

## Minutes 12 February 2008



Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on 12 February 2008, commencing at 9.21pm.

**PRESENT:**

Councillors R. Swan (Mayor); S. Dover (Deputy Mayor); C. Baumann; H. Brown; G. Dingle; G. Francis; J. Hodges; K. Jordan; J. Nell; G. Robinson; S. Tucker, General Manager; Executive Manager – Corporate Management, Facilities and Services Group Manager; Sustainable Planning Group Manager; Business and Support Group Manager.

012	Councillor Robinson Councillor Jordan	It was resolved that the apology from Cr Westbury be received and noted.
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# MOTIONS TO CLOSE

ITEM NO. 1

FILE NO: T35-2007 PSC2007-1900

**MOTION TO CLOSE MEETING TO THE PUBLIC**

REPORT OF: JUNE SHINE – EXECUTIVE MANAGER CORPORATE MANAGEMENT

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**RECOMMENDATION:**

- 1) That pursuant to section 10A(2)(d) of the Local Government Act, 1993, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 1 on the Ordinary meeting agenda namely **T35-2007 PSC Administration Building External Preventative Maintenance Painting Program.**
- 2) That the reasons for closing the meeting to the public to consider this item be that:
  - i) The report and discussion will include details of commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the tenderers; and
  - ii) In particular, the report includes confidential pricing information in respect of the **Tender T35-2007 PSC Administration Building External Preventative Maintenance Painting Program.**
- 3) That on balance, it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as disclosure of the confidential commercial information could compromise the commercial position of the tenderers and adversely affect Council's ability to attract competitive tenders for other contracts.
- 4) That the report and minutes of the closed part of the meeting are to remain confidential and that Council makes public its decision including the name and amount of the successful tenderer in accordance with Clause 179) of the Local Government (General) Regulation 2005.

**ORDINARY MEETING OF COUNCIL – 12 FEBRUARY 2008**

**RESOLUTION:**

<b>013</b>	<b>Councillor Robinson Councillor Nell</b>	<b>It was resolved that the recommendation be adopted.</b>
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ITEM NO. 2

FILE NO: T30-2007 PSC2008-0476

**MOTION TO CLOSE MEETING TO THE PUBLIC**

**REPORT OF: JUNE SHINE – EXECUTIVE MANAGER CORPORATE MANAGEMENT**

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**RECOMMENDATION:**

- 1) That pursuant to section 10A(2)(d) of the Local Government Act, 1993, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 2 on the Ordinary meeting agenda namely **T30-2007 Provision of Security Services – Port Stephens Beachside Holiday Parks and Samurai Beach Resort.**
- 2) That the reasons for closing the meeting to the public to consider this item be that:
  - i) The report and discussion will include details of commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the tenderers; and
  - ii) In particular, the report includes confidential pricing information in respect of the **Tender T30-2007 Provision of Security Services – Port Stephens Beachside Holiday Parks and Samurai Beach Resort.**
- 3) That on balance, it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as disclosure of the confidential commercial information could compromise the commercial position of the tenderers and adversely affect Council's ability to attract competitive tenders for other contracts.
- 4) That the report and minutes of the closed part of the meeting are to remain confidential and that Council makes public its decision including the name and amount of the successful tenderer in accordance with Clause 179) of the Local Government (General) Regulation 2005.

**ORDINARY MEETING OF COUNCIL – 12 FEBRUARY 2008**

<b>RESOLUTION:</b>		
<b>014</b>	<b>Councillor Robinson Councillor Nell</b>	<b>It was resolved that the recommendation be adopted.</b>

Councillor Swan declared a pecuniary interest in Item 2.

**ITEM NO. 3**

**FILE NO: T31-2007**

**MOTION TO CLOSE MEETING TO THE PUBLIC**

**REPORT OF: JUNE SHINE – EXECUTIVE MANAGER CORPORATE MANAGEMENT**

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**RECOMMENDATION:**

- 1) That pursuant to section 10A(2)(d) of the Local Government Act, 1993, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 3 on the Ordinary meeting agenda namely **T31-2007 Provision of Security Services – Council Administration Building, Libraries, Community Centre and Recreational Facilities.**
- 2) That the reasons for closing the meeting to the public to consider this item be that:
  - i) The report and discussion will include details of commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the tenderers; and
  - ii) In particular, the report includes confidential pricing information in respect of the **Tender T31-2007 Provision of Security Services – Council Administration Building, Libraries, Community Centre and Recreational Facilities.**
- 3) That on balance, it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as disclosure of the confidential commercial information could compromise the commercial position of the tenderers and adversely affect Council's ability to attract competitive tenders for other contracts.
- 4) That the report and minutes of the closed part of the meeting are to remain confidential and that Council makes public its decision including the name and amount of the successful tenderer in accordance with Clause 179) of the Local Government (General) Regulation 2005.

**ORDINARY MEETING OF COUNCIL – 12 FEBRUARY 2008**

<b>RESOLUTION:</b>		
<b>015</b>	<b>Councillor Robinson Councillor Nell</b>	<b>It was resolved that the recommendation be adopted.</b>

Councillor Swan declared a pecuniary interest in Item 3.

