NSW GOVERNMENT
Department of Planning

PLANNING circular

PLANNING SYSTEM	
Act and regulation changes	
Circular	PS 08–017
Issued	23 December 2008
Related	Supersedes PS 07-018

Review of infrastructure contributions

The purpose of this circular is to provide advice on the implementation of the recent reforms to infrastructure levies announced by the NSW Government. This circular focuses on the levies imposed on development under the *Environmental Planning and Assessment Act 1979*. Further information on changes to water infrastructure levies can be obtained from Sydney Water and Hunter Water. This circular supersedes PS 07-018.

Introduction

The 2008–09 Mini-Budget announced a review of State infrastructure contributions and water infrastructure levies that apply to the development of greenfield housing sites, infill development and employment lands (including industrial). The review also applied to local government levies charged under sections 94 and 94A of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The objective of the review was to ensure that infrastructure levies are consistent with the Government's plans to boost housing supply and affordability as well as support business and provide a stimulus to the construction industry.

On 17 December 2008, the Premier, the Hon. Nathan Rees MP, announced a package of reforms to infrastructure levies:

- A change to the way that State infrastructure contributions are calculated, by removing rail infrastructure and bus subsidies – leading to a reduction in the charges.
- Allowing for the deferral of the point at which developers pay the State infrastructure contribution to the point of sale of a new residential lot (to improve cash flow).
- Establishing a $20,000 threshold for local government contributions applying to residential dwellings. Councils will only be able to charge above the threshold if they have the approval of the Minister for Planning.
- Requiring councils to provide existing contributions plans that would allow for contributions above the $20,000 threshold to the Government for an evaluation of the plan.
- The immediate cessation of water infrastructure charges imposed by Sydney Water and Hunter Water.

The rationale for infrastructure contributions

The attractiveness of an area for development, and as a result its underlying land value, will increase when new infrastructure is provided. In NSW, the Government has taken a policy position that the beneficiaries of the provision of new infrastructure should make a contribution to that infrastructure.

Infrastructure levies can be a significant cost of providing serviced vacant blocks of land for development in NSW. For example, in the growth centres of Sydney, infrastructure levies can amount to $66,000 or about 30% of the sale price for a single vacant block of land that is zoned for residential development.

The imposition of levies can have an indirect impact on house prices. For example, if a developer is not able to sell a house for a price that is sufficient to cover development costs as well as providing an adequate return, they may elect not to develop. This would result in a reduction in the supply of houses, which can then translate into higher prices.

Review of levies

Given the current state of the development industry in NSW, along with the broader economic and financial climates, the Government has undertaken a review of infrastructure contributions in NSW. The objective of the review was to ensure that the contribution framework was supporting the State's housing and employment targets.

NSW Treasury has led the review of infrastructure levies with assistance from the Departments of Planning and Local Government. The NSW Government also undertook targeted consultation with development industry associations, the Local Government and Shires Associations and council general managers.

Changes to State infrastructure contributions

The reforms to State infrastructure contributions have a number of components.

Infrastructure types covered by the contribution

The current State levy framework includes recovery of train, road, bus subsidies, land for education, health and emergency service facilities, conservation and planning delivery.

As rail infrastructure and bus subsidies provide a benefit to the broader community the Government will remove these types of infrastructure from the State levy framework.

The costs of the construction and operation of rail infrastructure, bus subsidies as well as social infrastructure facilities such as schools and TAFEs, hospitals and emergency services will be borne by the 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 refined scope of infrastructure contributions will be applied to all State infrastructure contributions whether they are set under the State's special infrastructure contributions framework or are negotiated in a State developer agreement.

Increased State contributions

To generate a stimulus for the NSW development industry, it is proposed to increase the State's contribution towards infrastructure for a two-year period. Currently, 75 per cent of the cost of infrastructure is recovered through State levies. The remaining 25 per cent is funded by the Government.

Under the reforms the Government will increase its contribution to 50 per cent for all levies that are paid before 30 June 2011. This will apply to all direct State levies and State developer agreements.

Timing of payment

The payment of State infrastructure levies typically occurs before a developer generates any land/property sales (and hence receives any revenue). The development industry has advised that this has created significant cash flow concerns, particularly in light of the current tightening of credit.

As part of the reforms the timing of the payment of all State levies will be moved. The payments of the State levy will now typically need to occur before the transfer of title from the developer to the purchaser.

Introduction of credits for certain State infrastructure contributions

Developers have been able to negotiate with the Government for the provision of infrastructure as works in kind through developer agreements or as part of approvals given through the Precinct Acceleration Protocol (PAP).

The underlying principle of the PAP will remain unchanged. A developer will be required to construct the infrastructure needed to service a precinct at its own cost. Under the new arrangements the developer will receive an infrastructure levy credit as financial consideration for the works it provided. The credit will cover the State's contribution, as well as the excess capacity that was required under the PAP approval.

Similar arrangements will apply to developers providing works in kind.

The credit will be able to be used by developers to offset future contributions, or be traded to other developers. More detail on the operation of the proposed tradable credits scheme will be announced by the NSW Government in early 2009.

Changes to local government infrastructure contributions

The planning reforms contained in the *Environmental Planning and Assessment Amendment Act 2008* (Amending Act) include extensive changes to the way in which local councils will be able to levy new development for infrastructure.

The review of levies recognised that the implementation of the contribution provisions in the Amending Act is likely to achieve a reduction in levies, particularly in response to the key considerations for contributions and the specification that councils levy only for key community infrastructure. However, as councils may not be required to implement the changes until March 2010 it was considered that a review of existing levies which exceed an affordability threshold needed to be brought forward.

Identification of an affordability threshold for local contributions

As part of the review a $20,000 threshold per residential dwelling has been identified as the point above which a local contribution may be unaffordable.

It has been recognised that the number of councils that have levies greater than $20,000 for a typical residential dwelling or lot are quite limited. It has also been recognised that there may, in some cases, be legitimate reasons for a levy that may exceed this amount.

