

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

Organisation: The Greens
Date Received: 13 July 2021

Greens NSW Response to 'Review of Infrastructure Contributions in NSW' Issues Paper July 2020

Submitted August 2020

Prepared by the office of Jamie Parker MP
Member for Balmain and Greens NSW Planning spokesperson



Acknowledgement: Always was, always will be Aboriginal Land

As a matter of protocol and a mark of respect, we acknowledge it always was and always will be Aboriginal land, and we pay our respects to Aboriginal elders past, present and emerging.

It is incumbent upon us to acknowledge that infrastructure contributions in New South Wales are a means of extracting value from stolen land that was never ceded, for which reparations have not been paid.

Our Recommendations:

- *The NSW Government should give clear and explicit priority to both the planning and delivery of sustainable, productive infrastructure across New South Wales, and ensure adequate funding is made available for these purposes.*
- *Planning and delivery of infrastructure should be facilitated through a properly resourced process based on strategic planning and collaboration across precincts, localities and regions, rather than through developer-lead proposals and opaque planning agreements.*
- *Planning and funding for infrastructure should take account of the full cost of infrastructure needs, as well as ongoing costs of repairs, maintenance and upgrades where these can be reasonably ascertained.*
- *Land value windfalls should be levied so that the value created by rezoning decisions and the delivery of new infrastructure is shared across the community. This should be done in a consistent and predictable way so that developers know their costs up front and can capitalise them into the price they pay for land. A Betterment Levy would be a good way to achieve this.*

- *Requirements for reporting on the acquisition and disbursement of funds should be enhanced. Specifically, information about funds held and spent by local, regional and state authorities should be readily accessible to the public, and this should apply regardless of the manner in which funds are acquired.*
- *Infrastructure contributions must be sufficient to ensure environmental impact assessments can be properly and consistently resourced, and appropriate conservation measures applied.*
- *Affordable Housing and Aboriginal Housing must be prioritised. The NSW Government and councils must take on increased responsibility for ensuring there is widespread availability of Affordable Housing options.*
- *A high priority should be placed on open and green space and the state should set generous mandatory requirements.*
- *Councils should construct public facilities to ensure best value for money and public access.*

1) Introduction

The Greens NSW welcome the opportunity to contribute to the NSW Productivity Commission's "Review of Infrastructure Contributions in New South Wales".

We support a planning system that delivers ecologically sustainable development and takes account of the climate emergency, ensures locally based decision making is paramount while managing conflicts of interest to prevent corruption, respects and protects natural, cultural and built heritage, particularly First Nations' heritage, and presents progressive aspirations with regard to the impacts that new development may have upon communities and peoples' lives.

The manner in which we plan and deliver infrastructure to support urban growth is central to each of these principles. But constraints and complexities within the current system, along with a lack of resources for public oversight, encourage developer driven proposals over community lead planning, and ad-hoc assessments that prioritise profit over people and places.

A good example can be found in the City of Parramatta council area, where the council estimated in 2017 that the contributions due on planning approvals at that time would fall short of requirements for community infrastructure needed as a result of those developments. After taking into account contributions from additional rates, grants, developer contributions and planning agreements, the council was short of the required funds by around \$300 million.¹ Greens Councilors advise that the shortfall is now likely to be in the magnitude of \$1.2 billion.

As such we welcome the NSW Productivity Commission being tasked with a review of the current infrastructure contributions system, and asked to make recommendations for a principles based system that can deliver infrastructure to support urban growth. However we are concerned that the Commission's issues paper places too great an emphasis on matters of efficiency and the avoidance of complexity and cost for developers, while downplaying the need for competent administration and the availability of resources required to ensure communities can have confidence in the system.

2) Greens' Vision - well planned infrastructure that supports communities to grow, funded by developer contributions and land value windfalls

A fundamental issue with the current system is the lack of planning and cataloguing of infrastructure needs. Where this does occur it tends to happen in isolation based on development that has been proposed or approved, rather than on strategic considerations of how we may wish for communities to grow, intersect and interact with one another across regions. Infrastructure costs are often underestimated as the

¹ <https://www.govnews.com.au/parramatta-needs-to-spend-1-bil-on-infrastructure/>

need for new public transport, cycle and pedestrian links, access to water, sewerage and power service, or the ongoing costs of maintaining satisfactory environmental conditions are not properly considered or budgeted for.