# MAYORAL MINUTE

# MAYORAL MINUTE

ITEM NO. 1

FILE NO: PSC2006-0060

## **INFRASTRUCTURE CONTRIBUTIONS (SECTION 94) PROPOSED CHANGES BY THE NSW STATE GOVERNMENT**

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### **THAT COUNCIL:**

1. Supports the actions of the Presidents and Executive of the Local Government and Shires and Shires Association in mounting a campaign on the NSW Government's proposed planning changes including both the issues of Section 94 developer contributions and the recommendations in the Government's Discussion Paper – and preparing an alternative reform package as a base for discussion with the government, councils, stakeholders and the community;
  2. Advise the NSW Minister for Planning and the Presidents of the Local Government & Shires Association that it will concur with the position of the Associations and refuse to cooperate with the NSW Government if requested to transfer Section 94 funds held in trust by the Council to the Government;
  3. Give endorsement to making a contribution to the Local Government and Shires Associations towards the cost of engaging lobbying and media representatives to formulate and assist with the implementation of a continuing publicity campaign and
  4. Endorse the recommendations of the Group Manager, Sustainable Planning contained in the attached report (Attachment 2).
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### **ORDINARY MEETING OF COUNCIL – 12 FEBRUARY 2008**

<b>RESOLUTION:</b>		
<b>016</b>	<b>Councillor Swan Councillor Baumann</b>	<b>There being no objection the Mayoral Minute was adopted including all attachments.</b>

### **BACKGROUND**

On 30 January 2008, the Group Manager, Sustainable Planning (representing the General Manager) and myself attended the Leaders' Forum convened by the Local Government Shires of NSW and Shires Association of NSW which led to the following resolutions:

1. That the meeting supports the actions of the Presidents and Executives of the Local Government and Shires Associations in mounting a campaign on the NSW Government's proposed planning changes, including both the issue of Section 94 developer contributions and the recommendations in the Government's Discussion Paper, and preparing an alternative reform package as a basis for discussion with the government, councils, stakeholders and the community.



## MINUTES FOR ORDINARY MEETING – 12 FEBRUARY 2008

2. The meeting calls on all NSW councils to refuse to cooperate with the NSW Government if requested to transfer Section 94 funds held in trust by councils to the government, and
3. The meeting supports in principle the proposal that the Associations seek contributions from member councils towards the costs of engaging high level lobbying and media representation to formulate and assist with the implementation of a continuing public campaign.

On 5 February 2008, the General Manager and myself attended a special meeting of Hunter Councils Inc. involving the Mayors and General Managers or their representatives from Hunter Councils to discuss the NSW Government Department of Planning Discussion Paper on Improving the NSW Planning System and the proposal for changes to the management of Section 94 contributions.

Minutes of that meeting are Attachment 1 to this Mayoral Minute.

ATTACHMENT 1  
MINUTES OF HUNTER COUNCILS MEETING 5 FEBRUARY 2008

SPECIAL MEETING OF HUNTER COUNCILS INC  
DELEGATES AND REPRESENTATIVES  
TO DISCUSS PROPOSED PLANNING REFORM MATTERS  
HELD AT MAITLAND CITY COUNCIL  
5<sup>th</sup> FEBRUARY 2008 10am – 12.00noon

*1. Agenda*  
*2. David B*

Attendance:

John Chadban	Chair	Mayor,	Great Lakes Council
Keith O'Leary		GM	" "
Peter Blackmore		Mayor	Maitland City Council
David Evans		GM	" "
Fred Harvison		Mayor	Singleton Council
Steve McGrath		GM	" "
Bernie Mortomore		GM	Cessnock City Council
John Colvin		Mayor	Muswellbrook Shire Council
Chris Gidney		Director Environmental Services	" "
Ron Swan		Mayor	Port Stephens Council
Peter Gesling		GM	" "
Judy Jaegar		Manager, S & S Planning,	Newcastle City Council
John Tate		Mayor	" "
Julie Lyford		Mayor	Gloucester Shire Council
Norm McLeod		GM	" "
Peter Gesling		GM	Port Stephens Council
Daryl Dutton		GM	Upper Hunter Shire Council

Barbara Penson	CEO	Hunter Councils
Meredith Laing	Environment Director	"

Apologies:	Barry Rose	Mayor	Upper Hunter Shire Council
	John Clarence	Mayor	Cessnock City Council
	Craig Deasey	GM	Dungog Shire Council
	Glenn Wall	Mayor	" "

The urgent meeting was called to discuss the NSW Government, Department of Planning Discussion Paper on 'Improving the NSW Planning System' and the proposal for changes to the management of S94 payments.

The Chairman discussed a recent meeting convened by the Local Government and Shires Association and the proposed strategy outlined by the LGSA for addressing the concerns of Local Government to the State Government.

The meeting discussed many aspects of the proposal and did agree that the Planning Legislation required reform and that much of the Discussion Paper was positive. However the concerns expressed with regard to some aspects were of such significance that it was imperative that local government should raise its objections rapidly and in the most effective means available.

