT: **Variation 30 (Financial Contributions) Decision**

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1. RECOMMENDATION

That in respect of Variation 30 to the Proposed District Plan, Council resolves:

a) **Pursuant to Clause 10 (1) of the First Schedule of the RMA, to adopt the recommendations tabled in the Hearing Panel's Report dated 24 November 2009 as its decision on Variation 30.**

b) **To give public notice of the fact that it has made its decision and that the Proposed Plan shall be deemed to have been amended in accordance with that decision from the date of the public notice (Clause 10 (4)(b)).**

c) **To serve on every person who made a submission on Variation 30 a copy of its decision (Clause 11 (1)).**

d) **To delegate to the Environmental Services Manager the authority to take any steps necessary to give effect to recommendations a) to c) above.**

2. PURPOSE

This report seeks a decision from the Council that Variation 30 be **approved with modifications** and be confirmed for inclusion in the Operative Selwyn District Plan.

3. SIGNIFICANCE ASSESSMENT/COMPLIANCE STATEMENT

The recommendation has been assessed against the Significance Policy. Variation 30 -

a) Does not have the potential to affect a significant portion of the community in a way that is not inconsequential. Variation 30 removed financial contribution provisions from the Proposed District Plan. Council now relies on Development Contributions to fund public infrastructure required as part of development. In addition, the statutory process allows the community to respond to changes through submissions, hearing and ultimately, appeals to the Environment Court.

b) Does not have financial implications on the Council's resources that would be substantial, and

c) Has not generated a high degree of controversy.

Overall, I consider that the recommended decision on Variation 30 is not "significant" in terms of the Significance Policy.

4. HISTORY/BACKGROUND

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).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

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.

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.

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. The variation drew 8 new submissions, which were considered along with submissions "carried over" from the PDP As notified and Variation 1.

Cr Jack Pearcy, Cr Nigel Barnett and Commissioner Graham Taylor heard evidence from submitters on 16 October 2008.

5. PROPOSAL

A Hearing Panel, comprising Councillor Jack Pearcy (Chair), Councillor Nigel Barnet and Commissioner Graham Taylor, was appointed to hear submissions on Variation 30. The Hearing

Panels role is limited to that of conducting the hearing and, having considered all relevant material in respect of the Variation, including evidence presented at the hearing, make recommendations to the Council on the Variation and the associated submissions.

These recommendations are to relate to whether the Variation should be accepted, accepted with modifications (in accordance with the scope provided by the Variation and submissions made on it), or rejected. The final decision on whether or not the Variation is adopted as the responsibility of the Council.

For the reasons set out in the appended report (Attachment I), the Hearing Panel recommends that Variation 30 be approved subject to the removal of Environmental Damages Policies and that the submissions and further submissions are accepted, accepted in part or rejected accordingly.

The Environmental Damages Policies contained in Variation 30 as notified were considered deficient in that they did not provide any methodology, formula or criteria to determine the form of the financial contribution payable and the amount to be levied. As noted by the Hearing Panel, Section 108(2) of the RMA provides for a range of other mechanisms, in the form of conditions on resource consents, which Council can utilise to off-set significant adverse effects resulting from activities which cannot be avoided, remedied or mitigated.

6. OPTIONS

Council can –

i. Confirm the recommendation of the hearing panel as the Council's decision (the recommended option).

ii. Decline to accept the panel's recommendation, and reject Variation 30.

iii. Return the issue to staff for further consideration.

7. VIEWS OF THOSE AFFECTED/CONSULTATION

Views of those affected and consultation

The submissions, further submissions and hearing process have enabled those affected and the wider community to have an input into the changes to the Plan

Maori implications

There are no specific implications for Maori in Variation 30.

8. RELEVANT POLICY/PLANS

Selwyn District Plan

9. COMMUNITY OUTCOMES

Not relevant to this recommendation.

10. NEGATIVE IMPACTS

This proposal is not likely to impact negatively on the community or any of Council's activities.

11. LEGAL IMPLICATIONS

The legal implications of this recommendation are limited to any subsequent appeals to the Environment Court.

12. FUNDING IMPLICATIONS

The funding implications of this recommendation are limited to any subsequent appeals to the Environment Court.

13. HAS THE INPUT/IMPACT FROM/ON OTHER DEPARTMENTS BEEN CONSIDERED?

Not relevant to this recommendation.

Andrew Mactier
POLICY PLANNER

ENDORSED FOR AGENDA

David Smith

TEAM LEADER
STRATEGY & POLICY

Tim Harris

PLANNING MANAGER

John Christensen

ENVIRONMENTAL SERVICES MANAGER