The question of funding for infrastructure itself should be considered alongside the administrative requirements for an integrated planning process that enables all parties to contribute to and understand a community's strategic infrastructure needs prior to any development plans being lodged for approval, or contributions levied. Such a process must be adequately funded and the state should prioritise this in its annual budget. It should also be based on principles of community engagement, with local and regional authorities invited to collaborate with one another, rather than having planning considerations imposed upon them by a central agency.

Until the infrastructure needs of communities can be easily referenced, and kept relatively up-to-date, the question of how, when and in what circumstances developers should contribute funds towards construction is likely to remain vexed. But we must be clear that zoning decisions that present landholders with significant windfalls are an opportunity for the state and/or local councils to cover some of their infrastructure costs through a contributions scheme. This should be maximised according to the needs of communities, noting first that when developers know in advance what their contributions will be they will factor them into the price they are prepared to pay for land, and second that a consistent approach allows developers to predict their costs no matter where or what they are proposing to build.

One option that is flagged in the issues paper is the introduction of a Betterment Levy. The Greens NSW supports this approach as it would ensure unearned windfall gains accruing to property owners are shared throughout the community and could provide a significant amount of the resources needed for the ongoing planning and delivery of community infrastructure. We note recent modelling shows that New South Wales could be raising **\$8.2 billion per year** by following the Australian Capital Territories' model of levying a Betterment Levy on 75% of the land value uplift created by rezoning decisions.²

² <https://www.smh.com.au/national/nsw/nsw-missing-out-on-8-billion-a-year-from-failure-to-tax-land-rezoning-inquiry-told-20200527-p54wx1.html?>

Finally, it is important that some additional rigour is built into the system to ensure public confidence can be restored. Regardless of the manner in which contributions are levied, local and state authorities should be required to account to the public for any funds acquired and/or disbursed for infrastructure planning and delivery, by regular reporting and up-to-date publication of infrastructure plans and finances.

3) Response to discussion questions:

Issue 1.1 - Striking the right balance

The infrastructure contributions system in New South Wales should be aimed at achieving consistency across diverse localities and regions, but a “one size fits all” approach should be avoided. It should enable flexibility at the local level while a strong, overarching administration ensures appropriate levels of oversight and rigour are built into the system. This could be achieved by establishing and properly resourcing a process for planning, funding and reporting on the state's various infrastructure needs across all levels.

Issue 2.1 - Enable a broader revenue source for the funding of infrastructure

The NSW Government should make it a high priority to fund a process for planning and delivering new sustainable, productive infrastructure for the state across all levels. This could be achieved by drawing directly on the budget, acknowledging that developing the right infrastructure to meet community and regional needs will have positive economic impacts and will be money well spent. To this end the government should advocate strongly through the Coalition of Australian Governments that federal grants for infrastructure should also be prioritised, noting that the Australian Government is better placed to carry a deficit than the private sector is in the current economic climate.

Additionally the establishment of a Betterment Levy would allow the land value uplift created by rezoning decisions to be shared throughout the community, to be distributed according to agreed plans.

Issue 2.2 - Integrating land use and infrastructure planning

Integrated land use and infrastructure planning could be achieved by establishing and properly resourcing a process for planning, funding and reporting on the state's various infrastructure needs across all levels. The establishment of a Betterment Levy would allow the land value uplift created by rezoning decisions to be shared throughout the community, and this could be distributed according to agreed plans.

Issue 3.1 - Principles for planning agreements are non-binding

The current over-reliance on Voluntary Planning Agreements is sub-optimal, as they lead to developer lead planning and ad-hoc assessments. They present a significant risk to the community ranging from poor planning outcomes at one end of the spectrum and corrupt dealings at the other. The Greens NSW do not support the use of Voluntary Planning Agreements, and submit that preference should be given to mechanisms that facilitate community lead strategic planning.

Where such agreements are used we must be clear: zoning decisions that present landholders with significant windfalls will also increase their capacity to contribute to the funding of new infrastructure. Our contributions scheme should seek to maximise this according to community need. When developers know in advance what their contributions will be they will factor them into the price they are prepared to pay for land. A consistent and mandatory approach will allow developers to predict their costs no matter where or what they are proposing to build.

Issue 3.2 - Transparency and accountability for planning agreements are low,
Issue 3.3 - Planning agreements are resource intensive,
Issue 3.4 - Contributions plans are complex and costly to administer

There should be no barrier to improving the transparency and accountability of planning agreements - or indeed any component of an infrastructure contributions scheme - even if this results in some additional burden being placed on councils or the state. Any such burden should be alleviated with additional resources to meet administrative workloads, rather than a reduction in the levels of transparency and accountability that are required.

