

**Submission
No 150**

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

Organisation: Ku-ring-gai Council

Date Received: 15 July 2021

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Ref: S12785 / 2021/194075
15 July 2021

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Chair
Legislative Council Portfolio Committee No. 7 – Planning and Environment
Parliament House
6 Macquarie Street
SYDNEY NSW 2000

Submitted via email following extension to Thursday 15 July 2021

Dear Madam

LEGISLATIVE COUNCIL COMMITTEE OF INQUIRY INTO INFRASTRUCTURE CONTRIBUTIONS REFORMS – DRAFT BILL: *Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021*

Ku-ring-gai Council appreciates the opportunity to contribute some commentary towards the parliamentary inquiry into the *Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021* (Infrastructure Contributions Bill), but notes the very short timeframe for submissions limits the capacity for substantive documentation of the significant impact these reforms are anticipated to have.

It should also be noted that the short period to prepare this submission has not allowed for the formal endorsement of the elected council and arises from the onus and responsibility of staff to defend Council's adopted policies relating to the delivery of infrastructure to support new development - and the community in which it resides. Further, given its timing, the capacity for many local councils to comprehensively respond to this draft, especially in terms of quantifying the potential financial impact, is impacted by end-of-financial-year responsibilities, end of council term reporting obligations, and caretaker provisions beginning in early August.

Ku-ring-gai Council supports the submissions by Local Government NSW and the Northern Sydney Regional Organisations of Council (NSROC) of which it is a member and shares the concerns of the other NSROC Councils which are also experiencing active densification and demographic change.

Principles of Concern

No Council should find its financial position worsened and its capacity to deliver infrastructure to support growth and recovery further constrained.

While an important exercise, the impact of 40+ years of rate-pegging on the infrastructure contributions system cannot be rebalanced in a short timeframe, especially concurrent with an infrastructure driven economic recovery – to which Local Government contributes with major projects of its own. Certainty in cashflow is critical. Rate reform must be undertaken as a separate exercise.

The key principle that existing ratepayers should not have to subsidise the capital additional costs of growth is well-established. Under existing law, the development industry can only be asked to contribute its fair share of the cost (known as apportionment). Rate income, even from new growth, supports only the running of facilities not capital additional delivery. That existing residents should suffer reduced access to parks and facilities while subsidising new residents through increasing rates is unreasonable and unfair. It also acts as a political disincentive to facilitate additional growth.

The contributions of demographic change in urban renewal areas as a driver of infrastructure demand have not been well understood or appreciated by the Productivity Commissioner whose report underpins the proposed changes.

“Development-contingent” infrastructure has not even been defined. The Essential Works List – which pointedly excludes social infrastructure – is to apply to all councils. This negation undermines one of the core principles underpinning the introduction of development contributions into the *Environmental Planning and Assessment Act* at its inception in 1979 as the former section 94.

There is a clear implication that the remodelled s7.12 (rather than s7.11) is intended to apply to all redeveloping brownfield areas (as distinct from greenfield areas) but with proposed caps of \$10,000 for new houses and \$8,000 for new units. These figures are less than half of the twelve year old (2009) \$20,000 cap on s7.11 contributions which has never been inflated (and would be around \$30,000-\$35,000 now if it had been). Contribution rates at these caps are wholly inadequate to supplement the very low per capita access to local parks and playgrounds in established areas where land costs range from \$3,000-\$4,000 per square metre.

Inadequate Consultation

This draft Bill has not been released as an exposure draft for comment as is custom and practice and defers almost all of the detail that would make detailed comment possible to future Regulations, Guidelines and Directions, none of which actually require formal consultation prior to coming into effect.

Ku-ring-gai Council is deeply concerned about the prospect of the immediate impact of swiftly instigated reforms without the opportunity for detailed impact modelling. Preliminary modelling to date undertaken by GLN for all the NSROC Councils¹ indicates significant financial impacts across these areas which are experiencing high levels of high density urban renewal. What this means for the sustained rolling delivery of key infrastructure has not yet been assessed in comprehensive detail.

A full exposure draft of the legislation inclusive of the Regulations needs to be provided for the examination of industry, local government, peak bodies and the community prior to being presented to Parliament together with detailed financial modelling of the impacts with due consideration of the very different rate environment in high density areas where a large proportion of new dwellings are units on minimum rates.

Most significant change to infrastructure contributions since inception

Development contributions have been part of the *Environmental Planning and Assessment Act 1979* since its inception. The (then) *Local Government Act 1919* facilitated only provision of hard infrastructure like roads and limited parkland. Core principles in the intent behind the creation of (then) s94 (now Part 7) of the EP&A Act were to include provision for social infrastructure and to alleviate the onus placed on existing residents of an LGA to subsidise the provision of infrastructure for new residents. The advent of s94 also allowed, for the first time, each and every development that generated a part of a cumulative additional demand for new infrastructure and facilities, to contribute their fair proportion of the whole.

