

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

**Organisation:** Murray River Council

**Date Received:** 9 July 2021

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15 July 2021

Portfolio 7 – Committee  
Planning and Environment

Dear Committee members,

**RE: Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021 – Murray River Council Submission.**

Thank you for the opportunity for Murray River Council to provide a submission into the proposed Infrastructure contributions amendment bill 2021.

**Background**

The Murray River Council local government area resides within the broader riverine region of NSW, with most of our large townships and developments being our border towns, Moama and Barham. The Murray River Council area covers 11,865 square kilometres, with a population of approx. 12,000 people.

Whilst Murray River Council is in regional NSW, attracting tourism, commercial investment and residential population to our area is our focus and relates directly to issues associated with proposed developer contributions changes. We are unique in many ways, with our council area attracting considerably more investment from Victoria than from anywhere in NSW, noting that we are closest NSW LGA to Melbourne.

Over the last 10 years, Moama's population rate is growing and exceeding 8.5% per annum, which is considerably faster than the NSW state average, and other bordering local government areas, which is of great concerns to our Council in relation to adequate public services (Water treatment facilities) to support our residential growth alone.

Council has reviewed the proposed amended Bill, in particular the *NSW Productivity Commission's review of Infrastructure Contributions in NSW*, and the NSW government's response. Therefore, Council has provided the following observations, comments, and suggestions in the context of regional view and where these proposed changes will have an impact on our regional areas:

### **Land Value Contribution (LVC):**

- *The LVC will be payable when the land is sold for the first time. It is only payable once. If the land is being sold, the vendor must satisfy the requirement for the LVC on or before completion of the sale.*
  - o *If development consent is granted for the land (before it is sold), then the consent authority can impose a condition of consent requiring the payment of the LVC. However, this can only be completed if the development is likely to require the provision of, or result in an increase in the demand for, public amenities and services in the area.*
  - o *There is potential for the requirement to pay the LVC to be extended to existing development consents that were granted prior to the ministerial direction which means that there will be deeming provisions under which existing consents will be taken to be modified in accordance with the direction.*
  - o *An area will only be able to be included as a 'Land Contributions Area' if there is a change to the land's planning controls that: will enable more intensive development of the land; and as a result, will increase the value of the land.*

### **Comment:**

- Council has concerns that this is likely to increase the cost of developing the land. The introduction of this charge will discourage landowners within our LGA from selling their land especially in growth areas where Council is already finding it difficult to encourage 'land bankers' to develop their residentially zoned land.
- The developer will base their feasibility on costs that were in place at the time of the DA, only to incur additional costs after consent has been granted, which could mean the increased value costs will ultimately increase the price of land for the consumer.
- If there is no increase in land value, an identification of the land contributions area in a contributions plan might be unlawful. (It would be prudent to commence any legal proceedings within three months of the contributions plan being made.)
- The proposed legislation lacks robust safeguards protecting the rights of landowners who wish to sell their land (without first carrying out a development), which will have an impact on regional growth corridors, creating mosaic residential development patterns. Integrity of property rights may be impacted upon under this scenario.
- The costs of developing land are likely to increase. This may reduce the attractiveness of developing land, attracting investment and may see more land retained at its existing use in our growth corridor areas (contrary to what otherwise might be good land use planning).



### **Planning Proposals:**

- *Planning proposals may need to be accompanied by a draft contributions plan, to align the exhibition of planning proposals and contributions plans. This detail will not be known until after the legislation commences in 2022, at which time the Minister for Planning will issue a direction which will specify when a contributions plan must accompany a planning proposal.*


#### Comment:

- The intention for contributions plans to be exhibited concurrently with planning proposals will also increase extensive rezoning processes, which is mainly worn by Council planning/development departments.
- The intention to require (some) draft contributions plans to be prepared concurrently with planning proposals may further increase the time it takes to bring about changes in planning controls and flow-on effects to progressive development in high growth areas.
- It is not yet evident that any meaningful steps have been taken to limit planning authority insistence on planning agreements as part of the rezoning process (with the additional cost, delay, uncertainty, and investment disincentives that such insistence creates). In regional areas, planning agreements are rarely used for this purpose.