Under the reforms councils will be limited to charging a maximum of $20,000 for a typical residential dwelling unless they have received the approval of the Minister for Planning following a detailed evaluation of the contribution and council's broader infrastructure and asset management strategy.

Implementation of the $20,000 threshold

In January 2009 it is intended that a direction will be issued to councils under the EP&A Act to limit the conditions of development consent they may impose requiring contributions under new and/or existing local contributions plans. The direction will be accompanied by a planning circular to fully explain the effect of the direction.

The introduction of the threshold for new plans will be effective from the date of the direction.

In the case of existing contributions plans, councils will be required to provide any contributions plans to Department of Planning by 1 February 2009 that allow for a contribution for a residential dwelling that is more than the $20,000 threshold. This includes plans which, when applied in conjunction with other applicable contribution plans, would result in a contribution of greater than $20,000 per dwelling.

These plans will be evaluated by a review panel to determine whether the contribution, if imposed, would be reasonable and affordable. The review Panel will be required to report to the Minister for Planning by 30 April 2009. The Minister will then give councils directions on whether their plan(s), and consequently the contribution, needs to be amended.

The evaluation of council plans will have regard to the 'key considerations for contributions' (see section 116D of the Part 5B to the EP&A Act, which will come into effect on commencement of the relevant provisions of the Amending Act) to focus on the infrastructure needs of new development, how the infrastructure fits within an overall asset management strategy for the council, the cost estimates for the infrastructure and implications for affordability of development.

If a council does not provide its existing plan to the Department for evaluation, it will be limited to charging the $20,000 per residential dwelling from 30 April 2009 onwards.

Introduction of the new 'Part 5B' of the EP&A Act

The Department of Planning will continue to work on the introduction of the new Part 5B of the EP&A Act in the first quarter of 2009. Under the new Part 5B the important concepts of nexus and apportionment of infrastructure contributions to development are strengthened by a clearer identification of key community infrastructure and greater reporting and accountability in the use of levies to fund infrastructure.

As part of the implementation work for the new Part 5B the Department is preparing a new contributions manual, as well as working with the Department of Local Government on new reporting arrangements tied to the Local Performance Monitor. Further advice on the introduction of the new Part 5B will be provided in the first quarter of 2009.

Water infrastructure levies

Reforms to water infrastructure levies are also part of the Government's levies review. The reforms will see a reduction in developer charges, which will now be recouped through user charges, except for recycled water levies. It should also be noted that the changes to water infrastructure levies only apply to Sydney Water and Hunter Water charges, and not where councils are the water supply authority. Further information on these elements of the reforms can be obtained from Sydney Water or Hunter Water.

Implementation timeframes

Implementation of the reforms to levies announced by the Government on 17 December will occur progressively in January and February 2009.

New direction for local councils

A direction will be issued to local councils in early 2009 that ensures all new contributions plans will only authorise contributions below the $20,000 threshold unless approval is granted by the Minister for Planning. The direction will also limit the value of contributions under existing plans to $20,000 from 30 April 2009 onwards unless they are approved by the Minister for Planning.

Review of State infrastructure contributions

State infrastructure contributions are currently applicable in a number of locations (growth centres of Sydney, Interim Transport Levy areas and Warnervale Town Centre/Wyong Employment Zone). In January these levies will be reviewed consistent with the reforms announced by the Government. The new levy requirements are likely to take effect by 1 February 2009. A further circular will be issued to explain these changes.

State infrastructure contributions currently being developed/negotiated

Any further State infrastructure contributions, either through a State infrastructure Contributions plan or the negotiation of a developer agreement, will be revised in line with the Government's reforms announced on 17 December 2008 and outlined in this circular.

Revision of the Precinct Acceleration Protocol

The PAP that applies to the growth centres will be revised to allow for the provision of infrastructure credits.

Transitional arrangements

Appropriate transitional arrangements for each of the new measures will be developed. Included in these arrangements will be the ability to re-negotiate existing State developer agreements to encourage the expedited release of land from existing development sites.

Further information

Accompanying this circular is a more detailed question and answer sheet.

Additional information on the changes to infrastructure contributions under the EP&A Act can be obtained from the Department of Planning.

Note: This and other Department of Planning circulars are published on the web at www.planning.nsw.gov.au/planningsystem/practicenotes.

Authorised by:

Sam Haddad
Director-General
NSW Department of Planning

NSW GOVERNMENT
Department of Planning

INFRASTRUCTURE LEVIES – QUESTIONS AND ANSWERS

December 2008

OVERVIEW

The NSW Government, with Treasury as the lead agency, has undertaken a review of infrastructure levies, in consultation with stakeholders. An objective of the review was to ensure that levies are consistent with the Government's plans to boost housing supply and affordability as well as support business and provide a stimulus to the construction industry.

The major highlights are:

- the cessation of development charges imposed by Sydney Water and Hunter Water
- the refinement of the types of State infrastructure recovered through a contribution and a temporary reduction in the State infrastructure contribution to 30 June 2011
- the deferral of payment of State infrastructure contributions to the point of sale of a new residential lot
- the evaluation of all existing local government contribution plans that would, if applied to a particular development, result in a contribution exceeding $20,000 per residential dwelling
- setting a threshold of $20,000 above which contributions for individual residential dwellings may not be imposed except with the approval of the Minister for Planning.

INTRODUCTION OF THE CHANGES

Q When do these changes come into effect?

A The changes to water levies have already commenced with a direction by the NSW Treasurer to Hunter and Sydney Water.

The changes to State infrastructure contributions apply immediately in relation to the calculation of new levies and the review of existing levies.

State infrastructure contributions for the growth centres, Wyong Employment Zone, Warnervale Town Centre and the Interim Transport Levies will be revised during January 2009 with revised Ministerial Directions and determinations expected by 1 February 2009.

The limitation of levies under **new** local government contributions plans to the $20,000 threshold (unless the council has obtained the approval of the Minister) will apply from when the Minister for Planning issues a direction to Councils (anticipated to be mid/late January 2009).

The limitation of levies under **existing** local government contributions plans to the $20,000 threshold (unless the council has obtained the approval of the Minister) will apply from 30 April 2009 onwards and will be based on a direction issued by the Minister for Planning (anticipated to be in early 2009).

