

**INQUIRY INTO ENVIRONMENTAL PLANNING AND
ASSESSMENT AMENDMENT (INFRASTRUCTURE
CONTRIBUTIONS) BILL 2021**

Organisation: Inner West Council

Date Received: 8 July 2021



8 July 2021

Upper House Committee
Portfolio Committee No. 7 Planning and Environment
NSW Parliament

Dear Upper House Committee,

Thank you for the opportunity to provide comment on the Infrastructure Contribution Bill (2021) introduced to State Parliament on 29 June 2021. Council has reviewed the proposed changes and provided commentary in the attachment to this letter for your consideration.

In regards to the proposed legislative changes that relate to section 7.11 and section 7.12 of the *Environmental Planning and Assessment Act 1979*, we re-iterate the concerns of LGNSW that the Bill is premature without adequate information being provided on the future contents of the associated Regulations and Ministerial Directions. It is Council's preference that the matters relating to section 7.11 and 7.12 contribution plans be deferred until the broader infrastructure contributions reforms are known. It is our view that the application of the proposed changes should only be imposed on contribution plans that are implemented under the new infrastructure contribution framework. This would avoid the potential for legal appeals to arise as local governments transition their local contributions plan to the NSW Government's future reform's framework.

If you require any further details or have any queries on the matters raised, please feel free to contact

Sincerely,

Harjeet Atwal
Senior Manager Planning
Inner West Council

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Recc.	Proposed Amendment	Act Section	Bill Ref.	Council's Comment
4.1	<p>Aligning contributions plans with rezoning</p> <ul style="list-style-type: none"> A direction-making power will allow the Minister to specify when a contributions plan must accompany a planning proposal. This will align the exhibition of draft contributions plan with the exhibition of planning proposals. It does not affect planning proposal assessment timeframes. 	7.17(1)(e)	[23]	<p>Support in-principle, the alignment of growth and contribution plan updates is considered essential to address infrastructure needs. Concern is raised about the statement that <i>"this will not affect planning proposal assessment times"</i> as contribution plans often require special expertise and studies to be commissioned. This will be especially poignant for planning proposals and contribution amendments proceeding through the transitory period to July 2024 as the future framework proposes to distinguish development-contingent costs and population-related costs. Any proposed Minister Directions enabled by this section should incorporate savings and transitional arrangements for existing section 7.11 and 7.12 Plans until July 2024 (when plans under the new framework are required to be completed by).</p>
4.2	<p>Introduce a land value contribution mechanism to improve efficiency and certainty for funding land acquisition.</p> <ul style="list-style-type: none"> A new framework will allow councils to require all landowners in an identified precinct in an approved contributions plan to contribute towards land required for public purposes. The contribution will be based on a percentage of land area or value and is imposed when land is rezoned. It will be payable when the land is sold or developed. 	7.16B-F	[22]	<p>Support in-principle, subject to adequate detail being provided about the Regulatory framework. It is recommended that LGNSW support the inclusion of <i>land value contribution</i> but request the wording be amended so to allow monetary contributions for land subject to uplift in urban in-fill areas, where value capture studies demonstrate profitability, to enable in-fill metropolitan councils to collect funds for local infrastructure to meet infrastructure demand gaps across their local government areas (LGAs).</p> <p>The primary aim of this objective is to address issues with rising land value costs for land in Greenfield areas. This does not benefit or address the issues relating to brownfield (in-fill) redevelopment areas - given high land costs and</p>

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	<ul style="list-style-type: none"> Landowners will be notified of the land value contribution being imposed when land is rezoned. It will be payable when the land is sold or developed. Landowners will be notified of the land value contribution being imposed within a precinct as part of the public exhibition of draft contribution plans and planning proposals. 			<p>small lot sizes mean that land acquisition for new public services and amenities is largely <i>more</i> cost prohibitive than what is encountered in Greenfield area. There is often a funding shortfall for the establishment of new local infrastructure in urban renewal corridors, and so to address the needs of incoming populations it is a typical approach that existing infrastructure must “work-harder” to suffice demands.</p> <p>Numerous metropolitan councils have attempted to address this infrastructure funding gap via the inclusion of land-value sharing arrangements that offer local environmental plans (LEPs) planning incentives when section 7.4 planning agreements are forthcoming for local infrastructure, such precedents include:</p> <ul style="list-style-type: none"> Green Square Community Infrastructure Floorspace scheme (City of Sydney) Green Square Town Centre Development Rights Scheme (City of Sydney) Kensington and Kingsford Community Infrastructure LEP clause scheme (Randwick City Council) Burwood Town Centre Community Infrastructure LEP Clause scheme (Burwood City Council); and Penrith Town Centre Community Infrastructure LEP clause scheme (Penrith City Council). <p>The precedents tend to set a base floor space ratio (FSR) on relevant sites, which can be achieved without proponents providing any value sharing contribution (i.e. towards</p>

