

Submission in response to Christchurch City Council Draft Annual Plan 2008/09

To : Christchurch City Council
From : Property Council New Zealand

PROPERTY COUNCIL NEW ZEALAND INCORPORATED (at the address for service given below) makes the following submission on the draft Annual Plan (the "Plan"):

Background

1. Property Council New Zealand is a not for profit organisation that represents New Zealand's Commercial, Industrial, Retail, Property Funds and Multi Unit Residential Property Owners. Property Council New Zealand represents all the forms of commercial property and property investment in New Zealand.
2. Property Council New Zealand actively involves itself with central, local and other government associated bodies, promoting the views, goals and ideas of our Members.

Consultation

3. The Local Government Act 2002 codifies the requirement for a *minimum* period of one month for submissions on the draft Annual Plan. The comprehensive nature of the proposals and methodology outlined means that it is extremely difficult for submitters to fully understand the implications of the proposals or make a fully informed submission.
4. Property Council New Zealand has previously engaged with officers and elected members of a number of policy and investment issues. Most recently, Property Council New Zealand engaged with Christchurch City Council to seek a negotiated resolution to the application of the Development Contributions policy, which was considered to be in error of law. The South Island Branch of Property Council New Zealand wishes to maintain a formal relationship with officers and elected members as a means of achieving public policy outcomes that work for both organisations, in the future.

5. Property Council New Zealand notes that Christchurch City Council has determined to undertake consultation in two parts, with further consultation on proposed amendments to the Long Term Council Community Plan (LTCCP) to follow submissions on the Draft Annual Plan. Property Council New Zealand thanks Christchurch City Council for the additional time to consider the proposed amendments to the LTCCP, and will be lodging a further submission. However, in the context of the Draft Annual Plan, the proposed amendments are read into the assumptions that shape the strategic direction of Christchurch City Council, and consequently inform Property Council New Zealand's analysis.

Capital Expenditure Programme

6. Property Council New Zealand submits that a number of territorial authorities are engaging in unnecessarily high levels of growth-related capital expenditure. Christchurch City Council has forecast a \$14.7 million decrease in the capital expenditure programme, which is explained through the scheduling of projects, including:
 - the bus exchange site, which was purchased in 2007/08 resulting in \$23.2 million being taken forward from the 2008/09 year;
 - \$2.5 million brought forward from later years for bus priority routes to coincide with the bus exchange;
 - the Ocean Outfall Pipeline project, for which \$7.0 million was taken forward from 2008/09 to 2007/08.
7. The reality of a slowing national economy will cause new commercial property investors and manufacturers to reassess the timing of investment decisions. Existing investors and commercial ratepayers will similarly have to reassess investment decisions if it is deemed that market demand has abated due to the softening economic climate. Property Council New Zealand predicts that this market reassessment will force local authorities like Christchurch City Council to continually revisit its growth assumptions, and potentially defer or even cancel capital works.

8. A reduction in predicted growth must be taken into consideration for the current and near-term asset development and renewal plan. Property Council New Zealand recommends that Christchurch City Council reviews the timing of its proposed investment in growth-related assets in particular. By not reviewing growth and asset delivery plans to reflect the reality of lower anticipated growth rates, Christchurch City Council could potentially be left with unnecessary and underutilised assets.
9. With any subsequent deferrals in growth-related asset development, Christchurch City Council will be required to make a simultaneous adjustment to its growth model, which will impact upon the level of development contributions. As a matter of policy it is recommended that development contribution impact statements be drafted as part of the review process. Any change to capital expenditure projects can result in a shift in the quantum of development contributions. Constant review is needed to ensure compliance with the Local Government Act 2002 and the findings of the High Court declaratory judgment.

Development Contributions

10. Any unrealised revenue from a lower yield of development contributions cannot be recovered by increasing the quantum of development contribution charged by Christchurch City Council. This method of recouping costs is suited to rates-funded general (catch up) capital expenditure, but is in fact in error of law when applied to growth-related capital expenditure in respect to development contributions.
11. Section 199(1) of the Local Government Act 2002 codifies that:

“... development contributions may be required in relation to developments if the effect of the development is to require new or additional assets or assets of increased capacity and, as a consequence, the territorial authority incurs capital expenditure to provide appropriately for-

- (i). Reserves:
- (ii). Network infrastructure:
- (iii). Community infrastructure.”