STATE INFRASTRUCTURE CONTRIBUTIONS

Q How does this affect the growth centres?

A At present, a State Infrastructure Contributions system is in place in the north-west and south-west growth centres. As a result of the Government's decision the contribution are likely to be adjusted as shown in the table below.

2008	Feb 2009 – Jun 2011	Jul 2011 onwards
$23,000 per lot (approx)	$11,000 per lot (approx)	$17,000 per lot (approx)

The reductions are achieved by:

- reducing the scope of works to remove the rail infrastructure and bus subsidy component – a permanent change
- increasing the Government's share of the contribution from 25% of the cost of the infrastructure to 50% of the cost of the infrastructure – this is a temporary change for two years (until June 2011) to stimulate residential development.

Note: the values of the contributions are determined on a per hectare basis and may vary from one development to another.

Q State infrastructure contribution – how will the scope of works be reduced?

A The current State contribution framework includes recovery of train, road, bus subsidies, land for education, health and emergency service facilities, conservation and planning delivery. A recommendation of the review is that the type of works included in the State infrastructure levies be refined. The Government will exclude rail infrastructure and the funding of bus services from all State levies because these provide a benefit to the broader community and therefore require more broad-based funding.

Q State infrastructure contribution – how will the State reduce the contribution between February 2009 and June 2011?

A Under the current State contribution framework the dollar value of the contribution is based on an estimate of the cost of the proposed infrastructure directly related to the relevant development. This amount is then split between the developer (75%) and the Government (25%). In order to stimulate residential development, the Government will temporarily increase its component of the contribution from 25% to 50%. This will see a consequential reduction in the developer's component of the contribution. In order to achieve the reduction developers will need to ensure that the construction of new residential lots is completed before June 2011 and that they have obtained a subdivision certificate (linen or strata) or they have paid their levy beforehand.

Q How does this affect the Interim Transport Levy and other existing State Levies?

A The interim transport levy was introduced in 2002 and applies to land releases at Elderslie, Spring Farm, Balmoral Rd and Second Ponds Creek. These levies will be amended and as a result decreased at the same time as the State contributions in the growth centres. The Interim Transport Levy will be set at the same price as the growth centres contributions.

Q How does this affect the precinct acceleration program in the growth centres?

A The underlying principle of the precinct acceleration protocol remains unchanged. It is proposed that a developer will still be required to construct all the necessary infrastructure needed to service a precinct at their own cost. However, instead of receiving a refund from the Government for infrastructure that benefits other development areas, the developer receive an infrastructure contribution credit for the State levy as financial compensation for the works it has provided.

Q Why move the payment of the State contribution to the point of sale?

A The development industry has told the NSW Government that the payment of the contribution, before the realisation of sales revenue, has had a negative impact on project cashflows. Moving the payment to the point of sale will have a positive impact on project cashflows by deferral of payment of the contribution to when sales revenue is received.

Q How will the deferral of payment work?

A In relation to residential subdivisions a possible mechanism for deferral of the levy is the placing of a restrictive covenant on title which prevents the transfer of the lot until the levy is paid. For non-residential development payment will also be deferred to the first occupation certificate for the construction of buildings on the land. Further details on this system will be provided soon.

Q What happens if a developer has already paid a State Infrastructure charge?

A The changes to State infrastructure contributions will only apply to all payments made after the revised State levies directions come into effect by 1 February 2009. There will be no rebate for levies already paid, unless these levies have been provided as works-in-kind.

Q What happens if a developer has already entered an agreement for State infrastructure but hasn't paid?

A Where a developer has a voluntary planning agreement with the NSW Government, they will be able to renegotiate the terms of that agreement to reflect these reforms.

Q Do the reduced contributions apply to development on employment as well as residential land?

A Yes. The contribution for one hectare of employment land in the Growth Centres, as an example, will fall from $150,000 to $112,500. The levy will further reduce to around $68,800 per hectare until June 2011 as a result of increasing the State's contribution towards infrastructure.

OPERATION OF THE $20,000 THRESHOLD FOR LOCAL INFRASTRUCTURE CONTRIBUTIONS

Q How will the $20,000 threshold work for new local contributions?

A In January 2009 a direction will be issued to all councils that effectively requires new contributions plans to only authorise contributions for individual residential dwellings to a maximum of $20,000. A contribution of more than $20,000 will require evaluation by a panel and the approval of the Minister for Planning following a detailed evaluation of the plan.

Q What happens to contributions under existing local contributions plans that are more than $20,000?

A Councils with existing contribution plans that would, if applied to a particular development, result in a contribution of more than $20,000 for a single dwelling will be required to seek approval from the Minister for Planning. In seeking such approval, councils will be required to submit their contributions plans to the Department of Planning for evaluation. A contribution of more than $20,000 will require assessment by a panel and the approval of the Minister for Planning following the detailed evaluation of the relevant contributions plan(s).

Q How will the Government evaluate new and existing contributions plans?

A panel comprising representatives from the Department of Planning, NSW Treasury and the Department of Local Government and other infrastructure planning experts will be established to evaluate contributions plans. The evaluation of council plans will use the 'key considerations for contributions' (see section 116D of the new Part 5B to the EP&A Act which has been passed by NSW Parliament but is yet to commence) to focus on the infrastructure needs of new development, how the infrastructure fits within an overall asset management strategy for the council, the cost estimates for the infrastructure and implications for affordability of development.

INTRODUCTION OF THE LEVIES COMPONENTS OF THE PLANNING REFORMS

Q What happens to the new development contributions provisions (eg the commencement of the new Part 5B of the EP&A Act)?

A The Government will continue to implement the reforms to the legislative process for contributions. Any directions issued prior to the commencement of the new Part 5B provisions will be reviewed as part of the implementation of the new contributions provisions.

Q When will there be more detail on the introduction of the new development contributions provisions?

A Now that the levy review has been finalised, administrative details on the new legislative provisions will be made available as early as possible in 2009.

