



LOCAL GOVERNMENT ACT 2002

To : Christchurch City Council

Re : Draft Annual Plan 2007/08

SUBMISSION BY THE PROPERTY COUNCIL OF NEW ZEALAND INCORPORATED ON THE DRAFT ANNUAL PLAN 2007/08

PROPERTY COUNCIL OF NEW ZEALAND INCORPORATED (at the address for service given below) makes the following submission on the draft Annual Plan 2007/08 (the "draft Annual Plan"):

Background

1. The Property Council is a not for profit organisation that represents New Zealand's Commercial, Industrial, Retail, Property Funds and Multi Unit Residential Property Owners. The Property Council represents all the forms of commercial property and property investment in New Zealand. The Property Council's members collectively own and manage \$20 billion of commercial property investment in New Zealand.
2. The Property Council 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. Our members are

available to work with officers to address matters that will be raised in this submission, at a later date.

Rates and Revenue Strategy

4. The Property Council submits that minimal rate increases are an important means of attracting business sector development to any one community. A business-friendly economic landscape – facilitated in part by any given territorial authority – encourages job-rich investment.
5. The Property Council acknowledges that territorial authorities face three specific cost drivers:
 - (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).
6. In the context of cost drivers that impact on the business of local government, the proposed 7.35 per cent increase in rates of any territorial authority this year. The proposed application of a 1.51 business differential is both unfair and cannot be justified. Christchurch City Council, like every other territorial authority that applies a differential rate that is higher for business, has not yet demonstrated to the Property Council the additional benefits to commercial ratepayers, which justify such a significant differential.
7. The Property Council considers that the 1.51 business rating factor is proposed to decrease the amount of a politically unpopular rate charged to residential ratepayers *vis-à-vis* business ratepayers. This revenue strategy undermines Christchurch City as a job-rich investment, commercial development destination.
8. The onus is on the Christchurch City Council to justify a 1.51 business rating

factor by explaining how the business community derives specific benefit from a differential. If it cannot do so (and the draft Annual Plan does not justify that factor at present), Christchurch City Council will breach the funding principles (equity, exacerbator pays, fairness and benefit received *amongst other criteria*) codified under section 101(3) of the Local Government Act 2002.

9. The Property Council seeks relief through the gearing out of the business differential. Such a policy change could be enacted over a period of time (say 10 years) to ameliorate major rate adjustments experienced by residential ratepayers.

Development Contributions (a levy on new home owners, their family and whanau)

10. As a general rule, the Property Council is concerned that a number of territorial authorities have not provided sufficiently rigorous and adequate information, which codifies how those authorities determine that a particular capital cost or percentage of cost is related to growth, and to business growth in particular.
11. Development contributions were introduced into the Local Government Act 2002 as a funding mechanism to assist territorial authorities to fund their capital expenditure on ***additional capacity in infrastructure and facilities***, required to meet the demands of 'growth'. This requires that the 'growth' portion of capital expenditure is distinguished from expenditure required to raise levels of services to existing users, to raise environmental standards, or to provide additions to meet the demand of past growth, also known as 'catch-up'.
12. 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.*”

13. The Local Government Act 2002 does not permit local authorities to use development contributions to ‘cross-subsidise’ deferred capital expenditure that would wholly or substantially meet the benefits for existing users. This distinction is fundamental to the Property Council’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.
14. In assessing the ongoing asset development programme of each territorial authority, the Property Council assesses each 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.
15. Christchurch City Council must provide asset management information required, 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 analyses, which 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).
16. In a recent declaratory judgment issued against North Shore City Council, 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, the Property Council was not surprised by the overall thrust of the High Court’s decision. North Shore City Council’s 2004 development contributions policy reflects an appalling and unacceptable abuse of the Local Government Act 2002, motivated by a desire to extract cash and land from people who had no right of appeal and no right to vote.
18. As Justice Potter correctly points out:

“[55] Development contributions imposed by local authorities to fund capital expenditure for infrastructure required to service new development, invariably will be passed on by the developers liable for them, to the purchasers of property in

the development. The purchasers will become future ratepayers in the district of the relevant local authority, but in relation to any development contribution required, they have no say through the ballot box and the development who must meet the development contributions in the first place, has no right of appeal against the local authority's assessment."