12. The Local Government Act 2002 does not permit local authorities to use development contributions to cross-subsidise deferred capital expenditure to meet the needs of existing users. This distinction is fundamental to Property Council New Zealand's thesis that development contributions are designed to recover a marginal cost. If a territorial authority is correctly applying the Local Government Act 2002, the change in the quantum of development contribution levied against a property owner should not change significantly from year to year.
13. In assessing the ongoing capital expenditure from territorial authority to the next, Property Council New Zealand seeks to analyse the methodology used by a territorial authority to justify its development contribution policy, against the methodology prescribed in Schedule 13 of the Local Government Act 2002.
14. Christchurch City Council must provide the required asset management information, which clearly identifies:
 - (i). information on the current state, condition and capacity of assets;
 - (ii). clearly defined, target levels of service and the level of service being delivered;
 - (iii). detailed analysis support the current programme of works and projects, their purpose (distinguishing between the drivers for the capital expenditure) and cost;
 - (iv). the correlation of the outcome of works to the anticipated growth that the authority needs to cater for in its infrastructure planning; and
 - (v). allocation of the capital costs attributable to growth to units of demand (new homes, office blocks, commercial property developments etc).
15. It is acknowledged that in 2007, amendments were made to the LTCCP 2006/16, which resulted in a reduction in the amount of cash realised by Christchurch City Council pursuant to its Development Contributions Policy in 2007/08. Property Council New Zealand participated in a working group discussion following the High Court declaratory judgment issued against North Shore City Council (see

Neil Construction and Others v North Shore City Council, March 2007).

16. For the benefit of new councillors, in the declaratory judgment issued by Justice Potter against North Shore City Council (pertaining that that local authority's 2004 development contributions policy), the High Court concluded that North Shore City Council:

"... made an error of law in failing to ensure that its development contributions policy complies with the requirements of the Act to assess development contributions against a "development" (as defined as s197) that generates a demand for reserves, network infrastructure and community infrastructure."

"The [North Shore City] Council has made an error of law in adopting a narrow concept of economic efficiency in the causative approach it has applied to the assessment of development contributions, and excluding appropriate consideration of the distribution of benefits and equitable and proportionate allocation."

"It follows that the Council has made an error of law in failing appropriately to explain in its development contributions policy, as required by s106(2)(c) why in terms of s101(3) it has determined to use development contributions as a funding source."

17. While generally satisfied with the declaratory judgment, Property Council New Zealand was not surprised by the overall thrust of the Court's decision. North Shore City Council's 2004 development contributions policy reflected an unacceptable abuse of the Local Government Act 2002, motivated by a desire to extract monies and land from disenfranchised people with no rights of appeal.
18. At the time of drafting this submission, it is unclear as to how each territorial authority will respond to the High Court decision (Property Council New Zealand notes that many authorities are still grappling with the implications of the declaratory judgment, as well as contingent liability issues stemming from the illegal overcharging of development contributions). However, no policy can be justified by any territorial authority on the basis that it is widely supported by a majority of residents or councillors if that policy is demonstrably in error of law.

19. Notwithstanding the completion of the review of the Development Contributions Policy in 2007, Property Council New Zealand would recommend that an ongoing relationship with the South Island Branch of Property Council New Zealand, in order to ensure that the growth assumptions that underpin the methodology and rationale of that Policy are fair and robust. This is a key challenge for all units of local government that adopt a Development Contributions Policy, as the jurisprudence stemming from *Neil Construction and Others v North Shore City Council* provides the local government sector with a clear direction as to what is and is not legally permissible.
20. In addition, Property Council New Zealand recommends that Christchurch City Council adopt a "Development Contributions: Special Assessment Policy", which gives the developer the right to request a "Special Assessment" of the applicable development contribution charged by Christchurch City Council. Under such a policy, a "Special Assessment" could be triggered if the amount levied under a given category falls below a certain amount of the anticipated levels for developments of that type. A similar policy has been developed by Hamilton City Council.
21. Property Council New Zealand recommends that Christchurch City Council adopts a "Special Assessment" approach as a means of offsetting litigation through the High Court in the event the developer considers that the quantum of development contribution is unlawful. At the time of drafting this submission, Property Council New Zealand is aware of proceedings that have been triggered by developers within the Auckland region, using jurisprudence pursuant to *Neil Construction and Others v North Shore City Council*. While confident that such proceedings generally force negotiated outcomes that are acceptable to the developer, Property Council New Zealand considers that an optimal outcome would be for territorial authorities like Christchurch City Council to apply a development contributions policy that provides for a formal review and reassessment process, as a means of avoiding litigation.

Rates and revenue strategy

22. Property Council New Zealand submits that minimal rate increases are an important means of attracting business sector development to any community. A business-friendly economic landscape – facilitated in part by a given territorial authority – encourages employment-rich investment.