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				community infrastructure). Identified sites are able to achieve higher FSRs generally up to a maximum FSR if community infrastructure is provided, with the rate of contribution and appropriate contribution types usually specified in a separate policy. The rationale for this approach is generally to secure community infrastructure, which is required to support high-density development, but which cannot be funded in other ways. It is a value sharing mechanism. Recent policy reforms pursued by the State Government are discouraging a continuation of these precedents however a fundamental funding gap remains for urban in-fill areas for local infrastructure. There is an opportunity for the ' <i>land value contribution</i> ' pathway to better enable the purposes of these precedents, should it be amended so to allow monetary contribution for local infrastructure <i>as well as</i> the identified of land.
4.9	Encourage council to forward fund infrastructure through borrowing and pooling funds: <ul style="list-style-type: none"> • Council will be able to pool contributions without the need for a Ministerial Direction or contributions plan to allow it. • Regulations extend recoupment to include interest costs associated with forward-funding infrastructure. 	7.3(2) & 7.11(2)	[10] [19]	Support, in-principle.
NA	Other Section 7.11(1) & (2) changes: Proposed change from " <i>a consent authority be <u>satisfied</u> that there will be, or is likely to be, an</i>	7.11(1)&(2)	Pages 5-6	Strongly opposed to the imposition of an objective test as there will be greater potential for population-related costs or in-direct costs imposed through section 7.11 frameworks to

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	<i>increased demand for public amenities or services as a result of development</i> " to an objective test that considers works council has provided the service or amenities, or whether the development will benefit from the provision of services or amenities.			be appealed. This is especially poignant given the proposed subclause 7.11(2) then states that the cost of providing public amenities and public services be calculated in accordance with the regulations and Minister directions - that are not yet available for comment. This raises the potential for legal appeals for contribution plans that calculate costs not in accordance with the unknown Regulations. It is requested that the existing clause 7.11(1) be retained until the Department of Planning Industry and Environment (DPIE) can provide further guidance on the Regulations and Ministerial Directions.
NA	Other Section 7.11(1) changes: Previously, section 7.11 condition could only be imposed on the <i>grant</i> of a development consent, but the new wording is that ' <i>a consent authority may impose a local infrastructure condition on a development consent</i> '.	7.11(1)	Page 5	Subject to the above comment, relating to the deferment of this matter until DPIE can provide further guidance on the Regulations and Ministerial Directions, Council would support the expansion of s7.11 to being imposed on applications made under section 4.55 of the EP&A Act to modify a development consent.
NA	Other Section 7.11(3) and (4) changes: The new section 7.11 will allow consent authorities to accept ' <i>the provision of a material public benefits in part or full satisfaction of a local infrastructure condition</i> '. Meaning that two things not currently permitted by the wording of the existing section 7.11 will be allowed: (1) the dedication of land in satisfaction of an obligation to pay a monetary contribution, and	7.11(3)&(4)	Page 6	Support in-principle, however this will impact section 7.11 treatments of credits/discounts where planning agreements or works in kind are being pursued. Potentially, it may generate the risk of legal appeals for contributions plans as they transition to the new contributions reform framework. It is suggested that this section be deferred until such time the DPIE can provide more guidance on how credits and discounts are to be treated in the contributions reform.

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	(2) works in satisfaction of an obligation to dedicate land free of cost.			
NA	<p>Changes to Section 7.13</p> <p>There are two changes to note about this proposed section, which governs the circumstances in which local levy conditions and local infrastructure conditions may be imposed.</p> <ul style="list-style-type: none"> Firstly, there is an additional requirement that a local infrastructure condition or local levy condition is '<i>imposed in accordance with the regulations and relevant Ministerial directions</i>'. Secondly, the words '<i>this subsection does not authorise the Court to disallow or amend the contributions plan or direction</i>' have been deleted from the current section 7.13(3). 	7.13	Page 7	Request that this section be deferred until such time the DPIE can provide more guidance on the associated Regulations and Ministerial Direction. The proposed change may allow judicial intervention into contributions plans, Ministerial directions, and planning appeals, subject to limitations set by the Regulations. The intent of this change needs to be adequately explained by the NSW Government.
4.10	<p>Defer payment of contributions to occupational certificate stage:</p> <ul style="list-style-type: none"> Directions to set the timing of contribution payments will be extended beyond the COVID-19 pandemic period. 	7.17(1A) & (1B)	[19]	Opposed due to ongoing compliance issues in ensuring payments are made and the short-term loss of revenue. Request a continuation of the pre-COVID response that requires payment with issuance of the construction certificate.
4.11	<p>Increase maximum section 7.12 fixed development consent levies:</p> <ul style="list-style-type: none"> Maximum rates and a broader calculation methodology can be set by regulation. 	7.12(5)(a)	[19]	Endorsed, however it remains to be seen what limitations are imposed by the Regulations. It would be preferable if this matter was deferred until the Regulations are drafted.