OTHER LOCAL CONTRIBUTIONS ISSUES

Q Will the deferral of payment to point of sale apply to local levies?

A No. Many councils have the facility to defer payment and more will be encouraged to adopt that practice as the State Government provides a suitable security mechanism linked to the title of the land.

Q Will councils be able to continue with s94A levies?

A Yes. Under the new development contributions arrangements under Part 5B of the EP&A Act (yet to commence) these will be known as indirect levies and will be subject to affordability considerations.

Q Can councils continue to negotiate voluntary planning agreements (VPA).

A Yes, although the Government will keep a watching brief on agreements to ensure that councils respect the $20,000 maximum per lot threshold.

Q Can councils continue to levy commercial development?

A Yes, but once again this will be subject to meeting the reasonableness and affordability considerations of the new contributions provisions (once commenced).

WATER INFRASTRUCTURE LEVIES

Q What does this mean for Sydney Water and Hunter Water customers?

A The reforms will see a reduction in developer charges, which will now be recouped through user charges (except for recycled water levies). As the Department of Planning does not oversee legislation regarding water charges, please contact Sydney and Hunter Water for further details.

Q Do the changes to water infrastructure levies apply to other water supply/sewerage authorities such as councils in regional areas?

A No. These authorities continue to set developer levies for water and sewer consistent with the IPART guidelines.

December 2008
www.planning.nsw.gov.au
DOP 08_052

TWEED SHIRE COUNCIL
MEETING TASK SHEET

User Instructions

If necessary to view the original Report, double-click on the ‘Agenda Report’ blue hyperlink above.

Action Item - PLANNING MEETING Tuesday, 12 February 2008

Action for Item **P1** as per the Committee Decision outlined below.

ATTENTION:

PLEASE NOTE THE ADOPTION OF THE COMMITTEE RECOMMENDATIONS BY COUNCIL AT ITS MEETING HELD TUESDAY 12 FEBRUARY 2008:

15 COUNCIL DECISION:
Administrator Boyd
Administrator Payne

RESOLVED that the recommendations of the Planning Committee held Tuesday 12 February 2008 be adopted.

FOR VOTE - Unanimous

TITLE: **[EO-PC] S94 Developer Infrastructure Contributions Proposed Changes by NSW Government**

COMMITTEE DECISION:

Administrator Boyd
Administrator Payne

RECOMMENDED that due to the adverse impacts of the proposals in NSW Department of Planning Circular PS 07-018 on Local Governments ability to finance and provide the infrastructure necessary to service planned population growth and the long term financial viability of Councils in high growth areas:-

The Minister for Planning be requested to defer implementation of the proposals until there is an inquiry and full consultation with local government to determine the likely impacts on Local Government finances and ability to fund necessary growth related infrastructure and that if appropriate the inquiry make recommendations that would minimise adverse impacts

FOR VOTE - Unanimous

Agenda Report

TITLE: [EO-PC] S94 Developer Infrastructure Contributions Proposed Changes by NSW Government

ORIGIN:

Director Engineering & Operations

SUMMARY OF REPORT:

Section 94 Contributions are the means by which Councils levy development to finance the infrastructure necessary to the support population growth created by development.

It is a "user pays" system that avoids burdening existing residents and ratepayers with the costs of supporting development and associated future populations. S94 was introduced in 1980.

Tweed Shire collected $10.5M last financial year and this compares with around $30M collected in General Fund rates.

The NSW Department of Planning (DOP) circular of November 2007 announced major changes to the Section 94 system. It proposes to only allow contributions for local infrastructure that services the individual development or subdivision and to no longer allow contributions for regional or shire wide facilities that service a wider area.

Under the current s94 system, Councils may collect for these wider used facilities provided the developer contributions are only used for that portion of the facility to be used by new development. The NSW Department has strict guidelines on how this apportionment is calculated. Council presently has shire wide contribution plans for arterial roads, regional sporting facilities, regional open space, libraries, cemeteries and the like to collect a total of $260M from development that will be ineligible under the proposed changes.

Projects that will be deleted if the changes proceed will include the Kirkwood Road interchange and service roads to Kennedy Drive, Boyd Street Interchange, duplication of the Tweed Coast Road, Murwillumbah northern bypass, Arkinstall Park Regional Sports Facility, Upgrading of coastal reserves, additional surf life saving facilities.

Council's rates are pegged and in any case it is unrealistic to consider raising rates by the amount necessary to make up for the loss of Section 94 revenue. A possible outcome of the proposed Section 94 changes is that all urban expansion in Tweed may need to be curtailed as Council will not be able to supply the arterial road network and other facilities needed to support the new population.

The NSW Department of Planning has been advised of the difficulties the proposed changes will cause in Tweed Shire.

RECOMMENDATION:

That due to the adverse impacts of the proposals in NSW Department of Planning Circular PS 07-018 on Local Governments ability to finance and provide the infrastructure necessary to service planned population growth and the long term financial viability of Councils in high growth areas:-

The Minister for Planning be requested to defer implementation of the proposals until there is an inquiry and full consultation with local government to determine the likely impacts on Local Government finances and ability to fund necessary growth related infrastructure and that if appropriate the inquiry make recommendations that would minimise adverse impacts

REPORT:

1. Proposed Changes to Developer Contributions System

Changes to the developer contributions system announced by the NSW Government identify the following Tweed Shire Council Contribution Plans as being no longer eligible under the new system.

Section 94 Plan	Scope
4. Roads	shire wide arterial road network
5. Shire Wide Open Space	shire wide but excludes specified urban release areas
11. Library Facilities	shire wide regional facilities
13. Regional Eviron Cemetery	shire wide lawn cemetery facility
15. Community Facilities - Tweed Coast	Tweed Coast
16. Emergency Facilities - Surf Life Saving	shire wide
18. Council Admin Office & Support Facilities	shire wide
22. Cycleways	shire wide urban areas
26. Shirewide Regional Open Space & Sporting Facilities	shire wide, includes Arkinstall Park, Murwillumbah Regional Pool, Jack Evans Boatharbour

1.1 NSW Premier's Press Release - 12 October 2007

"Mr Iemma said the new regime would cut state and local government infrastructure contributions by 30 to 40 per cent, providing a saving of at least $25,000 per lot in the Western Sydney Growth Centres.......................................

