

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

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Randwick City Council submission

NSW Parliamentary Inquiry into the Draft Environmental Planning and Assessment Amendment (Infrastructure Contributions Bill) 2021

July 2021

Randwick City Council welcomes the opportunity to make a submission to the Parliamentary Inquiry into the *draft Environmental Planning and Assessment Amendment (Infrastructure Contributions Bill) 2021* (draft EP&A Bill).

As an overarching comment, Council agrees that a robust, streamlined, viable and efficient infrastructure funding system is necessary to facilitate good development outcomes, economic growth and job creation. The continuing roll out of local infrastructure is particularly pertinent given the current NSW Government focus on economic recovery out of the COVID-19 crisis, and the considerable strategic planning work underway at the local level to align Local Environmental Plans with District Plan directions on housing and employment.

While the tenets of the reforms are acknowledged, concerns are raised about the lack of broad consultation on the draft Bill, and more significantly, the fact that most of the operational and administrative detail are in the forthcoming Regulations and subordinate legislation which councils have not yet been afforded the opportunity to review.

It is our view that several measures appear to be unidirectional and focussed on the development industry, with limited consideration to the variable market conditions and unique characteristics at the local level which have a bearing upon infrastructure funding and delivery. For instance, the new s7.12 'local levy condition' based only on the number of new additional dwellings fails to consider the development context for inner city urbanised councils such as Randwick City, whereby the majority of development applications (DAs) are for alterations and additions to existing dwellings. In such contexts, the proposed changes could potentially have a negative impact on local contributions income streams and subsequent infrastructure delivery.

Moreover, concerns are raised about the cost imposts of the new regional infrastructure levies for residents carrying out local development, and the need for greater certainty that income generated would be genuinely spent on infrastructure within the local district and within reasonable timeframes. The following comments expand on these points to assist the Inquiry in its consideration of the implications of the draft Bill from a local government perspective.

Background

The s.7.12 development contributions framework, calculated as a fixed percentage based on the cost of works sliding scale, has been in operation in Randwick City for a number of years providing a system that is simple, easy to understand and manageable. The advantages of the s.7.12 infrastructure framework is widely recognised and tested over time, allowing for the timely collection and allocation of funds for delivering infrastructure as a direct consequence of development. Furthermore, the Plan is prepared to align with Council's Operational Plan and Resourcing Strategy having regard to our community's changing needs and priorities. In our experience, the s7.12 framework is efficient and less costly to administer and to update compared to s7.11 contributions plans, and provides a good balance between flexibility for Council and certainty for proponents.

Given the rising cost of labour and materials required to deliver local infrastructure and replacing/upgrading aging assets, which has not been matched commensurately by increases to the s7.12 percentage rate, councils are relying more and more on general revenue as a source of capital funding. Therefore, any changes that might erode councils' income from contributions will have long term financial implications and in turn the ability to appropriately address and respond to social, environmental and economic needs of local communities.

For councils, the s7.12 framework offers reduced administrative burden as there is no requirement for identifying a nexus between development and infrastructure required, and there is wider scope for the types of projects that can be levied for, compared to s7.11 plans. It allows for levying of new development to meet increasing demand for open space (including improvements and embellishment),

community and cultural facilities, public domain and town centre improvements, transport, access and mobility improvements such as for walking, cycling and environmental improvements. For development proponents, the s7.12 framework offers more certainty to account for infrastructure contributions as a fixed proportion of costs, making it easier to determine development feasibility upfront.

The s7.12 approach is particularly beneficial for inner city council areas such as Randwick City, where the majority of DAs are for alterations and additions to existing development. This allows Council to capture infrastructure funding across a wider range of development proposals equitably, as opposed to the s7.11 nexus based framework where levies are based on the number of additional bedrooms or dwellings that a DA would deliver.

Key Comments

Lack of Operational and Administrative Detail

The draft Bill proposes an overhaul of the NSW infrastructure contributions system, addressing a range of matters including how contributions are levied under s7.12 plans, new regional infrastructure and land value charges and the permanent deferral of contributions payments to the occupation certificate stage. It is further noted that the draft Bill was introduced as part of the broader budget legislative package on 22 June 2021, which generally progresses rapidly through Parliament.