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The meeting agreed to the following actions as a matter of priority:

- A. That the Chairman request a meeting with the Minister for Planning and attend with a delegation comprising a Lower Hunter Mayor and an Upper Hunter Mayor together with advisory General Managers such as David Evans. The delegation should generally express support for reform to the Planning Process, clarify the details of the proposal and express concern with components of the proposal as they currently stand, particularly with regard to the retention of S94 payments.

The Chairman would arrange this meeting as a matter of high priority and provide a report back to councils as soon as practicable.

- B. Request that all member councils consider the resolutions proposed by the LGSA as framed resulting from the Leaders Forum. Views and comments as a result of such review to be forwarded to Hunter Councils CEO to be incorporated in a formal Hunter Councils response.

The Chairman would arrange a Media Release on the special meeting as a matter of priority. A further meeting may be convened to discuss the outcomes of the above actions.

The meeting also considered the proposed amendments as they relate to the provision of Water and Sewerage in those councils where they are under the management of local government and also the changes proposed to the Single Invitation contracts for Road Maintenance and in particular the negative impacts the changes will have to the economic and social life of the affected communities.

The General Managers of those councils to provide the Hunter Councils CEO with sufficient background information to prepare a letter to the relevant Ministers on behalf of Hunter Councils for consideration and endorsement at the forthcoming Hunter Councils Board Meeting on 28<sup>th</sup> February.

ATTACHMENT 2  
REPORT TO COUNCIL

ITEM NO. 2

FILE NO: PSC2006-0060

**INFRASTRUCTURE CONTRIBUTIONS (SECTION 94) PROPOSED  
CHANGES BY THE NSW STATE GOVERNMENT**

REPORT OF: DAVID BROYD (GROUP MANAGER, SUSTAINABLE PLANNING)

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Advise the NSW Minister for Planning, Mr Frank Sartor, the Director General of the Department of Planning and the Presidents of the Local Government Association and Local Government Shires Association as follows:
  - i) Council strongly opposes the NSW Government's Circular and announcements on Infrastructure Contributions and Developer Contributions;
  - ii) Reaffirms the position contained in Council's letter to the Director General of the Department of Planning of 26 November 2007.

**BACKGROUND**

**The purpose of this report is to advise Council of the proposed changes to the legislation and practices for developer contributions by the State Government.**

The NSW Premier Morris Iemma announced on 12 October 2007 a comprehensive overhaul of infrastructure charges – asserting that this would:

- cut State and local government infrastructure contributions by 30 to 40 per cent;
- provide a saving of at least \$25,000 per lot in the Western Sydney Growth Centres

and that the same principles would be applied to new land release areas across the State. The proposed changes were stated to be in response to the State Plan objectives of housing affordability; maintaining and investing in infrastructure; and “cutting red tape”.

The major reason for the changes to Infrastructure Contributions appears to originate from the Government's concern with excessive contribution levies imposed by some Councils. For example, the Oran Park Growth Centre Local Government S94 levy for a single dwelling was \$48,425 and is now proposed to be reduced to \$30,914. Development will also contribute 75% of State Transport Infrastructure and State Land acquisition for Social Infrastructure (eg Oran Park Growth Centre \$23,000) (Total Oran Park contribution to Councils and State \$53,914).

Port Stephens Council's comparable developer contribution per lot is \$10,479 which is far below the levies suggested as being excessive.

The Department of Planning subsequently issued a Circular on 6 November 2007 (Attachment 1) concerning Infrastructure Contributions. The Circular states that the Department of Planning, NSW Treasury and the NSW Growth Centres Commission will develop guidelines and procedures for changes to S94 legislation. Section 94 Plans will have to be approved by the Minister for Planning. The Government will hold all Section 94 and Section 94A funds in growth centres and may consider collecting and holding Section 94 and Section 94A contributions for greenfield development outside the growth centres on a case-by-case basis. The circular advised that future local contributions will be set through an approved Section 94 or Section 94A plan based on Ministerial Guidelines. Contributions (S94 and S94A) will only fund **local** infrastructure costs including:

- local roads
- local bus infrastructure
- local parks that service a development site or precinct
- drainage and water management expenses
- land and facilities for local community
- infrastructure that services a development site or precinct
- land for other community infrastructure and recreation facilities.

All other costs, such as facilities benefiting existing communities (including Council or district-wide community and recreation facilities), will no longer be recovered through local contributions. Councils will still prepare their own Section 94 or Section 94A plans in accordance with the guidelines; however these will need to be endorsed by a delegate of the Minister for Planning.

The proposal will effectively reduce the facilities for which Council can levy development to the detriment of future communities.

A letter (Attachment 2) was therefore endorsed by the Executive Team and sent to the Director General of Planning in response to the Circular outlining concerns with the proposed Ministerial Direction. The more particular concerns included:

- Facilities benefiting existing communities (including council or district-wide community and recreation facilities), can no longer be recovered through local contributions.
- Local contributions will no longer be permitted to fund acquisition of land for riparian corridors. These areas will be protected and managed through planning (zoning and other) controls.
- Possible options for deferring the payment of the Contributions.
- The NSW Government may consider collecting and holding section 94 and section 94A contributions for greenfield development outside the growth centres on a case-by-case basis.