23. Property Council New Zealand acknowledges that Christchurch City Council faces three specific cost drivers, which impacts on its balance sheet:
- (i). inflationary cost-pressure associated with asset management and asset development;
 - (ii). inflationary cost-pressure associated with internal operating costs (e.g. council staff wages and salaries); and
 - (iii). new and increasing costs associated with new or enhanced council activities (e.g. administering provisions of the Building Act 2004, or undertaking a Special Consultative Procedure pursuant to Part Six of the Local Government Act 2002).
24. However territorial authorities should be willing to explore other ways of funding projects e.g. targeted rates, debt funding, and reserves. Every community needs funding to grow and develop. Property Council New Zealand does not subscribe to the idea that short-term underinvestment in infrastructure and services is necessarily appropriate or in a community's long-term best interests. But we do challenge every territorial authority to rigorously assess its capital spending to determine whether the benefit of each project outweighs the cost of funding that project through continual rates increases.
25. The Mayor and the Chief Executive are correct: a 9.14 per cent increase in property rates for 2008/09 with a further 2.8 per cent for the kerbside collection scheme is not palatable. However, the Draft Annual Plan proposes an average rate increase for residential properties of 5.1 per cent, an 8.3 per cent average increases for businesses, and an 3.1 per cent average increase for rural ratepayers.
26. The onus is on the Christchurch City Council to justify the property rate differential by explaining how the business community derives specific benefit from that differential. Property Council New Zealand considers that the absence of a reasonable justification for the differential would constitute a breach of the funding principles (equity, exacerbator pays, fairness and benefit received amongst other criteria) codified under section 101(3) of the Local Government Act 2002.
27. Property Council New Zealand seeks relief through the gearing out of the business differential. Such a policy change could be enacted over a period of time (a maximum gearing period of 10 years) to

ameliorate major rate adjustments experienced by residential ratepayers.

28. The Government has not announced if it will implement the recommendations of the Inquiry into Local Government Rates. That Inquiry's recommendations included (amongst others):

- removing the ability to set uniform annual general charges;
- removing the ability to have general rates differentials; and
- setting charges for services supplied by council controlled organisations solely on a cost-recovery basis.

29. Property Council New Zealand is recommending that the Government amends the Local Government (Rating) Act 2002, to enact these recommendations of the Inquiry, property rates and revenue strategy within the local government sector. Rate differentials generally (and unfairly) require commercial ratepayers to pay a higher than necessary rate in order to cross-subsidise many residential and rural ratepayers. Notwithstanding any future amendments to the Local Government (Rating) Act 2002, Property Council New Zealand recommends that Christchurch City Council amends its policy to provide the relief sought in this submission (as outlined in paragraph 27).

Housing Affordability strategy

30. Property Council New Zealand supports an increased supply of affordable housing to meet market demand. Property Council New Zealand acknowledges that a skilled workforce is fundamental to achieving productivity-driven economic growth. An adequate supply of affordable housing for New Zealand workers is a key factor in maintaining New Zealand's ability to increase productivity and achieve comparative advantage in a global market place.

31. At the time of writing this submission the *Housing Affordability: Enabling Territorial Authorities Bill* ("the Bill") is before the Local Government and Environment Select Committee. Property Council New Zealand opposes the Bill for the following reasons:

- a) Property Council New Zealand submits that it is not the role or responsibility of the local

government sector to provide either affordable or social housing; and

- b) territorial authorities do not have the resources required to undertake a housing needs assessment as prescribed under the Bill. Such an assessment would be resource intensive, with the cost creating an additional burden for ratepayers and act as a disincentive to investment and development if developers are required to contribute land or cash for the purpose of developing affordable housing; and
- c) the Bill would prohibit covenants that may be perceived to impact upon affordability. Property Council New Zealand submits that this would diminish building standards and would inevitably impact upon the equity of affordable homes, leaving already struggling tenants at a disadvantage to the rest of the market. Demand that is filled by covenant-enhanced development releases more affordable property to the market, as existing home owners trade up.

32. The prohibition of covenants will further undermine investor confidence in significant developments where covenants add to the development value and ensure the expectations of customers are upheld. The risk that existing covenants may be overturned on the rationale of housing affordability, be it a real or implied risk, will reduce the desirability of certain classes of development, jeopardising an important source of new housing.

33. Although not set out in the draft Annual Plan 2008/09, Property Council New Zealand requests that Christchurch City Council opposes the passage of the Bill for the reasons codified in paragraph 24 of this submissions. It is necessary for the local government sector to acknowledge and challenge the cost impost associated with the Bill, which would increase compliance costs and distort investment in Christchurch's property market.

Conclusion

34. Property Council New Zealand wishes to be heard on this submission.
35. Property Council New Zealand reserves the right to be heard on such matters as may arise from other submissions or such further information as may be obtained.

DATED this 21st day of April 2008.



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On behalf of Property Council New Zealand of NZ Incorporated

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