The impact of Local Government rate pegging over the past 40-plus years has increased the reliance on utilising development contributions to fund the capital additional infrastructure that is directly demanded as a consequence of the development of nett additional dwellings – and the direction of rate revenue to their maintenance and running costs.

However, a rebalancing of the relative importance of rate revenue and development contributions over the past 40 years cannot realistically be achieved in the extremely short timeframe which seems to be the intent of this bill without seriously impacting the pace of delivery of local government infrastructure. The on-going delivery of infrastructure by all levels of government, including local government, is a core component of economic recovery in the short term, and supporting sustainable development in the long term.

¹ Please refer to the NSROC submission to this Inquiry for further detail.

The linkage of contributions reform to the reform of rate pegging for population growth undermines the core principle that the existing ratepayer community should not be placed in the position of subsidising the capital additional infrastructure required by new residents and/or suffering a reduction in the access to over-utilised core quality of life amenities and facilities such as parks and playgrounds, libraries and community facilities, and public domain works.

The bill is also premature because so much of its core premise – that a relaxation of rate-pegging can fill the considerable gap occasioned by significant restrictions in development contributions - is still under examination. The IPART Review of the rate peg to include population growth for which a draft report was released on 29 June 2021 and remains on exhibition until 6 August 2021 with a final paper not due until September 2021.

In summary, the absence of any detail in the form of draft Regulations, draft Guidelines or Policy documents, the inferences from various policy references to enforcing an essential works list that currently excludes capital works for community facilities and the undefined term “development contingent infrastructure” suggests this bill has the potential to be, at worst, a reversion to the pre-EP&A Act situation, excluding social infrastructure and placing the burden of subsidising such infrastructure on ratepayers as a whole.

Standardised works and costs

The Bill lays the groundwork for the Government of the day to standardise contributions plans across the state without reference to the needs of the community. The push towards standard works and standardised costs is clear in the Productivity Commissioner’s report and the government’s response to it.

In this context, public domain works have been clearly undervalued as essential infrastructure yet, in densely built-up areas, these provide for streets and civic squares to serve dual recreation and travel purposes in the urban core where access to open space is often limited by low rates of provision and the cost of land. This is the essence of efficiency. Any further reduction in access to local parks and playgrounds cannot be sustained in densifying areas. Intensification of use of limited areas increase load and gives rise to a need for more durable surfaces. These are more costly. Urban renewal areas have seen little evidence to date that standardised costs across greenfield and urban renewal areas appreciate the cost of designing for more intense usage.

The guiding principle that the existing ratepayers should not have to subsidise the additional infrastructure demands of new development and redevelopment – to the standard that is appropriate in the local context - does not appear to have been understood in the context of the Productivity Commissioner’s report and is contrary to the work of the NSW Department of Planning itself in designing for liveability and urban places. It should be noted that high-quality urban environments actually support liveable development and sustain the process of future housing delivery.

Concerns with Key aspects of the Bill

Land value contributions

This passage of the legislation appears to be written with greenfield areas in mind. It is unclear how it could work in practical terms in an urban renewal area. Densifying urban councils like Ku-ring-gai target consolidated land parcels to deliver strategically-placed parks of around 3,000sqm; tiny slivers of linear pocket parks excised from individual multi-unit development sites would not be practical. Since 2012, when the Local Centres LEP was gazetted, [Ku-ring-gai has delivered](#): Balcombe Park in Wahroonga, Curtilage Park Warrawee, Greengate Park in Killara, Cameron Park in Turrumurra, Lapwing Reserve in St Ives and Boyds Orchard Park in Turrumurra. The [Lindfield Village Green](#) in the heart of Lindfield is currently [under construction](#) and land has been acquired to deliver additional parks. Ku-ring-gai has also delivered two links roads: Beans Farm Road and Hanson Way in Gordon – one by adjoining developers under Planning Agreements. Any land value contribution in Ku-ring-gai would have to be made as a monetary contribution to purchase targeted consolidated space. This contribution seems intended to apply as a charge on the land, payable when it is sold. There is no detail available to assess whether “sale” refers to the settlement of an option by the first developer, the

on-sale of the DA-approved property to another developer, or the settlement of units on completion. It is also unclear if it would apply to ordinary houses that happen to have been rezoned R3 or R4 being sold as dwelling houses or deceased estates before there is an interested developer in the picture.

An exposure draft of the Bill together with draft Regulations and other supporting documentation needs to be formally exhibited for comprehensive stakeholder and public examination and submissions before proceeding to gazettal. Again, this Bill is premature and lacks the necessary detail.