The letter also indicated that Port Stephens Council's Benchmarks Standards Model could effectively overcome the Governments concern with the high cost of S94 that some metropolitan councils levy and that this model would provide a substantial win for both Local and State Government. The Director General has now responded to the effect that it is not the Departments position to redress the Governments position.

The Local Government and Shires Association have also conducted a campaign and lobbied the Department of Planning, Department of Premier and Cabinet, Treasury and the Growth Centres Commission to have the State Government delay the implementation of changes to the development contributions framework until such time as the negative impacts on Local Government and the community have been addressed.

Unofficial advice however has been received that despite all efforts, the changes are expected to be presented to the Minister for Planning shortly with the changes to be implemented before June 2008.

## **LINKS TO CORPORATE PLANS**

The links to the 2007-2011 Council Plan are:-

**SOCIAL SUSTAINABILITY –** *Council will preserve and strengthen the fabric of the community, building on community strengths.*

**CULTURAL SUSTAINABILITY –** *Council will assist to inspire a sense of pride and place as well as enhancing quality of life and defining local identity.*

**ECONOMIC SUSTAINABILITY –** *Council will support the economic sustainability of its communities while not compromising its environmental and social well being.*

**ENVIRONMENTAL SUSTAINABILITY –** *Council will protect and enhance the environment while considering the social and economic ramifications of decisions.*

**BUSINESS EXCELLENCE –** *Council will use the Business Excellence Framework to innovate and demonstrate continuous improvement leading to long-term sustainability across operational and governance areas in a Business Excellence Journey*

## **FINANCIAL/RESOURCE IMPLICATIONS**

Council will only be able to levy for Local Infrastructure including parks, roads and drainage.

Except for the land component, Council will not be able to levy for Administration; Works Depots; Sports and Leisure Facilities; Cultural and Community Facilities; Fire & Emergency Services. The value of Section 94 funds lost that Council will be required to find from other sources totals \$50 million in the current Section 94 Plan. Statements by the Minister for Planning indicate that Council should funds these works from rates. It is estimated that Council would need to increase its rates revenue by 8.7% to make up this shortfall.

## **LEGAL AND POLICY IMPLICATIONS**

It has been indicated that a Ministerial Direction will direct Councils to implement the proposed changes in their Section 94 Plans. An additional direction is expected directing which Councils will be required to hand over all Section 94 funds held and collected in the future to State Government Treasury.

## **Business Excellence Framework**

Port Stephens Council is a quality driven organisation. We use the Business Excellence Framework as a basis for driving organisational excellence. The Framework is an integrated leadership and management system that describes elements essential to organisational excellence. It is based on eight (8) principles.

These outcomes align with the following Business Excellence principles:-

- 1) **LEADERSHIP** – *Lead by example, provide clear direction, build organisational alignment and focus on sustainable achievement of goals.*
- 2) **CUSTOMERS** – *Understand what markets and customers value, now and into the future, and use this to drive organisational design, strategy, products and services.*
- 6) **INFORMATION AND KNOWLEDGE** – *Improve performance through the use of data, information and knowledge to understand variability and to improve strategic and operational decision making.*
- 7) **CORPORATE AND SOCIAL RESPONSIBILITY** – *Behave in an ethically, socially and environmentally responsible manner.*
- 8) **SUSTAINABLE RESULTS** – *Focus on sustainable results, value and outcomes.*

## **SUSTAINABILITY IMPLICATIONS**

### **SOCIAL IMPLICATIONS**

The proposed changes will have major, adverse impacts on the provision of community facilities and other infrastructure to the community particularly for new residents.

### **ECONOMIC IMPLICATIONS**

The changes will place a major strain on existing infrastructure and Council's ability to provide new or expanded community facilities.

### **ENVIRONMENTAL IMPLICATIONS**

Council's funds and resources to implement environmental compatibility will be significantly curtailed.

### **CONSULTATION**

Executive team, other Councils, Department of Planning, Local Government Association and the Local Government Shires Association.

### **OPTIONS**

Council can:

- 1) Adopt the recommendation;
- 2) Adjust the position recommended to be put to the Minister.

**ATTACHMENTS**

- 1) Department of Planning Circular.
- 2) Letter to Department of Planning.
- 3) Response from Department of Planning
- 4) Letter from the Presidents of the LGA and LGSA of 30 January 2008



ATTACHMENT 1  
DEPARTMENT OF PLANNING CIRCULAR



PLANNING circular

PLANNING SYSTEM

Development contributions

<b>Circular</b>	PS 07-018
<b>Issued</b>	6 November 2007
<b>Related</b>	

Infrastructure contributions

This circular is to provide early advice to local councils, relevant State agencies, the development industry and the community of recent changes to the setting and collection of infrastructure contributions in NSW. Further advice will follow as these changes are implemented. The Department will be issuing guidelines and update circulars to facilitate implementation.