In addition to slashing levies, the changes also include:

- *Reducing the type of projects funded through State and local government infrastructure levies;*
- *Infrastructure provided by councils to be delivered in a more timely way – typically within seven years – and must directly service new release areas;*
- *The creation of an Urban Improvement Fund to hold State Government and developer contributions for infrastructure in new land release areas;*
- *The new levies framework to be progressively applied throughout the State – including 'brownfield' areas – based on local and regional assessments of core infrastructure needs;*
- *State projects in new land release 'greenfield' areas – including roads – to be put out to competitive tender."*

1.2 NSW Treasury Briefing Paper - 12 October 2007

"Local levies are recovering costs that are more appropriately funded through council rates or special council levies

....

When combined, local and state levies should fall by between 30-40 percent in the Growth Centres".........

1.3 NSW Department of Planning Circular

A NSW Department of Planning Circular PS 07-018 issued 6 November 2007 advised the following changes:

- State contributions applying to greenfield areas identified in Regional or Subregional areas will fund 75% of attributable State infrastructure costs.
- Local (Council) Contribution Plans may fund 100% of 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 can no longer be recovered through local contributions
- The Minister will issue new guidelines. Councils will continue to prepare new s94 (94A) plans, but they must be endorsed by the Ministers delegate
- for new greenfield areas a single contribution combining State & Local infrastructure charges will be set on a developable area basis and collected at two stages on a "developable area basis":
  - 25% of state & local infrastructure costs at time land is first sold following rezoning or DA consent (called a Rezoning Infrastructure Contribution - RIC)
  - 75% on release of subdivision/occupancy certificate (called a Serviced Infrastructure Contribution - SIC)
- The NSW government may consider collecting & holding s94 (s94A) funds for greenfield development outside Sydney growth centres on a case by case basis
- New system will apply to s94 (94A) contributions in existing urban and greenfield areas
- Planning agreements must be consistent with new framework
- Plans made before 12 November 2007 will continue as if changes announced had not been made

1.4 Letter Director General NSW Department of Planning 21January 2008

The Director General, Mr Sam Haddad advises the Department of Planning has established a working group to bring changes into effect and advises he will give proper consideration to Tweed's needs. He further advises that the implementation timetable has not yet been determined and that whilst it is not the Department's position to redress the Government's decision, the Department is working to achieve a balance and appropriate outcome for all stakeholders. He further advises that the status of Council's existing contributions has yet to be decided. See attachment.

1.5 Objectives of the Proposed Changes

1.5.1 Reduce Types of Projects that can be funded by Developer Contributions

The Department of Planning Circular says that future s94 plans will fund:

"100% of the following 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 ....., can no longer be recovered through local contributions"

and this sentiment is echoed in the Treasury Briefing Paper.

The above list of eligible infrastructure excludes shire wide regional infrastructure needed to service planned new populations. In Tweed Shire this would exclude existing contributions plans for Arterial Roads (CP4), Shire Wide Open Space (CP5), Regional Libraries (CP11), Regional cemetery (CP13), Community Facilities - Tweed Coast (CP15), Emergency Facilities - Surf Life Saving (CP16), Council Admin Office & Support Facilities (CP18), Shire Wide Cycleways Network (CP22) and Regional Open Space & Sporting Facilities (CP26).

The proposed changes would be successful in eliminating projects that have shire wide or regional benefits. However, proposed legislative changes to make shire wide or regional contribution plans, that legitimately provide necessary infrastructure for the future planned population, ineligible would undermine the orderly planning and provision of infrastructure for growth areas. Councils would be unable to finance the infrastructure through the pegged rating system and it would be inequitable to do so. It also undermines Council's long term financial planning, particularly where loans have been obtained or facilities provided ahead of time on the assumption that future contributions would pay them off.

Recovery of costs for facilities benefiting existing local communities through s94 contributions is already unlawful under s94 of the Act. It is an established principle in drafting s94 plans that if a proposed facility will benefit both existing and future populations, then the costs are apportioned and the contributions may only be applied to that proportion of the facility that benefits the future population. The statement in the departmental documents is either ill informed or it suggests that Councils have been unlawfully using s94 of the Act.

It would be regrettable if such critical changes to the contributions system were based on a misunderstanding of the existing provisions of s94 or a simple need for better auditing of contributions plans and enforcement of existing provisions of s94.

