

17 May 2010

Mr Nick Tobin
General Manager
Willoughby City Council
PO Box 57
CHATSWOOD NSW 2057

By email: email@willoughby.nsw.gov.au

Dear Mr Tobin,

**Re: Submission in response to the
Draft Section 94A Contributions Plan - Chatswood CBD Developer Contributions Levy**

The Urban Taskforce represents Australia's most prominent property developers and equity financiers. We provide a forum for people involved in the development and planning of the urban environment to engage in constructive dialogue with both government and the community.

We recognise the need for the local council to undertake works in the town centre that will make Chatswood a better environment. However, most of these works will benefit the whole community and are not sufficiently connected to new development to warrant the imposition of such a high section 94A levy.

1. The three per cent levy is a thinly disguised betterment tax

The levy will add 3 per cent to project costs – and is supposed to raise up to \$109 million. It will apply to all urban development exceeding \$250,000 in cost, including new homes and commercial office development.

Willoughby City Council has observed that

[t]he Councils [sic] general position is that S.94A does not require a direct nexus and it is sufficient that the levy is applied to fund capital works across the CBD.¹

Indeed, the council is correct in its belief that there is no requirement for money raised to be spent on infrastructure required for new housing and workplaces.²

This lack of any direct relationship between the use of the money raised and the development that bears the cost of a levy suggests that this levy is simply a tax. Indeed this issue was canvassed in the Henry Tax Review, released earlier this month:

A particular form of tax used when land is re-zoned for alternative use is a 'betterment tax' which attempts to capture some of the increase in land value. Betterment taxes are not infrastructure charges since the objective is to tax economic rent, although sometimes the revenues are hypothecated (that is, earmarked) to infrastructure provision.³

This fits the intent of a section 94A levy exactly. The Henry Review goes on to observe that

[i]n general, infrastructure charges will operate more effectively if they are set to reflect the cost of infrastructure, not to tax the profit of development.⁴

¹ Letter from Willoughby City Council to Faye Roberts, Department of Planning, dated 23 July 2010.

² *Environmental Planning and Assessment Act 1979* s 94A(4).

³ Commonwealth of Australia, *Australia's future tax system — Report to the Treasurer* (2010) 424.

⁴ Commonwealth of Australia, *Australia's future tax system — Report to the Treasurer* (2010) 424.

According to the review, the consequences of a tax on the "profit" of a development are clear:

Where the charge exceeds the cost of providing infrastructure, it acts like a tax and can discourage development. This is more likely to occur where the size of the charge is not set relative to the cost of infrastructure but the developer's capacity to pay. In these cases, the charges may attempt to capture part of the increase in value resulting from the provision of infrastructure or from changes in zoning, that is, to impose a betterment tax ...⁵

The Henry Review therefore concludes that

... where infrastructure charges are poorly administered — particularly where they are complex, non-transparent or set too high — they can discourage investment ... lower the overall supply .. and raise ... price[s].⁶

There is no question that 3 per cent is a very high levy. The current maximum levy for most councils is 1 per cent. Sydney central business district, for example, only carries a levy at the 1 per cent rate.

The proposed plan clearly overestimates the capacity of town centre development to generate the level of funds required to pay for the capital works program. It's worth noting that while the intent of the council is to use the 3 per cent levy to capture a share of development profits, as a matter of form it is calculated on the basis of project costs. In some cases this levy will turn a development with potential for modest commercial profit, into a loss-making venture. In such circumstances the development will simply not get off the ground.

The reality is a 3 per cent levy will not raise even a fraction of the \$109 million sought – if only because the levy will act as a barrier to the development of Chatswood. Levy monies will only start flowing in when it is commercially feasible to develop in the area. Otherwise no funds will be raised and no capital works will be funded. Surely it is preferable to agree on a reasonable town centre improvement plan that can be funded by existing reserves, supplemented by a reasonable (1 per cent) town centre levy?

2. Chatswood is not a "regional city"

Councils currently have the power to impose a percentage-based levy on development, but outside of six "regional cities" (and, now, Burwood town centre) this levy has always been capped at one per cent.

Willoughby Council's draft Section 94A Plan tries to justify the imposition of an extremely high town centre levy on the basis that though Chatswood has been identified as a "major centre" in the Metropolitan Strategy, it should be a "sub-regional centre". This does not in itself justify the imposition of a 3 per cent levy on town centre development.

The Urban Taskforce urges the Council to properly consider the impact that levies will have on town centre renewal. Little or no development activity means no urban renewal, which, if allowed to continue, will mean major centres, such as Chatswood, will not attract the level of development expected and in the end, will go into decline.