**Introduction**

On 12 October 2007, the Premier announced a comprehensive overhaul to the way that contributions from development in NSW are administered for State and local infrastructure.

State and local infrastructure contributions will now only fund attributable infrastructure and land requirements to support developed land rather than infrastructure requirements driven by general population growth. This means that for both State government agencies and local councils, it will only be possible to levy for a range of infrastructure items where the need for that infrastructure arises from the development of land.

The changes will ensure a more consistent approach to setting infrastructure contributions across NSW, and will improve certainty and transparency in the release of land for development.

**Changes to the infrastructure funded by State infrastructure contributions**

State contributions applying to greenfield areas identified in Regional or Subregional Strategies, the Metropolitan Development Program or in an approved local strategy will fund 75% of the following attributable State infrastructure costs:

..

Infrastructure item	Previous approach	New approach
Roads	✓	✓
Rail	✓	✓
Bus	✓	✓
Emergency and justice	✓	Land only
Health	✓	Land only
Education	✓	Land only
Regional open space	✓	Land only
Planning and delivery	✓	✓

In the case of the growth centres, this will result in a reduction of the per lot levy from \$33,000 to \$23,000.

These principles will apply immediately to greenfield development sites across the State where rezonings or levies have not yet been finalised. This will result in a unique levy for each precinct or region that reflects underlying attributable infrastructure costs.

The costs of the construction and operation of social infrastructure facilities such as schools and TAFEs, hospitals and emergency services will be borne by the State Government. It is the NSW Government's intention that there will be no reduction in the type, amount or delivery of infrastructure to be provided, only in how this will be funded. The State Government is implementing other changes to its infrastructure planning so there are clear alignments between the State Infrastructure Strategy and long term land use strategies.

The new contribution arrangements will not apply to planning agreements that have already been signed, rezonings already gazetted or development applications where consent has been granted.

### **Changes to infrastructure funded by local section 94 and section 94A infrastructure contributions**

Future local contributions will be set through an approved section 94 or section 94A plan based on Ministerial Guidelines (to be separately published) and will fund 100% of the following attributable local infrastructure costs:

- local roads
- local bus infrastructure
- local parks that service a development site or precinct
- drainage and water management expenses
- land and facilities for local community infrastructure that services a development site or precinct
- land for other community infrastructure and recreation facilities.

All other costs, such as facilities benefiting existing communities (including council or district-wide community and recreation facilities), can no longer be recovered through local contributions.

The Minister for Planning will issue guidelines to advise the categories of infrastructure costs to be funded from local contributions. Councils will still prepare their own section 94 or section 94A plans in accordance with the guidelines however these will need to be endorsed by a delegate of the Minister for Planning. Councils will be separately advised about the timing for the commencement of these arrangements.

### **Changes to section 94 and section 94A for riparian corridors**

Local contributions will no longer be permitted to fund acquisition of land for riparian corridors. These areas will be protected and managed through planning (zoning and other) controls.

Councils will be separately advised about the timing and method of the preparation and implementation of section 94 and section 94A contributions plans.

### **Staged contribution collection**

For all future greenfield release areas in NSW, a single contribution combining State and Local infrastructure charges will be set on a developable area basis, and collected at two stages:

- a Rezoning Infrastructure Contribution (RIC) shall apply on the purchaser, at the time land is first sold following rezoning or approval of a development application to recover 25% of State and local infrastructure costs

- a Serviced Infrastructure Contribution (SIC) will be payable by developers upon release of subdivision or occupancy certificates to recover the remaining 75% of State and local infrastructure costs.

Contributions will escalate annually against an appropriate construction cost index. Possible options for deferring the payment of the RIC and the SIC are being investigated by NSW Treasury.

### **Urban Improvement Fund**

State contributions will be held in a new Urban Improvement Fund, to be managed by NSW Treasury. The NSW Government will provide \$200 million to initially establish the fund.

Collection methods are currently being developed.

Funds will be allocated to State agencies through the Budget process. In time, developers will have the opportunity to deliver relevant infrastructure as works in kind and apply for the State's 25% contribution against milestones.

### **Section 94 and section 94A contributions held in Trust**

Section 94 and section 94A contributions from developments within the growth centres shall be held separately under Trust by NSW Treasury on behalf of councils. Councils can draw on these funds based on approved section 94 and section 94A plans, subject to funding being spent within the timetable of the approved plan.

The NSW Government may consider collecting and holding section 94 and section 94A contributions for greenfield development outside the growth centres on a case-by-case basis. In particular, this is likely to occur for other large scale greenfield release areas.

### **Precinct Acceleration Protocol**

Within the growth centres, the Precinct Acceleration Protocol will be modified. Developers will now need to pay 75% of the modified range of infrastructure costs and will be provided with a 100% refund for linkage and excess capacity infrastructure as other developments proceed.

### **Land release in areas outside of the Metropolitan Development Program or a Regional/Subregional Strategy**

Proposals in areas outside of the Metropolitan Development Program, a Regional or Subregional Strategy or an endorsed local strategy will be assessed against an objective gateway test based on the sustainability criteria included in the Metropolitan Strategy, Regional Strategies or endorsed local strategy where applicable. If compliant, 100% of the attributable infrastructure costs would be borne by the developer.