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4.12	<p>Planning agreements consistent with principles-based approach:</p> <ul style="list-style-type: none"> Planning authorities will be required to public exhibit rather notify draft agreements, and to invite and consider submissions. The requirement for hard copies of planning agreements will be removed given planning agreement information will be available online. 	Schedule 1, clause 6A 7.5, 7.10	[33] [16-17]	Endorsed.
5.1-5.4	Adopt Regional Infrastructure Contributions, Adopt Transport Contributions & Adopt Strategic Biodiversity Contributions.	7.22-7.31(2)	[27] [34]	<p>Supported in-principle, provided adequate transparency and forward planning with LGAs should occur so that it is known what infrastructure works are being funded by State Infrastructure Contributions. We strongly advocate that the money collected from a LGA should be approximate to the level of expenditure outlaid in that area, and this be stated in the associated Regulations.</p> <p>The LGNSW's attention is brought to a continuing trend of the DPIE continuing to apply pseudo SIC-type clauses in LEPs that require developers to enter planning agreements with the State Government before development consent is given for public infrastructure. This is a mechanism not addressed by this Bill, or discussed in the NSW Productivity Commissioners Final Report, but is a mechanism by which the State collect contributions for public infrastructure, outside the provisions of Part 7 of the EP&A Act.</p>

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				<p>This pseudo-SIC LEP clause approach is contrary to DPIE's own advice, that planning agreements should not be mandated for development consent to be issued. Likewise, DPIE has repeatedly discouraged councils' from adopting similar approach, as discussed in the commentary to 4.2. Examples of the pseudo SIC-type clauses DPIE have inserted in recent LEP amendments, typically along urban in-fill renewal areas, include:</p> <ul style="list-style-type: none"> • Clause 6.18 of Marrickville LEP 2011 - Arrangements for designated State public infrastructure in relation to development on certain land at Victoria Road, Marrickville - <i>"development consent must not be granted...unless the Secretary has certified in writing to the consent authority that satisfactory arrangements have been provided for State public infrastructure"</i>. • Clause 6.23 of Leichhardt LEP 2012 - Development of land at 1-5 Chester Street, Annandale - concurrence needed by the Planning Secretary. • Clause 8.1 and 8.1A of Parramatta LEP 2011 - Arrangements for designated State public infrastructure. <p>It is requested that the Parliaments' attention be drawn to this matter as an inconsistency to be addressed by DPIE as part of this policy reform.</p>

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NA	Expanded scope for Regulations Section 7.16A proposed by the Bill expands the scope of what the regulations can provide for, such as when and how monetary contributions must be paid. Normally, this would be provided for in a contributions plan.	7.16A	Page 8	Strongly opposed to this change being progressed without adequate information regarding the content of the Regulations. This may significantly impact local government funding able to be obtained by section 7.11 and 7.12 respectively.
6.1	Use digital tools to make contributions simpler and more transparent: <ul style="list-style-type: none"> Form and content of plans can be set by regulations, building on existing ePlanning provisions. 	7.18(2)	[25]	Support in-principle, so long as adequate time and assistance (funding and resources) is provided to local councils for adoption and implementation.
6.5	Better synchronise State and local strategic planning frameworks <ul style="list-style-type: none"> Review timeframes for local strategic planning statements will be changes from seven to five years to align with review requirements for State Infrastructure strategies and regional plans. 	3.9	[4]	Support in-principle, so long as adequate time and assistance (funding and resources) is provided to local councils.
NA	<u>Proposed Section 7.46(2)</u> If passed, this sub-section would allow consent authorities and councils in the area of a development to recover unpaid contributions required under local infrastructure conditions as debts in a court of competent jurisdiction.	7.46[2]		Endorsed.