3. End-users of developed land bear the costs of levies

Those who argue for high development levies are mistaken if they believe that a developer ultimately bears the costs of the charges. It is the land buyer, homebuyer or lessee of premises who must ultimately pay. This is because modern capital is mobile. It flows to wherever it gets the best return. A local developer will not be able to secure equity for a development unless the rate of return that is available for investments of a similar risk profile in other local government areas (or other states or countries) can be offered.

In order to ensure that a market rate of return is achieved, a developer will either reduce the amount of money paid for the undeveloped land/redevelopment site, or increase the price paid by the ultimate buyer of the developed property. However, often the buyer cannot afford

⁵ Commonwealth of Australia, *Australia's future tax system — Report to the Treasurer* (2010) 424.

⁶ Commonwealth of Australia, *Australia's future tax system — Report to the Treasurer* (2010) 428.

an increase in land price due to council levies because there is a ceiling on the price that buyers are able to pay, i.e. their borrowing capacity (if residential) or the income stream they anticipate from their business (if they're retail/commercial).

The maximum amount that buyers are able to borrow is based on their income and interest rates. Without increases in income or sustained long-term reductions in interest rates, buyers are unable to pay more for new homes or business premises. As a result, any project, which cannot be delivered at a price buyers currently can afford, simply doesn't get built.

Council levies, if not properly considered, will stifle development. This 3 percent levy means that Chatswood will not experience urban renewal and development at a rate observed in comparable city centres.

4. A three per cent levy on city centre development is punitive

The Urban Taskforce has made numerous submissions to Government on the importance of ensuring development fees and charges are reasonable. In this regard, we strongly argue for an element of market reality when determining development charges, particularly when reviewing a section 94A contributions plan.

We are of the belief that market realities have not been properly considered when drafting the *Section 94A Contributions Plan*.

A lower levy may actually give rise to an increase in revenue for Council. This is because a reduced levy may make more projects feasible, which means more development can proceed, which in turn generates more revenue to Council. Furthermore, more development certainly acts as an economic stimulant that brings many flow-on effects to the local economy.

There is no doubt that there is an argument for a *reasonable* contribution from development projects. **A reasonable contribution has been set by legislation at no more that 1 per cent of the development cost.** Government, including local government should be looking at ways to stimulate development, not opportunities to introduce excessive taxes on development. Opportunities to reduce charges should be examined. **Reducing charges will increase the supply of developed land coming into the market.** An increase in supply will result in an overall reduction in the cost of developed land.⁷

5. There is no proper and transparent justification for levies

In any event, the Urban Taskforce is concerned with the lack of detailed information provided in the exhibited draft contributions plan. The estimated cost of infrastructure is a wish list with dollars assigned. Council cannot in all honesty expect the community to accept significant project estimates without any detail to justify the cost. Loosely worded generalisations are not sufficient. Without appropriate project specification and justification Council is not being transparent and the community is unable to hold Council accountable for project quality or delivery.

The Urban Taskforce is not alone in expressing concerns with local council cost shifting. Evidence and submissions presented to the Senate Select Committee on Housing Affordability in Australia support our concerns. For example, evidence has been put on the record that infrastructure costs are being transferred to the users of new development; local authorities may have a tendency to "gold-plate" excessively expensive infrastructure. In his evidence to the Committee, Professor Troy stated that "we are very generous about what we do with road supplies.....one of the reasons that we do this is that now we have the developer paying for it...."⁸

⁷ BIS Shrapnel (2008) *Is there a housing crisis?* Summary of talk by Frank Gelber at the Melbourne Institute and the Australian 2008 Economic & Social Outlook Conference, 'New Agenda for Prosperity' 27 March 2008.

⁸ Commonwealth of Australia (2008) *A good house is hard to find: Housing affordability in Australia*, June 2008. pp. 110

In summary:

- We ask that the proposed 3 per cent in the Chatswood town centre be lowered to 1 per cent.
- There is insufficient information provided in the draft plan or exhibited material to offer any reasonable justification for the imposition of a town centre levy in excess of the benchmark.

The Urban Taskforce implores Council to carefully consider the contents of this correspondence and apply an element of market reality when developing a section 94A contribution plan. Furthermore, Council should place on exhibition at least a completed draft plan that includes summary project details with sufficient information to justify project costs stated in its draft plan.

Thank you for providing us with the opportunity to offer our comments and should you require any further clarification of the content of this correspondence, please feel free to contact me.

Yours sincerely

Urban Taskforce Australia

A handwritten signature in black ink that reads "Aaron Gadiel". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

Aaron Gadiel
Chief Executive Officer