### State infrastructure contributions and section 94 and section 94A contributions in existing urban areas

The revised contributions framework will apply to section 94 and section 94A contributions in both existing urban areas and greenfield areas. However, only the incremental costs arising from development can be collected through the levy.

### Consultation

As these arrangements are developed local government and other stakeholders will be consulted.

### Planning agreements

Where a State voluntary planning agreement is being proposed (e.g. to demonstrate satisfactory arrangements for infrastructure), it must in principle be consistent with the revised infrastructure contributions framework unless approved by NSW Treasury.

### Transitional arrangements

Any local environmental plan, planning agreement or section 94 or section 94A contributions plan made on or before 12 November 2007 will continue to operate as if the changes announced by the Premier on 12 October 2007 had not been made. Once the mechanisms to implement the measures outlined in this circular have been finalised additional transitional measures will be put in place.

### Policy initiatives requiring legislative change

Legislative changes will be examined as part of the planning reform program to:

- require section 94 plans to be approved by the Minister for Planning or delegate (*Environmental Planning and Assessment Act 1979*)
- establish requirements for the payment of a Rezoning Infrastructure Contribution at the time land is first sold following its rezoning (*Real Property Act 1900*)
- require the transfer of developer contributions collected by a council in the north west or south west metropolitan growth centres to the State Government (*Local Government Act 1993*)
- establish the Urban Improvement Fund.

### What happens next?

The Department of Planning is working with NSW Treasury and the NSW Growth Centres Commission to develop guidelines and procedures to give effect to these reforms.

### Authorised by:

Sam Haddad  
Director-General

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### Important note

This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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ATTACHMENT 2  
LETTER TO DEPARTMENT OF PLANNING

Telephone Enquiries:(02) 49800 324  
David Broyd  
**Sustainable Planning**  
Please Quote File No:PSC2006-0060

The Director-General  
Department of Planning  
GPO Box 39  
SYDNEY NSW 2001

Dear Sir,

**RE: INFRASTRUCTURE CONTRIBUTIONS (S94)**

I refer to the Department's Planning Circular PS 07–018 issued 6 November 2007 concerning Infrastructure Contributions and wish, on behalf of Council, to comment on the implications of the Circular and to offer a Standards Approach model as an alternative option to that proposed under the Circular. A Standards Approach model will achieve the same desired outcome by the Department and State Government as that proposed by the Circular, without the detrimental affect to those communities where Councils set fair and reasonable levies on new development.

The major reason for the changes to Infrastructure Contributions appears to originate from the Government's concern with excessive Contribution levies imposed by some Councils. For example, the Oran Park Growth Centre Local Government S94 levy for a single dwelling lot was \$48,425 and is now proposed to be reduced to \$30,914 (Meeting Land Supply Targets: Industry briefing 12 October 2007 NSW Treasury). Port Stephens Council's similar S94 Levy is \$10,479, which is far below the levies suggested as being excessive.

We are very concerned that the current Circular proposal will effectively reduce the provision of facilities for future communities. We are also concerned that our communities will suffer due to a few Councils who have been unreasonable in the levies imposed.

**Comments on the Planning Circular: "Infrastructure Contributions"**

One of the key purposes of planning is to create developments that have adequate services, facilities and amenities for the residents and general public.

The main comments that are made on the Planning Circular are:

1. That the Circular has been initiated without due consultation of Councils and the approach to infrastructure contributions that it introduces does not recognise how financial difficulties of Councils will be exacerbated in terms of delivering services and facilities, and indeed in creating reasonable quality, in some cases, of living environments for residents of new areas.

2. The few Councils who may have been unreasonable in applying Section 94 appear to have undermined the majority of Councils who have applied Section 94 in a rigorous and accountable way.
3. The inability to apply development contributions to provide regional and district facilities and facilities such as libraries, swimming pools, sporting facilities, surf life saving facilities and inter-district road and cycleway networks is highly detrimental.
4. The discretionary ability of the State Government to take over contributions acquired at the local government level is highly inappropriate, and the question arises as to whether the State Government will add the accumulating interest to the relevant funds with such a “takeover”.

Below some of those impacts are elaborated upon further.

We are particularly concerned with the following proposed Ministerial Guidelines advised in the above circular:

#### **Local Section 94 and Section 94A Infrastructure Contributions**

- *“..facilities benefiting existing communities (including council or district-wide community and recreation facilities), can no longer be recovered through local contributions.”*

This Council has always apportioned costs of facilities as required by legislation and has not levied development for any benefits to existing communities.

Similar to the State Government, Council has always consolidated its facilities on a cost benefit basis. The elimination of District facilities such as libraries, swimming pools, sporting facilities, cemeteries, surf lifesaving, inter-district road and cycleway networks which provide economic and resource benefits will be counterproductive to achieving quality of services provision to local communities.