Concerns are raised that councils and other stakeholders have not been afforded adequate opportunity to consider the implications of the draft Bill, as the full suite of supporting regulations, Ministerial directions and subordinate legislation containing the operational and administrative detail have not been publicly released. Moreover, concerns are raised about the incorporation of the draft Bill as part of the NSW Budget Appropriation Bills, which means that the legislative changes are not subject to the level of scrutiny that it requires.

It is imperative that the full content of regulations and subordinate legislation are released so that councils can fully understand the implications of the reforms at the local level, and determine the level of impact on infrastructure funding and delivery. Councils need certainty that the reform agenda will not leave Local Government and the community worse off in terms of cost shifting. As it stands it is premature to progress with the legislation while so much of the infrastructure reform agenda remains unknown.

'Local Levy Conditions' for s7.12 Development Contributions Plans

The draft Bill proposes to abandon the s7.12 percentage based approach (s7.12 (1)), in favour of a new 'local levy condition' comprising a capped monetary levy based on the number of additional dwellings in a development or gross floor area in a commercial/retail setting. As noted above, detail on the monetary amount, and other limitations will be provided in forthcoming Regulations and relevant Ministerial Directions.

In the absence of such crucial operational detail, it is very difficult for councils to fully ascertain the implications of the changes on funding streams and respond accordingly. Councils need assurance that the reforms will not impact on long term financial sustainability and capacity to roll out and maintain local infrastructure. There are substantial concerns that the omission of the percentage based approach may have far reaching financial implications for inner city councils such as Randwick City where the majority of DAs are for improvements such as alterations and additions to existing dwellings. By basing the contributions scheme on the number of net additional dwellings it would significantly reduce the scope, type and quantum of DAs that Council could levy contributions from. This in turn could impact upon contributions income streams and the ability for Council to finance infrastructure necessary to meet demands of new development.

The extent of ambiguity within the proposed reforms raises further concerns about Council's own local infrastructure scheme for the Kensington and Kingsford Town Centres (K2K) which has been developed taking into account the specific land use and localised development context. For example, the K2K infrastructure scheme comprises three components: a new s. 7.12 Plan (2.5% of capital investment value), a Community Infrastructure Contribution (CIC) (based on a per square metre rate on the proposed uplift) and an Affordable Housing Plan based on 3% (rising to 5%) of new residential floor space. This three-tiered approach has been underpinned by rigorous modelling and feasibility testing to ensure equitable outcomes for both proponents and the community in terms of infrastructure funding

and its delivery to support expected growth. Without independent economic modelling to support the proposed changes, Council is not assured that essential infrastructure envisaged in the K2K Planning Strategy can be delivered in the precinct under the new proposed infrastructure funding regime.

Council is therefore seeking certainty that the proposed Bill will not undermine specific infrastructure schemes such as the K2K town centres which are based on a fixed percentage levy and which allow for levying of contributions for a variety of residential accommodation including student housing and boarding houses, and not just additional dwellings.

As drafted, the proposed new approach to s7.12 levies raises equity issues across the Metropolitan area, whereby proposals which cost more to develop (such as boutique developments with expensive fittings) would be paying the same fixed levy as lower cost developments. In this context, the current percentage based approach is fairer as proposals pay a commensurate amount in development contributions based on the actual cost of works, with exemptions available for certain specified development.

Land Value Contributions

The draft Bill introduces a new 'land value contribution' charge as a mechanism to enable value capture resulting from rezonings or development. It allows councils to require all land owners in an identified precinct within a contributions plan to pay a 'land value contribution' charge based on a percentage of land area of value. The charge is imposed when the land is rezoned and collected when the land is sold. In terms of administration, this new framework requires the vendor or purchaser to apply for a *land value contribution certificate* from council. The council then determines the contribution in accordance with the regulations and the contributions plan concerned.

Council supports the proposed new mechanism for value capture, noting that it addresses the issue of capturing a portion of the windfall gain resulting from awarding development rights such as through rezonings. Value sharing is a reasonable and equitable approach, allowing the wider community to also benefit from infrastructure investment, site rezoning or development approvals for a high value or more intensive land use and additional development rights to a land owner, which are not available to all land owners.