1.5.2 Reduce Housing Land Costs

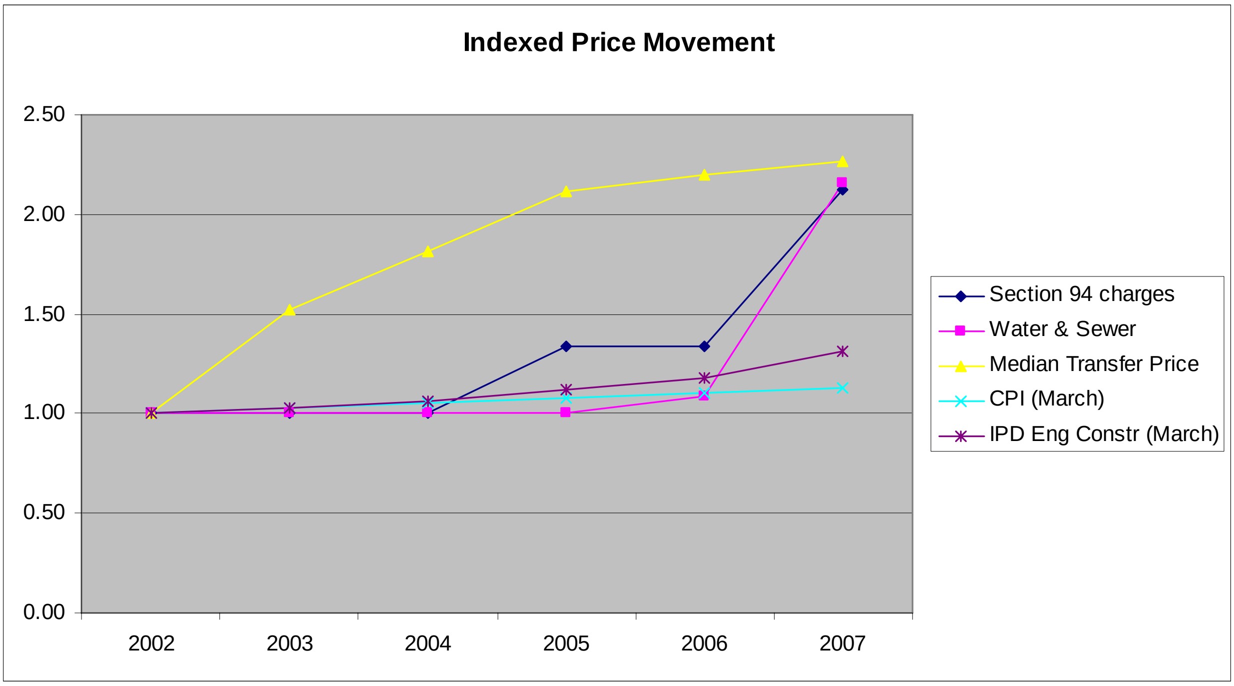
Whilst Council contributions are a significant input cost to developers, the price of housing land to consumers is set by the market and not developer cost inputs. The Tweed Shire housing land market is a small part of the South East Queensland market, and prices are generally determined by how the land product supplied interacts with the demand in the South East Queensland market.

The cost of developer contributions has risen significantly in past years, mainly due to large increases in the cost of civil engineering contract construction caused by high demand for labour, plant and materials in the booming SEQ infrastructure industry.

In general contributions costs are only keeping pace with construction costs and market prices for housing land.

It is acknowledged that if development costs, which include s94 contributions, are excessive, then the developer of "greenfields" land may choose to defer or abandon development. There is no evidence that contribution costs are causing this to occur in Tweed Shire.

The following is an example of the movement of land prices and Council contribution costs at the "Seabreeze" estate west of Pottsville in Tweed Shire.



In 2002 the average (transfer) price of land in this estate was $95,500 and the cost of s94 contributions was $7,017. In 2007 the price of land was $216,250 and cost of s94 contributions $14,886. In the same period s64 water & sewer contributions rose from $6,864 to $14,801. In summary the price of land has more than doubled and the amount of Council contributions has risen at a similar rate. More details are appended at the end of this report.

The Circular and Treasury briefing have not explained how projected contribution savings would be passed on to purchasers. It can be expected that developers will charge what the market will pay. There is also the issue that if in fact developers reduce land prices by $28k (see Treasury Paper) then owners of houses adjacent are likely to have their properties reduced by the same amount, which will compound current debt servicing problems associated with interest rate rises.

It is also noted that the State Infrastructure charges "*will apply to development sites across the State where rezonings or levies have not been finalised" (Planning Circular PS 07-018*). This appears to mean that developers of Cobaki , Kings Forest , West Kingscliff etc where zonings are still under review may be liable to pay the state infrastructure charge of $23k. Imposition of a new state contribution would increase total contributions significantly and be contrary to the Government's objective of reducing housing development costs. As an example at Kings Forest current Council contributions are $23,754. Under the proposed changes Council contributions would be reduced to $16,228, but with new state charges of $23,000 the combined total may be $39,228, a substantial total increase and contrary to the Government's objective of reducing housing development costs.

1.5.3 Expend Contributions in Seven Years
It is an objective of the Government's changes to ensure infrastructure is delivered in a more timely manner - typically 7 years.

Unfortunately timing and staging of land releases is outside Council's control and therefore both the need for infrastructure and collection of all necessary contributions can also be delayed. Unlike Sydney, where large land releases are quickly sold, land releases in regional growth areas are generally staged in small releases and completion can take many years. This means progressive contributions must be accumulated, sometimes for a long time, until sufficient is available to construct larger projects. Councils can shorten the period by borrowing, but this entails risk as the future contribution cash flow may not materialise as predicted.

2. S94 Contributions Plans at Risk in Tweed Shire
Plans likely to be ineligible under proposed changes are shaded.

Section 94 Plan	Scope	06/07 Contrib $'000	Works Outstanding $'000	Comments
1. Banora Point West/ Tweed Heads South - Open Space	local	171	-652	
2. Tweed Heads South - Drainage	local	0	212	
4. Roads	shire wide	4,724	184,069	linked to joint Council/RTA Lower Tweed & Pacific Highway Traffic Master Plan. $6.45M recently paid to Qld Main Roads for overpass of Tugun Bypass on assumption of future contributions from Cobaki Lakes
5. Shire Wide Open Space	shire wide but excludes urban release areas	440	876	
6. Street Trees	shire wide	81	480	
7. West Kingscliff - drainage, open space, community facilities, footpath/cycleways	local	59	609	
10. Cobaki Lakes	local	0	0	
11. Library Facilities	shire wide	438	9,883	services debt of 1.9M

Section 94 Plan	Scope	06/07 Contrib $'000	Works Outstanding $'000	Comments
12. Bus Shelters	shire wide		136	
13. Eviron Cemetery	shire wide	85	1,746	services debt of $0.94M
15. Community Facilities - Tweed Coast	Tweed Coast	220	236	
16. Emergency Facilities - Surf Life Saving	shire wide	192	608	
18. Council Admin Office & Support Facilities	shire wide	2,176	15,753	services debt of $5.38M
19. Casuarina Beach/Kings Forest - open space, community facilities, foot/cycleways	local	201	8,305	
22. Cycleways	shire wide urban areas	240	2,978	
23. Offsite Parking	CBD areas	381	1,212	
25. SALT	local	-99	155	
26. Shirewide Regional Open Space	shire wide	1,113	46,003	services debt of $2.2M with part assistance of CP18 & 23
27. Tweed Heads Master Plan - Local Open Space, Streetscaping	local	53	2,239	
28. Seaside City	local			
Totals		**10,475**	**282,516**	

Tweed Shire Strategic Plans of 1973, 1984, 2000+ (adopted 1996) and the Far North Coast Regional Strategy (adopted 2006) all proposed significant urban growth for the Shire. At present the shire population is 80,000 and is expected to grow by around 40,000 over the next 20 years.