#### **Section 94 and Section 94A for Riparian Corridors**

- *“Local contributions will no longer be permitted to fund acquisition of land for riparian corridors. These areas will be protected and managed through planning (zoning and other) controls.”*

Council is concerned that this may conflict with Council's LEP and the State Government Standard LEP and the implications where Councils are required to compulsory acquire under the Land Acquisition (Just Terms Compensation) Act 1991. It is quite possible that this will not mitigate the Courts requiring Councils to compensate land owners for any loss of use.

#### **Staged Contribution Collection**

- *“..a Rezoning Infrastructure Contribution (RIC) shall apply on the purchaser at the time land is first sold following rezoning or approval of a development application to recover 25% of State and local infrastructure costs.”*

Council has no legislative control over the timing of the sale of land and it is doubtful that any legislation could be enforced due to the complexities of sale of land.

The rezoning of land does not define the eventual development details and timing on the land. Local Infrastructure costs (through S94) cannot be determined until Development Application stage.

*“A Serviced Infrastructure Contribution (SIC) will be payable by developers upon release of subdivision or occupancy certificates to recover the remaining 75% of State and local infrastructure costs..”*

Development does not always apply for occupancy certificates and due to legal and debt recovery issues, Council has found this option to be unviable.

Council is also concerned that there may not be options if costs have not been fully recovered by the initial Rezoning Infrastructure Contribution (RIC) which is based on estimated development.

- *“..possible options for deferring the payment of the RIC and the SIC are being investigated by NSW Treasury.”*

Council is most concerned that this will place Councils in a position of debt recovery of these funds.

- *“The NSW Government may consider collecting and holding section 94 and section 94A contributions for greenfield development outside the growth centres on a case-by-case basis.”*

Council is concerned that this will cause delays due to the bureaucratic process and a loss in money value.

#### **Land Release in Areas Outside of the Metropolitan Development Program or a Regional/Subregional Strategy**

- *“If compliant, 100% of the attributable infrastructure costs would be borne by the developer.”*

Council is concerned that this will lead to variable infrastructure levies across the State.

#### **State Infrastructure Contributions and Section 94 and Section 94a Contributions in Existing Urban Areas**

- *“..only the incremental costs arising from development can be collected through the levy.”*

Council is concerned that if this amends the current apportionment requirements that this may further reduce Councils ability to provide infrastructure to new development.

#### **Consultation**

- *“As these arrangements are developed local government and other stakeholders will be consulted.”*

Council is concerned that such consultation has not taken place.

**Alternative Solution – (Win Win Option)**

We would therefore seek to propose an alternative solution to the suggested proposal by your Circular. The alternative solution will provide a reasonable and fair Contributions Levy to both the Development industry and Local Councils, can be benchmarked by your department in a simpler manner, can be standardised across Local Government and will not cause detriment to those Councils who have set reasonable levies.

A Benchmark Standards Approach model is proposed for acceptance by the Department. Port Stephens Council introduced a new Section 94 Development Contributions Plan based on this model in June 2007. The Standards Approach model significantly simplifies the S94 process while still complying with S94

legislation. The model defines a baseline set of facilities to satisfy benchmark standards. The cost of these facilities is grouped by category and equated to a cost per person. This cost is multiplied by the occupancy ratio to determine the S94 levy.

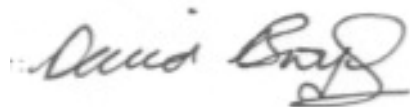
Setting a baseline standard for each type of facility allows the development industry, Local Government and any State Government to benchmark the costs per person to ensure that no Council unfairly burdens the cost to development and subsequently the home purchaser.

The model also allows levies collected to be expended within a reasonable timeframe which creates greater efficiency and avoids the regular criticism by the development industry.

It should be noted that local developers and the UDIA have commented and endorsed our model.

I would therefore appreciate the opportunity to present this model and our S94 Plan to you for consideration prior to any changes to the current legislation as we feel this approach will overcome the current issues with many Council's S94 Plans.

Yours faithfully



**DAVID BROYD  
GROUP MANAGER  
SUSTAINABLE PLANNING**

**Attachments:**

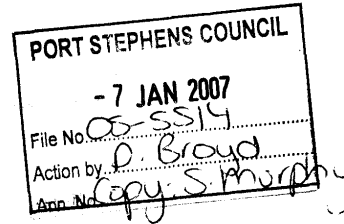
1. Response to NSW Local Government & shires Association regarding 'Impacts of Proposed Infrastructure Levies:
- c.c. **President of NSW Local Government Shires Association, Genia McCaffrey**  
**CEO Hunter Councils, Barbara Penson**  
**General Managers Lower Hunter Councils: Newcastle City Council, Lake Macquarie City Council, Cessnock City Council, Maitland City Council**  
**Acting Regional Director, NSW Department of Planning Hunter Regional Office, Gary Forster**

ATTACHMENT 3



NSW GOVERNMENT  
Department of Planning

Office of the Director General



David Broyd  
Port Stephens Council  
PO Box 42  
RAYMOND TERRACE NSW 2324

DGC07/2038  
DGC07/2005

Dear Mr Broyd

**Infrastructure contributions (s94) Port Stephens Council**

I refer to your undated letter received by the Department of Planning on 29 November 2007 concerning local infrastructure contributions.


