WYONG SHIRE COUNCIL
Submission to the Inquiry into
Assessing Local Government Revenue Raising Capacity

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Executive Summary

Wyong Shire continues to be one of the fastest growing areas in NSW and Australia. One of the biggest challenges for coastal growth areas, like Wyong Shire, is to raise revenue to fund infrastructure for the growing community.

Developer charges (Section 94 contributions in NSW) have been an important source of Councils' funding for infrastructure,

The NSW Department of Planning has recently proposed changes, to the setting and collection of developer charges, that would have a significant impact on Councils' ability to raise revenue.

The current system of development contributions has worked well for over 25 years. It is inappropriate for the NSW Government to attempt to shift the costs of providing new infrastructure away from developers and onto councils and their communities.

This "revenue shifting" poses a genuine threat to Local Governments and their ability to provide infrastructure for their communities.

In addition, Local Governments are limited in their capacity to raise revenue by the restrictions on the rates and other fees they are able to charge, and their inability to levy charges on other levels of government.

Recommendations:

1. That the NSW State Government retain the current system of levying (Section 94) developer charges by Local Government.

2. That any future review of developer charges in NSW involve extensive consultation with all stakeholders and include investigation of the possibility of Councils recouping the total costs of establishing new facilities and not just the capital costs as prescribed under the current system.

3. That the Federal Government continue to provide financial assistance to Local Government to fund the provision of local infrastructure.

4. That the NSW State Government abolish rate pegging, so that Local Government can provide for its increasing costs.

5. That Councils be able to levy rates on State and Federal land or be reimbursed for the costs associated with the land.

6. That the statutory ceiling on many of the charges levied by Local Government be lifted to allow Councils to determine them.

7. That the NSW Government pass on competition payments to Local Government.

1. Introduction

Wyong Shire

Wyong Shire continues to be one of the fastest growing areas in NSW and Australia. Between 1996 and 2001 the Shire experienced the fourth greatest increase in population of all Local Government areas in NSW and the eleventh highest increase in population nationally with 15,313 additional residents.

One of the biggest challenges for coastal growth areas, like Wyong Shire, is to retain the qualities that make the area attractive whilst catering to the needs of a growing community. Rapid population growth has placed pressure on the development and provision of adequate social and physical infrastructure, and demands on support services.

Developer charges (in NSW these are also referred to as Section 94 contributions) have been an important source of revenue to fund infrastructure and manage growing communities.

In November 2007 the NSW Department of Planning proposed significant changes to the setting and collection of developer contributions. These proposed changes would have a significant impact on Councils' ability to raise revenue.

Focus of this Submission

The Productivity Commission's draft report notes that-

> ***"Developer charges is another area where the Commission has had difficulty gathering relevant information by council area. Developer charges are a complex issue and the Commission intends to consider the impacts further for its final report."***

This submission provides background information on developer charges in NSW and highlights the significant impacts that the proposed changes to the legislation would have on Councils' revenue raising capacity.

It also briefly covers other impediments on sustainable revenue raising by Local Government.

2. Developer Charges in NSW

History

The funding of public infrastructure has changed substantially over the last 40 years, moving from traditional sources such as Commonwealth, State and Local Government budget allocations to a mix of sources ranging from public-private partnerships to developer charges and user pays charges.

The user pays philosophy underlying the funding of local infrastructure has existed in NSW since the 1940s when the planning process has had the ability to require developers to contribute to the provision of public facilities, the need for which arises as a result of the development. Legislation requiring a contribution towards the provision of public infrastructure in NSW was first codified as Section 94 of the *Environmental Planning & Assessment Act 1979.*

Section 94 has been subject to review on a number of occasions in response to concerns raised by the development industry and local Councils. The merits of maintaining the existing system and making improvements have been explored, as have alternatives that are more or less prescriptive than Section 94.

These reviews have included:

- The Simpson Inquiry of 1988/89. In general, the inquiry supported the power to levy contributions and described Section 94 as a 'special type of user pays tax'.