The 2000+ Strategic Plan was accompanied by the "Tweed Development Program" which outlined a capital infrastructure plan for water supply, sewerage, distributor roads, open space/recreation and community facilities with a time horizon of around 2030.

Tweed Shire's suite of s94 plans have been targeted to finance the infrastructure necessary to facilitate this projected urban growth.

3. Impacts of Proposed Changes on Tweed Shire Council

3.1 Impacts on Long Term Strategic Landuse and Infrastructure Planning

Strategic Landuse and Infrastructure Planning in Tweed Shire has been in progress and the planning has been progressively implemented since the first Strategic Plan in the early 1970s.

The suite of s94 Plans and s64 Water & Sewerage Developer Servicing Plans have been developed to deliver capital infrastructure works estimated to cost in excess of a billion dollars to facilitate further development that includes:

- Cobaki Lakes
- Kings Forest
- West Kingscliff
- Bilambil Heights
- West Murwillumbah
- Greater Pottsville (Seabreeze, Dunloe Park)
- Employment land at Murwillumbah
- Redevelopment of Tweed Heads

For greenfield development, the majority of contributions are incrementally payable at release of subdivision plan. Whilst some infrastructure provision can be staged to align with or lag this cash flow, other infrastructure must be provided ahead of land release (particularly water, sewerage).

Where infrastructure is needed prior to land release, Council takes on the risk of raising loans to be paid off by future contributions. Where infrastructure can wait, contributions can be accumulated until there is sufficient capital available to commit to construction.

There are major risks for Council which include:

- Council cannot control the rate of release of subdivision lots and receipt of associated contributions.
- the timing of infrastructure construction and necessary contribution cash flows must be estimated based on best available information.
- Staged release of development is subject to constant change outside Council control.
- where loans are raised, future contribution cash flows may be less than estimated and insufficient to service infrastructure debt repayments.
- forward estimates of infrastructure costs in contribution plans become dated and contribution amounts and cash flow are often insufficient to deliver actual costs.
- infrastructure items are often large and expensive, requiring extensive lead times for planning & environmental approvals. Expenditure of this nature is lumpy and difficult to align with contribution cash flow.
- large infrastructure projects such as water treatment plants (eg Bray Park commenced 2007 costing $80M) are required ahead of development and require hefty loan finance ahead of contribution cash flow.
- State Government may change the contribution system after Council has already borrowed for major projects and land releases.

Nevertheless for planned urban growth to take place, Council has taken on these risks and projects are timed and staged as much as possible to align with contribution cash flows and to minimise risk.

Council has developed its infrastructure strategies and associated contribution plans in accordance with the legislative framework established by the NSW Government since 1980. Whilst continuous reform is a necessity in any industry, significant changes to this framework, as now proposed, increase uncertainty and associated risk and may induce Council to now undertake a more cautious approach to urban growth. This would create the opposite effect on development, to which the State Government appears to be trying to encourage, through reduced contribution charges.

Tweed Shire Council however is in somewhat of a bind. It has only last year committed contractually to the $80M Bray Park Water Treatment Plant (to serve an additional 40,000 population) and requires urban development and associated contributions to service the plant's debt financing. Urban growth with the proposed s94 changes may lead to the establishment of new urban areas without adequate community and regional infrastructure. This in turn will place pressure on the existing rate base to make up the shortfall in community and regional infrastructure for both the existing and future populations. This is not practical in a rate pegged financial environment.

There is a need for changes such as now proposed to s94 to be considered in a holistic manner by State policy makers. Such changes may have significant impacts on the financial viability of high growth Councils, particularly those multipurpose Councils that have made large investments in water & sewerage infrastructure.

A widely focused government inquiry to analyse the impacts of the proposed s94 changes, the current review of Water Supply Authorities and the impacts of both these measures on the financial viability of affected Councils would now seem appropriate. Such an inquiry could ensure that narrow focused policy decisions do not have unintended consequences on the financial viability of multipurpose Councils in high growth areas. Such an inquiry could also ensure planned urban growth in NSW is not put at risk by the inability or risk aversion of Councils to undertake loan borrowing to provide the infrastructure.

3.2 Shire Wide Contribution Plans Excluded by Proposals

The NSW Government proposes:

- Local parks and open space that service a development site or precinct may be recovered through contribution levies but council-or district wide facilities can no longer be recovered through contributions and must be funded through rates as all residents benefit.
- Land and facilities for Local community infrastructure that service a development site or precinct may be recovered through contribution levies but council-or district wide facilities can no longer be recovered through contributions and must be funded through rates as all residents benefit.

This proposal presents significant difficulties for Tweed Shire Council.

Council has a number of Contribution Plans that finance shire wide facilities and it is considered that these plans are fully compliant with the nexus provisions of the Act.

It is agreed that most of these shire wide facilities benefit both existing and future populations, however there is an equitable mechanism used to apportion costs to each population segment. This mechanism is detailed in the NSW Department of Infrastructure Planning and Natural Resources, Development Practice Note July 2006 titled "Determining rates for different types of development" under the section "How is existing demand treated". See attachment.

"In many instances, a council will be augmenting new facilities or providing new facilities, a proportion of which may cater to the demands of the existing population.

This is quite acceptable, however, in these cases, a suitable apportionment will need to be used to make allowance for this demand and to ensure that future development is only paying its fair and reasonable share"

It is considered that this apportioning process has worked well for providing regional standard, shire wide community and sporting facilities in an equitable manner and that by combining both existing and future population needs there are considerable efficiencies in the number of facilities provided and economies of scale. The proposed removal of shire wide facilities from eligibility in contributions plans will have adverse impacts on both existing and future populations.

It is submitted therefore that the proposed removal of shire wide facilities from contribution plans, as proposed in the NSW Department of Planning Circular PS 07-018, should not proceed.