The NSW Government should prioritise funding for a process of planning and delivering new sustainable, productive infrastructure for the state across all levels. This should include any administrative costs to ensure the public can have confidence in the system. We should seek to avoid complexity and cost where this is possible, but we should not simply assume that a simplified system will produce better community outcomes.

Issue 3.5 - Timing of payment of contributions and delivery of infrastructure does not align

The risks associated with allowing developers to defer contribution payments until towards the end of the construction process require careful consideration. However if sufficient priority is given to the funding of community infrastructure planning and delivery processes, with funding or finance for local and regional authorities secured through a mechanism such as a Betterment Levy that shares the benefit of land rezoning decisions across the community, such risks could be relatively easy to manage.

Issue 3.6 - Infrastructure costs and contribution rates are rising,
Issue 3.7 - The maximum s7.12 rate is low but balanced with low need for nexus

The introduction of a Betterment Levy could enable the establishment and proper resourcing of a process for planning, funding and reporting on the state's various

infrastructure needs across all levels. It would allow the land value uplift created by rezoning decisions to be shared throughout the community, to be distributed according to agreed plans.

Zoning decisions that present landholders with significant windfalls will also increase their capacity to contribute to the funding of new infrastructure. A contributions scheme should seek to maximise this according to community need. When developers know in advance what their contributions will be they can factor them into the price they are prepared to pay for land. A consistent and mandatory approach would allow developers to predict their costs no matter where they buy land or what they propose to build on it.

Issue 3.8 - Limited effectiveness of special infrastructure contributions

While the introduction of a Betterment Levy is the NSW Greens' recommendation for the reasons outlined above, giving effect to Special Contributions Areas and applying Special Infrastructure Contributions in more locations would also unlock significant developer contributions that could be capitalised into land costs.

This would ensure councils do not continue to miss out on funding that could be achieved through a reasonable value capture measure. For example we note an estimated funding shortfall of up to \$320million for Parramatta City Council has arisen from delays in implementing a Special Infrastructure Contribution requirement for the area.

Issue 3.9 - Difficulty funding biodiversity through special infrastructure contributions

The Greens NSW believe that biodiversity is fundamental to the sustainability of all life, and that the restoration, protection and conservation of biodiversity is essential for the wellbeing of all. Environmental protections must be fundamental objectives of all urban growth, as there can be no biodiversity offsetting that is capable of reducing the impact of the loss of threatened species or high conservation value areas.

Processes for the planning and delivery of infrastructure should ensure proper environmental impact assessments are carried out and appropriate conservation measures applied. Infrastructure contributions, in whatever form they take, must be sufficient to ensure such processes can be properly and consistently resourced.

Issue 3.10 - Affordable housing

Affordable Housing, and in particular Housing for Aboriginal people, must be a priority. New housing developments should include at least 30% new Affordable Housing and this should be funded from developer contributions. The NSW Government and councils together must take on increased responsibility for ensuring there is widespread availability of Affordable Housing options.

Issue 4.1 - Sharing land value uplift

The Greens NSW support the establishment of a Betterment Levy to allow the land value uplift created by rezoning decisions to be shared throughout the community.

Issue 4.2 - Land values that consider a future infrastructure charge

The Greens NSW support measures that would ensure value sharing and/or infrastructure contributions liabilities can not be avoided through title transfers or other future dealings in land.

Issue 4.3 - Land acquisition for public infrastructure purposes,

Issue 4.4 - Keeping up with property escalation,

Issue 4.5 - Corridor protection

By sharing the land value uplift created by rezoning decisions throughout the community the budget could become less constrained than it is currently. As we have discussed above, modelling the application of a Betterment Levy in New South Wales that is similar in operation to Australian Capital Territory's model, New South Wales could be raising **more than \$8 billion each year** if such a scheme is adopted.

The availability of a significant new revenue stream coupled with early identification of land for public infrastructure use through the establishment of clear integrated planning processes would make the early acquisition of land simpler and less costly.

Alternatively a direct land dedication scheme that is clearly communicated to land holders and developers would ensure that the cost of this contribution could be anticipated, and factored into the price of developable land.

Issue 4.6 - Open space

Open spaces, and green spaces in particular, are especially important in our densifying urban areas. They are good for health and wellbeing, cool our cities, reduce air pollutants, regulate water flow, lower carbon emissions and even increase property values. But as our cities and towns increase in density through the conversion of detached dwellings into blocks of apartments, we lose open private space and create demand for new public places.