While the new land value contribution is a step in the right direction, a number of issues are raised for consideration:

- The draft Bill is light on detail on how the value capture charge would be administered and implemented. Clarification is sought on how the funds received would be utilised and allocated ie what types of infrastructure projects would be funded and in which area? It is prudent that any value capture charges received from land sales within the LGA be spent on infrastructure projects within the local or district area, and this should be mandated within the legislation;
- The draft Bill should explicitly state that the land value contribution must be an additional contribution to the local development contributions;
- The value capture mechanism is a new approach to incorporate into Council's development contributions and infrastructure funding framework. As such, there would be an added administrative burden from developing the land contributions area framework and implementing the charge, as well as preparing and issuing land value certificates. It is integral that Government commits adequate resourcing, support and technical assistance if councils are to transition into this new framework.

Regional Infrastructure Contributions

The draft Bill proposes to repeal the provisions of the EP&A Act dealing with special infrastructure contributions (SICs), replacing them with provisions for a new *regional infrastructure contributions* (RICs). RICs are contributions required in respect of development for public amenities or public services (including infrastructure that enhances public open space or the public domain), affordable housing, transport infrastructure, regional or State roads, and measures to conserve or enhance the natural environment. The contributions may be applied to a region or parts of a region, with funds collected in the region to be spent on infrastructure within the region. The Productivity Commission Report indicates that within Greater Sydney, the RIC would be between \$10,000 and

\$20,000 per dwelling, while a contribution between \$10 -\$40 per square metre will be charged for non-residential uses.

While the need for a regional charge to fund regional level infrastructure projects is well understood and acknowledged, the following concerns are raised:

- The introduction of a regional charge on top of the local development contributions levy would place an added financial burden for applicants, particularly for 'mums and dads' who are seeking improvements to their homes. The new charge constitutes cost shifting of contributions income to the NSW State Government;
- There is no detail on where the funds collected for regional infrastructure would be allocated and there is no certainty or timeframes for infrastructure delivery. We contend that any regional infrastructure levies collected must be delivered in the district in which they are collected, in accordance with the district infrastructure priorities outlined in the relevant district plans as well as local plans and strategies. These matters must be embedded in the draft Bill so there is certainty for both proponents and the community that regional infrastructure levies are directed appropriately. This issue is particularly pertinent given our experience in regional infrastructure funding contributions, whereby Randwick City has contributed substantially to the Sydney Region Development Fund over many years, with no funding commitments towards projects directed back to our region or local area;
- There needs to be state level commitment to the timing of contributions to ensure that levies collected are spent on projects in a timely manner and this should be embedded in the legislation;
- Implementing two tiers of infrastructure contributions will be an added complexity to local contributions processes. It would be resource intensive and an added administrative burden for councils (e.g. checking, verifying and levying two types of infrastructure charges, providing advice to applicants). Moreover, the onus would be on councils for the most part in terms of messaging to the local community and other stakeholders about changes to the contributions regime. This highlights the importance of Government commitment in resourcing and guidance for councils in the implementation of the new charge.

Deferral of Payment of Contributions

The draft Bill proposes to extend the timing of payment of development contributions to the occupation certificate (OC) stage beyond the COVID 19 pandemic period. This would formalise the existing temporary arrangements whereby applicants have until the issuing of an occupation certificate in which to pay the development contribution levies. Prior to the COVID 19 pandemic, payment of s7.12 levies were required at the construction certificate stage.

One of the risks with delaying the payment of contributions to Council, is the flow on effects on the timings of infrastructure delivery. The deferral in payment to the OC stage in many instances, can result in payment delays over several years, with consequential impacts on the timely provision of essential community infrastructure. It also places the burden on existing rate payers with infrastructure costs to support new developments until the payments are made.

To address these issues, it is recommended that a level of flexibility be retained in the legislation for councils to determine the timing for the payment of s7.12 levies, rather than the blanket timeline imposed by the State Government which itself is an overreach of power. This would allow councils the opportunity to better plan for infrastructure projects and align anticipated s7.12 income streams with capital works delivery programs.

Review of local strategic planning statement (LSPS)

Council raises concern in relation to the amendment that will bring forward the timing for review of LSPSs from 7 years to "at least every 5 years". The current provisions allow councils to undertake reviews as required within a 7 year window (or earlier if possible) and with consideration to Council's Integrated Planning and Reporting Framework. The amendment is considered unnecessary and is likely to create resource implications for councils.

Yours sincerely

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