3.3 Impacts on Individual Tweed Shire Contribution Plans
CP4. Roads (Shire Wide Arterial/Distributor)
This plan finances augmentation of the arterial road network to accommodate the traffic generated by future population and urban growth.

The total expenditure in the network exceeds $300M, but part of this has been apportioned to the existing population.

A key element of the plan is the incorporation of the "Lower Tweed and Pacific Highway Master Plan" which was a joint product of the Roads & Traffic Authority of NSW (RTA) and Tweed Shire Council. The Master Plan optimises the arterial network (RTA and Council roads) in the Lower Tweed Region and apportions costs of services roads, bridges and interchanges between the two agencies.

It is doubtful whether this plan would be eligible under the proposed changes. There are outstanding planned works of $184M to be funded by contributions and a commitment to jointly fund works with the RTA at an estimated cost of $26M.

The Government's transitional arrangements are not finalised at this stage and it is not known if this plan could be deemed an "existing plan" to continue indefinitely under the new arrangements.

If this Plan is to be deleted many greenfield subdivisions could not proceed as road infrastructure would not be capable of absorbing the extra traffic generated (e.g. Kings Forest where the Tweed Coast Road will need widening to 4 lanes to cater for Kings Forest Traffic).

Areas such as Tweed Heads South that are identified for redevelopment by the Department of Planning, could not proceed without the Kirkwood Road link, interchange and service roads to Kennedy Drive, which were to be funded by this contribution plan.

Council has paid the Queensland Department of Main Roads $6.45M for construction of the Boyd Street Overpass over the Tugun Bypass in anticipation of this being recovered from developer contributions from a number of developers involved in the Cobaki Lakes and Bilambil Heights greenfield developments. If CP4 is deleted this advance payment will not be recovered.

CP11. Library Facilities
This plan proposes augmentation of library facilities (buildings and book stock) to service additional demand from future population. The facilities would be provided by Tweed Shire Council and managed by the joint Councils Tweed Richmond Regional Library Service.

This plan would be ineligible under the proposed changes. There are outstanding planned works of $9.9M and an existing debt of $1.9M.

The Government's transitional arrangements are not finalised at this stage and it is not known if this plan could be deemed an "existing plan" to continue indefinitely under the new arrangements.

CP13. Eviron Regional Cemetery
This is the lawn cemetery established for the whole of Tweed Shire.

This plan would be ineligible under the proposed changes. There are outstanding planned works of $1.75M and an existing debt of $0.94M.

The Governments transitional arrangements are not finalised at this stage and it is not known if this plan could be deemed an "existing plan" to continue indefinitely under the new arrangements.

CP16. Emergency Facilities - Surf Life Saving
This is a shire wide plan established to provide surf lifesaving facilities on the coast to service the needs of future population.

This plan would be ineligible under the proposed changes. There are outstanding planned works of $0.6M.

The Governments transitional arrangements are not finalised at this stage and it is not known if this plan could be deemed an "existing plan" to continue indefinitely under the new arrangements

CP18. Council Admin Office & Support Facilities
Council's administration buildings and depots are sufficient to service the existing population, however these facilities require augmentation to service the planned future population.

This plan would be ineligible under the proposed changes. There are outstanding planned works of $15.7M and an existing debt of $5.4M.

The Governments transitional arrangements are not finalised at this stage and it is not known if this plan could be deemed an "existing plan" to continue indefinitely under the new arrangements.

CP26. Shirewide Regional Open Space
This plan provides the higher level regional open space, recreational and sporting facilities that are needed by the growing population and associated need to support higher level facilities.

Facilities proposed include:

- Arkinstall Park Regional Sporting Centre $16.5M (see appended plan)
- Murwillumbah Regional Pool Complex, Total Cost $16M, committed to contract August 2007, apportioned cost to CP26 $3.4, remainder financed by existing population.
- Regional hockey complex $2.9M
- Regional softball & soccer complex $2M
- Coastal foreshore embellishment $2.1M
- Regional botanic gardens $2M
- Tweed Heads Master Plan Implementation - Jack Evans Boat Harbour section $7.9M - Project in partnership with NSW Dept of Lands and Dept of Planning

This plan would be ineligible under the proposed changes. There are outstanding planned works of $46M and an existing debt of $2.2M (partly shared with CP18 & 23). The Governments transitional arrangements are not finalised at this stage and it is not known if this plan could be deemed an "existing plan" to continue indefinitely under the new arrangements.

4. Conclusion
The changes proposed to the developer contributions system may cost Tweed Shire Council hundreds of millions of dollars in forgone contributions. This could have significant adverse impacts on the financial viability of Council and its ability to provide the infrastructure necessary for the significant urban growth that has been planned over the next 20 to 30 years.

The proposed changes appear to be a reaction to Western Sydney issues and may be based on a misunderstanding of how contribution funds are apportioned for council wide projects that benefit both existing and future populations. Notwithstanding the assertions in the Department of Planning Circular, current Contribution Plans must <u>not</u> fund the infrastructure needed for the existing population.

The proposals do not appear to take account of the circumstances of high growth regional multipurpose (including water & sewerage) Councils that have taken considerable financial risk to debt service infrastructure for future population growth.

Tweed Shire Council may need to suspend its current high population growth strategy as under these new contributions proposals, it will be unable to fund and provide the necessary infrastructure to service the proposed growth areas.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

See body of report.

POLICY IMPLICATIONS:

See body of report.

UNDER SEPARATE COVER/FURTHER INFORMATION:

*To view any **"non confidential"** attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

1. Movements in land price and S94 Contributions at Seabreeze Estate, West Pottsville (DW 1753287).
2. Plan of CP26 Works at Arkinstall Park (DW 1753267).
3. NSW Government Department of Planning's Planning Circular PS 07-018 dated 6 November 2007 (DW 1700686).
4. NSW Government Department of Planning Letter dated 21 January 2008 (DW 1749363).
5. Development Contributions - Practice Note - Determining rates for different types of development - Department of Infrastructure Planning and Natural Resources - Issued July 2005 (DW 1753624).