19. While acknowledging that each territorial authority applies its own unique policy pertaining to development and reserve contributions, or financial contributions, the Property Council gives notice of its intention to investigate the policies of a number of territorial authorities throughout New Zealand to assess general compliance with the principles codified in the High Court's declaratory judgment.
20. In the Property Councils judgement, Christchurch City Council's development contributions policy continues to be in error of the Local Government Act 2002. The Property Council has had the chance to meet with Council officials and endorses the Christchurch City Councils decision to review the policy. The Property Council wishes to reiterate our willingness to assist in the development of a new policy.
21. The Property Council considers that Christchurch City Council's draft policy fails to address the very issues identified in the High Court's declaratory judgement, namely the narrow concept of economic efficiency in the causative approach to the assessment of development contributions, and the **exclusion of appropriate consideration of the distribution of benefits and equitable and proportionate allocation** (see section 101 of the Local Government Act 2002). This matter needs to be addressed as a matter of priority to ensure compliance with the requirement of the High Court. While judicial review is never a desired course of action, the declaratory judgment issued against North Shore City Council's 2004 development contributions policy provides a useful legal precedent against which the development community can benchmark the individual policies of territorial authorities such as Christchurch City Council.
22. The Property Council maintains that its members can provide useful and informed analysis to Christchurch City Council, with a view to agreeing to a

development contributions policy that is transparent, rigorous and compliant with the Local Government Act 2002 and the evolving jurisprudence stemming from the High Court. We submit that Christchurch City Council should take advantage of the Property Council's offer to work in good faith to achieving this outcome. Fundamental to any policy review is the need to address the errors of law identified by the High Court as it relates to the application of the Local Government Act 2002, in particular the distributions of benefits and the equitable and proportionate allocation of capital expenditure costs.

23. At present Christchurch City Council requires the payment of development contributions at the time of resource consent even though the impact on the city's infrastructure will not take effect until code compliance certificates are issued. The development community is interested in the timing of Christchurch City Council's development contributions requirement at the time of building consent uplift.
24. The Property Council notes the precedent set by Auckland City Council in allowing developers to enter into a bank bond so that development contributions over a certain amount can be deferred until the issuing of the code compliance certificate. The Property Council requests that Christchurch City Council adopts a similar bank bond initiative, which would allow the developer to avoid the significant interest costs arising from payment 12 months or more before the completion of development.
25. Christchurch City Council proposes substantial increases in the development contribution payable by future property owners. These new charges as set out in the amendments codified in the draft Annual Plan would enable development contributions exceeding \$25,000 to be levied against new residential houses. This levy becomes an unavoidable compliance cost that is passed on to first home buyers, thus diminishing the ability of young families to purchase their first homes.
26. The Property Council sees no basis for such a dramatic level of development contribution levied by Christchurch City Council. The Local Government Act 2002 contemplates development contributions as a means of offsetting marginal

growth-driven cost. However Christchurch City Council has, in the view of the Property Council, justified a contribution quantum well beyond the level that recovers the marginal growth-driven cost, for the express purpose of insulating existing ratepayers against the true cost of services and infrastructure that meet their needs and expectations.

27. The draft Annual Plan states that the cost of capital expenditure for “wastewater services from increased demand” (i.e. presumably growth-driven demand), is equal to approximately \$49m over 10 years. Earlier the statement was made that over the next 10 years estimated funds from development contributions levied for “waste water collection and treatment” are equal to \$69m (of which over 70 per cent is to be funded by future residents and businesses). The Property Council submits that such a cost allocation illustrates the realisation of money via development contributions than Christchurch City Council plans to spend to offset growth-driven capital expenditure.

Conclusion

28. The Property Council wishes to be heard on this submission.
29. The Property Council 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 10th day of May 2007.



Connal Townsend, Chief Executive

On behalf of The Property Council of NZ Incorporated

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