- A Section 94 review committee which reported in 2000 and recommended a range of significant reforms. These were discussed with stakeholders and a range of alternative systems were canvassed that could provide for more flexibility in the system.

- A taskforce established in 2003 to look more closely at the way the Section 94 developer contribution system operated and in particular the alternative mechanisms by which planning authorities may obtain a development contribution.

The Taskforce report supported the intent and function of a well administered Section 94 regime for funding local infrastructure.

The Taskforce found that the original policy basis for levying developer contributions at the local level (Section 94) generally remained legitimate and sound, and that the current system should be maintained.

Definition

In NSW the provisions of Section 94 of the *Environmental Planning & Assessment Act 1979* have traditionally been the principal method enabling Councils to levy contributions for public amenities and services required as a consequence of development. This may be the provision of new facilities for a new area, or may be the expansion of existing facilities where a developed area is growing.

Councils currently use development contributions to provide new residents with a range of high quality, centrally located and integrated community and recreational facilities, including multi purpose indoor centres, district sporting fields, senior citizen centres and cycleways.

Section 94 contributions are imposed by way of a condition of development consent or complying development, and can be satisfied by:

- dedication of land;
- a monetary contribution;
- material public benefit; or
- a combination of some or all of the above.

Section 94 contributions are levied by Councils in accordance with a Development Contributions Plan (that has been publicly exhibited) which has allowed the system to be transparent.

Example - Wyong Shire

Wyong Shire Council has one Shire Wide Contributions Plan and ten District Section 94 Plans. These plans fund a broad variety of works including:

- Open Space land acquisition (parks, fields, courts, cycle ways and semi natural areas)
- Open Space embellishment (parks, fields, courts, cycle ways and semi natural areas)
- Environmental Corridor land acquisition and embellishment
- Community facilities land acquisition and construction
- Road and intersection improvements
- Drainage land acquisition and infrastructure construction
- Water Quality land acquisition and infrastructure construction
- Regional/Shire Wide infrastructure (Performing Arts Centre, Public Art, Regional Open Space)
- Studies
- Administration

Within Wyong Shire's main urban release area, current Section 94 contribution rates are approximately $42,000 per lot. Contribution rates in other infill areas of the Shire are in the order of $10,000-$15,000 per lot.

These contributions are paid by the property developer at the time of registration of the subdivision at the Lands Title Office. For development other than land subdivision, such as unit development, the contributions are paid prior to the commencement of construction works.

In 2006/07 Section 94 funded works (both cash and non cash) represented 37% of Wyong Shire Council's total General Fund capital expenditure.

The total Section 94 funds held by Wyong Shire Council at 30 June 2007 was $36.25m.

3. Impact of Proposed Changes to NSW Developer Charges on Revenue Raising Capacity

Impact on Local Government

In November 2007 the NSW Department of Planning proposed significant changes to the setting and collection of developer contributions. These proposed changes would have a significant impact on Councils' ability to raise revenue.

The new rules are a retrograde step and will mean that development contributions can only be collected to fund roads, drainage and water management expenses, local bus infrastructure, local parks and community infrastructure that service an individual development site or precinct.

Local Councils in NSW will no longer be able to levy developer charges to fund:

- Facilities required as a result of demands arising from existing populations or population growth;
- Council-wide community facilities;
- Council-wide recreational facilities; or
- Acquisition of land for riparian corridors.

The current system of development contributions has worked well for over 25 years. Local Government believes that it is inappropriate for the State Government to attempt to shift the costs of providing new infrastructure away from developers and onto Councils and their communities.

Example - Wyong Shire

During the next five years Wyong Shire Council has $172m in projects earmarked for construction that were to be funded $110m from Developer Charges that are likely to be affected by the changes proposed by the State Government.

These works include:

- Regional Performing Arts Centre
- Railway Rd (a major link road between Warnervale and Watanobbi)
- Warnervale Aquatic and Leisure Centre
- Warnervale Knowledge Centre (including a library)
- Shire-wide cycleway network
- San Remo Extreme Sports Facility
- Integrated water cycle management regional projects
- Hamlyn Terrace and Woongarrah Sporting Fields
- Salt Water Creek Regional Park

It is estimated that the total value of all future works that will not be able to be carried out if the current legislation is to be passed is in order of $248m.