Local levy contributions

The current s7.12 (formerly s94A) was instigated as part of the 2005 amendments to allow for a percentage levy contribution of up to 1% of the development cost on smaller or scattered developments (over \$100,000 CIV) where the direct demand for infrastructure was more difficult to define but still generated an indirect demand. This has been re-termed “non-demand” development which is considered to be quite misleading.

In the Ku-ring-gai LGA the indirect s7.12 contribution of just 1% is sought only from smaller-scale development such as knockdown rebuilds and alterations and additions and addresses the indirect demand arising from on-going urban renewal and demographic change. Typical examples, not only in Ku-ring-gai but across the established areas of Sydney, are found in the form of deceased estate cottages of the post-war era being redeveloped into substantial modern family dwellings for much larger households. In Ku-ring-gai, these contributions are put towards intersection upgrades, parkland facilities and upgrades to the public domain in local shopping areas – areas that have taken on new life as the pandemic has emphasised the importance of “local” in the ways we live.

All of the development in the Ku-ring-gai LGA that generates a direct, measurable, demand for pro rata per capita additional works - such as parks and the public domain, community floorspace and increased traffic generation - is levied s7.11 contributions. Only s7.11 contributions can provide adequate funding for any infrastructure that requires additional land because the cost of land in Ku-ring-gai (c. \$3,000+/sqm) severely constrains the capacity to even maintain the current low-level provision of local parks and playgrounds (excluding bushland and ovals) levying at just 2.75sqm/capita. Provision of quality public spaces alongside densification is critical to building sustainable communities which is supported by the NSW Government’s own strategic planning policies.

The current s7.12 iterated above will cease to exist as part of this bill. The new s7.12 in this bill appears to be intended to actually replace the current s7.11 contributions rather than s7.12 - at least in established areas – but negates the capacity to levy a small percentage (1%) from development that cumulatively contributes to demographic change through reconstruction of existing ageing dwelling stock for new families.

The Bill also allows the Minister to limit the quantum of local infrastructure contributions including local levy contributions. The capped amount the Productivity Commissioner has proposed - and the NSW Government has accepted in principle² - for s7.12 contributions is \$10,000 per additional dwelling and \$8,000 per additional unit.

This is less than half of the twelve year old, 2009 Direction that capped many s7.11 contributions at \$20,000 per dwelling - in literal terms let alone what its value would be in 2021 dollars. If urban renewal areas are forced into using s7.12 rather than s7.11 through the onerous restrictions of the essential works list (without social infrastructure) and NSW-wide standardised cost (for which there has been no detail provided) that are intended to apply to s7.11 contributions, then this represents a dramatic reduction in the quantum of contributions that can be sought towards local infrastructure provision.

² **4.11** on page 3 of the *NSW Government Response to the NSW Productivity Commission’s Review of Infrastructure Contributions in NSW*

Government Overreach

Adding to the concerns that local government in middle ring or brownfields areas is not being heard by the NSW Government or the Productivity Commission, there is a real fear of centralisation of power in the Minister of Planning to direct and constrain very detailed aspects of Local Infrastructure Funding.

The bill allows the Minister to direct a Council as to the type and form of contributions that can be levied, to limit the quantum of contributions and to step in and replace a Council's contributions plan as they see fit. It also allows the Minister to determine in what areas a local council may impose a local levy contribution, potentially denying some councils any capacity to levy infrastructure contributions from development with no clear rights of appeal.

This is an extraordinary increase in the powers of the Minister and could, conceivably, be used to target single councils far more directly than general Ministerial Directions. This is a matter of deep concern especially in Ku-ring-gai where we are preparing to deliver the [Lindfield Hub Project](#): a major project on the western side of Lindfield comprising an urban hub with a new library, public domain and parkland and commuter carparking. While the project has budget inputs from a number of sources, the apportioned contributions component remains critical to its delivery. Any sudden change in cashflow would destabilise this project at an advanced stage of planning for delivery increasing the risk of commencing construction in the short term.

Conclusion

This draft Bill has wide-ranging and significant impacts on Local Government's on-going capacity to levy for the delivery of local infrastructure to support growth through development and to support the establishment and upgrading of liveable communities along our major transport arteries.

The potential implications of this draft Bill should not be underestimated and it is critical that they can be fully examined by way of a full exposure draft with supporting draft regulations and policy as well as being economically modelled in detail before legislation is presented to the Parliament. It is counter-productive to de-stabilise local government cashflow to facilitate a development-led recovery with inadequately funded local supporting infrastructure. No council should be worse off as a result of these reforms. No existing communities should be forced to subsidise the measurable, direct infrastructure demands of new development.

Yours sincerely

Director of Strategy and Environment