I advise that following the NSW Government's decision, the Department of Planning has established a Working Group to bring into effect changes in the collection of infrastructure contributions. The timeframe for implementing such changes has yet to be determined. Further advice will follow as changes are implemented and the Department will be issuing guidelines and updated circulars to facilitate the implementation.

I note your comments concerning the impact that the Government's decision would have on councils. Please be assured that the Department is working with councils, industry representatives and professional associations to achieve a balanced and appropriate outcome that is in the best interest of all stakeholders.

I also note your comments concerning the adoption of a "standards approach model" to local contributions. Whilst it is not the Department's position to redress the Government's decision, the Working Group will examine the proposal as part of the implementation process.

Should you have any further enquiries about this matter, I have arranged for Mr Scott Phillips, Director Sydney Region Land Supply Program, to assist you. Mr Phillips may be contacted at the Department's Bridge Street Office on telephone number (02) 9228 6305.

Yours sincerely

  
Sam Haddad  
Director General

14/12/2007.

Bridge St Office 23-33 Bridge St Sydney NSW 2000 GPO Box 39 Sydney NSW 2001 DX 22 Sydney  
Telephone: (02) 9228 6111 Facsimile: (02) 9228 6191 Website planning.nsw.gov.au



ATTACHMENT 4  
LETTER FROM THE PRESIDENTS OF THE LGA AND LGSA  
OF 30 JANUARY 2008

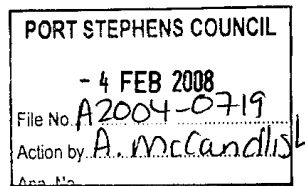
Local Government  
Association of NSW



Shires Association of NSW

Our ref: R04/0066.dh Out-15720  
30 January 2008

Cr Ron Swan  
Mayor of Port Stephens  
Port Stephens Council  
PO Box 42  
RAYMOND TERRACE NSW 2324



Dear Ron

**PLANNING CHANGES: OUTCOMES OF LEADERS FORUM**

Thank you to all mayors, councillors and staff who attended our Leaders Forum in Sydney today to discuss the NSW Government's proposed planning changes. The forum was well attended, the debate enthusiastic, and a great example of Local Government working together.

The meeting made the following resolution and asked that it be brought to the attention of all mayors as a matter of urgency:

1. That the meeting supports the actions of the Presidents and Executives of the Local Government and Shires Associations in mounting a campaign on the NSW Government's proposed planning changes, including both the issue of section 94 developer contributions and the recommendations in the Government's discussion paper, and preparing an alternative reform package as a basis for discussion with the Government, councils, stakeholders and the community.
2. The meeting calls on all NSW councils to refuse to cooperate with the NSW Government if requested to transfer section 94 funds held in trust by councils, to the Government.
3. The meeting supports in principle the proposal that the Associations seek contributions from member councils towards the costs of engaging high level lobbying and media representation to formulate and assist with the implementation of a continuing public campaign.

We reported to the meeting that the preparation of a paper had commenced, with the assistance of Mr John Mant, planning consultant, scoping an alternative reform package. We will distribute this paper to all mayors in early February for your review and comment, and hopefully your endorsement, as the basis for our campaign to ensure that any reforms made to NSW planning legislation are in the best interests of councils and our communities.

As you are aware, our campaign to date has included Local Government's open letter to the Premier, published in metropolitan and selected regional newspapers prior to Christmas, and the ongoing media campaign which marries our template media releases and messages with your local experiences. Local Government media exposure has been frequent and sustained throughout the summer, and we congratulate all councils on your successes in capturing media and public attention.

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ABN 49 853 913 882

Further, we have released our preliminary response to the Government's discussion paper and aim for our alternative reform package to be similarly released shortly, with a view to generating widespread and constructive discussion across the state. You can read the speech from today's forum outlining the framework for our alternative package on our website at [www.lgsa.org.au](http://www.lgsa.org.au).

Many of the mayors who spoke at today's forum stressed that it is essential our campaign has the support of every mayor and council in New South Wales, and that Local Government must be united against this serious attack on good governance and our communities. We cannot agree too strongly. United support and action will be the crucial components of our campaign.

We would be pleased if you would seek a resolution of council endorsing the three points above, and advise us as soon as this has occurred.

Thank you again for your support. We look forward to working with you on this important issue.

Yours sincerely



Cr Genia McCaffery  
**President**  
*Local Government Association of NSW*



Cr Bruce Miller  
**President**  
*Shires Association of NSW*

# **CONFIDENTIAL ITEMS**

## **ORDINARY MEETING OF COUNCIL – 12 FEBRUARY 2008**

<b>RESOLUTION:</b>		
<b>017</b>	<b>Councillor Hodges Councillor Robinson</b>	<b>It was resolved that Council move into Confidential session.</b>

Cr Swan declared a Pecuniary Interest in Items 2 and 3 and vacated the Chair and left the Council Chambers for all Confidential items.

Cr Dover chaired the meeting for the Confidential session.