4. “Revenue Shifting” – from Local Government to State Government

The NSW Government intends to replace the developer charges (that it will preclude Local Government from levying) with a State Infrastructure Contribution.

This “revenue shifting” poses a genuine threat to Local Governments and their ability to provide infrastructure for their communities.

The NSW State Infrastructure Contribution will fund 75% of the State’s infrastructure costs for roads, rail, bus, and the land for emergency services, health, education and regional open space. These are costs that the State Government should be meeting out of its own taxes and Federal Government allocations.

5. Other Impacts from the Proposed Changes to Developer Charges

Inability to recoup previous Bankrolling

Many NSW Councils have, in the past, bankrolled the construction of certain facilities to ensure that adequate services are available to the residents of the Local Government area. The proposed changes to the legislation will mean that Councils are no longer able to recoup the cost of some of these facilities, which will also impact on their funding strategies.

Community Expectations

Councils have been collecting developer contributions for some projects over a number of years but, under the proposed changes, may be unlikely to continue to collect funds for these projects. There will be some moral obligation for Councils to provide these facilities, (given some contributions are already collected and the community's expectations), and Councils must now seek to secure funding from alternative sources.

Rate pegging

Council's ability to raise funds to cover the shortfall created by the proposed changes to the developer charges system is limited by rate pegging – so it will be difficult to "replace" the loss of revenue from the proposed changes to developer charges in NSW. Particularly since rate pegging does not keep up with the costs of providing and maintaining infrastructure.

6. Other Impediments to Local Government's Revenue Raising Capacity

Rate exemptions

All land in a Council area is rateable except for that which is specified as exempt in legislation. Significant proportions of some Local Government Areas comprise non-rateable land (such as defence land, National Parks, State Forest, Crown land, etc) and, in most cases, this land attracts people who utilise Local Government services and generate "wear and tear" on their assets.

Local Government should be able to levy rates on State and Federal Government land or, at least, be reimbursed for the costs associated with the land.

Other Fees and Charges

State Governments impose statutory ceilings on a range of fees (particularly development fees and charges) making it difficult for Councils to recoup their costs or "bundle" services together (such as inspections and approvals) in an effort to compete in the wider marketplace.

The statutory ceiling on many of the charges levied by Local Government should be lifted and Councils allowed to determine them.

National Competition Policy

In 1995 the Australian, State and Territory governments agreed to a program of Competition Policy Reform. Whilst Local Government was involved in the negotiations, it was not a signatory to the resulting agreement.

Local Government recognises the benefits of improving the efficiency of its activities. Many Councils bore the costs associated with reform, yet did not receive any funds from their respective State or Territory Governments to assist in the implementation process or share in the benefits of the reform process.

In its submission to the Hawker inquiry, the National Competition Council (NCC) accepted that there were numerous circumstances where Local Governments had incurred significant reform costs without receiving any fiscal resources to assist in accomplishing this task.

In New South Wales, the State Government has not passed on any proportion of the National Competition Policy (NCP) payments, despite Local Government's key role in achieving NCP goals and requirements. This is an example of a potential revenue source being "cut-off" by the State Government.

In the absence of national rules, the application of the National Competition Policy payments has been inconsistent across the States and the Northern Territory.

The NSW Government should pass on competition payments to Local Government.

7. Recommendations

Recommendations:

1. That the NSW State Government retain the current system of levying (Section 94) developer charges by Local Government.

2. That any future review of developer charges in NSW involve extensive consultation with all stakeholders and include investigation of the possibility of Councils recouping the total costs of establishing new facilities and not just the capital costs as prescribed under the current system.

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7. That the NSW Government pass on competition payments to Local Government.

8. References

Australian Local Government Association, “Review of National Competition Policy Arrangements”, 19 July 2004

Local Government & Shires’ Association of NSW, “Open Letter to the Premier of NSW – Development Contribution Changes – Impact on NSW Communities”, 10 December 2007.

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