The Greens NSW submits that a high priority should be placed on open and green space and that the state should set generous mandatory requirements. While councils and local communities should have the ultimate say over the amount and location of open space in their area it is difficult to see how demand for open space can be appropriately measured. Further, where developers and councils see financial incentives to maximise closed urban spaces through increased profits and opaque planning agreements, communities will remain skeptical of the methods by which demand is measured.

Issue 4.7 - Metropolitan water charges

The Greens NSW submits that developer contributions toward new water connections and upgrades to existing connections should be re-examined. Incentives and concessions could be made available where developments aim to reduce reliance on community facilities by installing water recycling plants and taking other steps to make sustainability improvements at the local level.

Issue 4.8 - Improving transparency and accountability

Requirements for reporting on the acquisition and disbursement of funds should be enhanced. Specifically, information about funds held and spent by local, regional and state authorities should be readily accessible to the public, and this should apply regardless of the manner in which funds are acquired.

The introduction of a central register would be valuable as it could produce a consistent approach to reporting. Some regulation around these requirements may also be required.

Greens Councilors report that problems with poor record keeping and reporting can lead to problems with underpayments by developers. For example, one metropolitan council area was not aware that it was **owed nearly \$4million** in contributions because of non-compliance with reporting requirements over a four year period, until after an internal review had been conducted.

Issue 4.9 - Shortage of expertise and insufficient scale

Skill shortages should be resolved with additional resources for councils to meet administrative workloads. We should seek to avoid complexity and cost where this is possible, but we should not simply assume that a simplified system will produce better community outcomes.

The NSW Government should prioritise funding for a process of planning and delivering new sustainable, productive infrastructure for the state across all levels. This should include any administrative costs to ensure the public can have confidence in the system, and should be established in such a way as to be collaborative across local, regional and state authorities.

Issue 4.10 - Current issues with exemptions

The introduction of a Betterment Levy that shares the land value uplift generated by rezoning decisions throughout the community would go some way towards resolving the complexity of exemptions for certain types of development.

Issue 4.11 - Works-in-kind agreements and special infrastructure contributions

Developers should be able to provide works-in-kind or land in lieu of cash to meet their contribution liabilities, however this can leave scope for developers to underspend on the promised value and there have been instances where developers have constructed items in a way that favours their own development over broader community access.

A clear process for planning and meeting community infrastructure needs should guide how and when such an option may be used, noting that councils should always construct public facilities to ensure best value for money and public access. Ongoing expenses or the cost for rectification work if required should not be passed on to communities where works-in-kind are provided.

Developers should weigh up the costs and benefits of providing works-in-kind and credits for providing work of greater value than is required should not be allowed. If credits are allowed, they should not be tradeable as this would add unreasonable complexity to the system and would expose the development of community infrastructure to new economic risks.

RECOMMENDATIONS:

- *The NSW Government should give clear and explicit priority to both the planning and delivery of sustainable, productive infrastructure across New South Wales, and ensure adequate funding is made available for these purposes.*
- *Planning and delivery of infrastructure should be facilitated through a properly resourced process based on strategic planning and collaboration across precincts,*

localities and regions, rather than through developer-lead proposals and opaque planning agreements.

- *Planning and funding for infrastructure should take account of the full cost of infrastructure needs, as well as ongoing costs of repairs, maintenance and upgrades where these can be reasonably ascertained.*
- *Land value windfalls should be levied so that the value created by rezoning decisions and the delivery of new infrastructure is shared across the community. This should be done in a consistent and predictable way so that developers know their costs up front and can capitalise them into the price they pay for land. A Betterment Levy would be a good way to achieve this.*
- *Requirements for reporting on the acquisition and disbursement of funds should be enhanced. Specifically, information about funds held and spent by local, regional and state authorities should be readily accessible to the public, and this should apply regardless of the manner in which funds are acquired.*
- *Infrastructure contributions must be sufficient to ensure environmental impact assessments can be properly and consistently resourced, and appropriate conservation measures applied.*
- *Affordable Housing and Aboriginal Housing must be prioritised. The NSW Government and councils must take on increased responsibility for ensuring there is widespread availability of Affordable Housing options.*
- *A high priority should be placed on open and green space and that the state should set generous mandatory requirements.*
- *Councils should construct public facilities to ensure best value for money and public access.*