### **Regional Infrastructure Contributions (RIC's):**

- *A condition of consent requiring payment of the RIC must not be modified without the Minister for Planning's approval.*
- *The new vendor tax on potential development sites will apparently seek to recover around half the costs in current greenfield contributions plans (being the land cost). If the property is sold by existing landowners following rezoning, the tax will be immediately payable, well before development takes place.*

#### Comment:

- The trigger for regional infrastructure contributions is unlikely to occur in our Murray River Council area, as councils assume that this will be a general State government Levy on new development across Greater Sydney, Central Coast, Hunter, Illawarra-Shoalhaven.
  - If any levy/tax is being charged, a large proportion (if not all) should be returned or quarantined in the local government area, to support local infrastructure. Otherwise, council are required to enter a competitive grants processes, where infrastructure projects are largely assessed against risk on a state-wide basis.
  - This is likely to reduce the sale property prices and will mean that landowners will not sell their property in the short-term.
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- Some landowners may attempt to beat the system, by delaying the sale of their land and count on the vendor tax being abolished by machinery of government changes, stifling development which is not acceptable in a regional area in the current climate. This is a significant concern to Councils, especially border towns.

**\*Note:** Our border towns and communities have been dramatically affected with COVID restrictions in recent times from either Victorian or NSW restrictions being applied.

### **Defer payment of contributions to the Occupation Certificate stage**

- Council is concerned with this approach. The deferring of contributions to Occupation Certificate stage has the potential to be missed, especially when Private Certifiers are releasing the O.C.
- It is recommended to provide Council with discretion to decide when contributions are required to be paid. This will ensure Council's will be able to be flexible and encourage development whilst also ensuring contributions are paid at an appropriate stage of development.
- A private Certifier has no alliance with Councils, and therefore are less likely to adhere to conditions pertained in a Development Application which relates to contributions towards Council owned and managed assets.
- Council welcomes the further use of the NSW Planning Portal regarding payment of contributions.

### **Additional comments/Summary:**

- The NSW government will have the power to issue regulations and directions about what can be in contribution plans.
- There will be no 'merit' court appeal for landowners who are not able to develop their land before the sale of the land proceeds.
- There will be no right to pursue a merit appeal in the Land and Environment Court against a consent condition on the grounds of 'unreasonableness'; and
- No link is required between the subject development or land and the purpose for which the contributions is collected, which raises concerns that our community may have with transparency.
- State levies for major state transport infrastructure and biodiversity certification of land would also be part of the 'regional infrastructure contribution'. These components of the contributions will be additional to the above amounts and would vary between different areas.
- The review concedes that there will be 'short-term impacts' but says this can be mitigated. It anticipates long-term benefits. In short, these new 'reforms' are, in the short and medium



term, likely to contribute to the uncertainty of the planning system and discourage some development from proceeding.

- Levies and Taxes recouped from this reform will disadvantage Councils further in accessing funding not only for assets, but Council's ability to access ANY type of funding to complete appropriate Strategic planning in relation to any development.

It is further noted that the full package, include the extent of the new levies, will not be clear until:

- The State Government finalises a new SEPP;
- Local Council's finalise their new Contributions Plans; and
- Sydney Water/Hunter Water finalise their new development servicing plans (DSPs).

And finally, Murray River Council is suggesting the following points for consideration as an appropriate way forward that meets the objectives of the proposed bill:

- Remove the 7.11 developer contributions from regional areas, they are cumbersome, confusing for developers and planners and do not provide adequate CPI increase measures or variations in market value for Council do adequately fund assets.
- Applying a higher % charge of contributions at the Subdivision rate under 7.12 scenario could be a way that is linked to the proposed amendments in the Bill but allow the contributions to remain in the council areas for the benefit of regional communities.
- Conduct a state-wide investigation around the 7.12 developer contribution plans, which includes measure for developers declaring under-valued land to lower the contributions being paid and review the % based model strategically in a regional context.
- Consider the merits of the 7.12 % based system for all regional councils, with an investigation across regional NSW to ensure that Councils can largely self-fund their assets with consideration for higher % contributions in higher population growth areas (using localised population growth data, not NSW population data). Meaning less reliance on State funds for essential services and major assets.
- The 7.12 contributions system provides a simplistic pathway for both developers and Council planners to ensure that contributions are transparently and consistently applied across Council areas.

Happy to discuss any of the issues outlined in the submission.

Yours sincerely

**Rod Croft**

Director Planning & Environment

