

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

**Organisation:** Camden Council

**Date Received:** 15 July 2021

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14 July 2021

The Director – Portfolio Committee No. 7  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Dear Cate,

**Re: Camden Council officer submission to the Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021**

Camden Council welcomes the opportunity to provide a submission on the recent Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021.

The NSW Government has accepted all 29 recommendations of the Productivity Commission's Final Report on the *Review of Infrastructure Contributions in NSW*. The proposed Bill seeks to make amendments to the *Environmental Planning and Assessment Act 1979* (the Act) as part of the NSW Government's broader reforms to the infrastructure contributions system.

Accordingly, the submission has been structured to relate to key aspects of the Bill to the relevant Final Report recommendations.

We note that Camden Council received an extension to the submission deadline to 15 July 2021.

**Recommendation 4.1 Develop infrastructure contributions plans upfront as part of the zoning process**

The Bill seeks to amend Section 7.17 of the Act to enable the Minister for Planning and Public Spaces (the Minister) to issue a Ministerial Direction to specify when a contributions plan must accompany a planning proposal.

Council officers support the amendment in-principle as it seeks to ensure that land is not rezoned without the necessary infrastructure planning in place to deliver public infrastructure that is required by an increase in demand resulting from the rezoning. However, concerns are raised in relation to the amendment referring to a "draft contributions plan" with no requirement that the contribution plan be in force concurrently at the time of commencement of the planning instrument that it relates.

Council officers recommend that any draft contributions plan accompanying a planning proposal, as per the proposed amendment Section 7.17(1)(e), be required to be endorsed and come into force prior to, or on the date of commencement of the instrument to which the planning proposal relates.

#### **Recommendation 4.2 Introduce a direct land contribution mechanism, to improve both efficiency and certainty for funding land acquisition**

The Bill proposes to introduce a new section under Subdivision 3A to ensure that existing landowners, that would benefit from a rezoning that results in an uplift of land value, are obligated to make a contribution when they sell their land. The proposed amendments effectively enables a value capture mechanism which is tied to the value of the land.

Council officers support this in-principle, but raise concerns that there is a lack of guidance or information in terms of determining the calculation of a land value contribution, and how it is to be indexed thereafter. There is also a lack of commentary on its relationship with the current Ministerial thresholds that limit the amount a consent authority can levy for new dwellings or lots.

Council officers recommend that further clarification be made in terms of the operational provisions of these amendments. Any future amendments to the *Environmental Planning and Assessment Regulation 2000* (the Regulation) to enable the operational provisions of the proposed Subdivision 3A under the Act needs to be made available for comment and consideration prior to any changes made.

#### **Recommendation 4.9 Encourage councils to forward fund infrastructure, through borrowing and pooling of funds**

In May 2020, the Ministerial Direction *Environmental Planning and Assessment) Local Infrastructure Contributions – Pooling of Contributions) Direction 2020* was issued that enabled councils to pool contributions and apply them progressively to facilitate the delivery of infrastructure. The Bill seeks to include this in the Act without relying on the Ministerial Direction, under the proposed Section 7.3(2).

Section 7.3(2) states, “*Payments required for different purposes may be pooled and applied progressively for the different purposes, including for purposes identified in more than 1 contributions plan applying to the area concerned.*”

Council officers raise concerns that the term “area concerned” is vague and request that clarification be made. It is unsure if the “area concerned” is limited to areas where contributions plans cross-over (but only one contributions plan applies) or whether it is applicable LGA-wide. It should be noted that under the May 2020 Ministerial Direction, the pooling of funds is applicable to the “local government area concerned”.

Accordingly, Council officers recommend that the proposed Section 7.3(2) be amended to clarify that the area concerned is applicable to the whole local government area.

#### **Recommendation 4.10 Defer payment of contributions to the occupation certificate stage**

In June 2020, the Ministerial Direction *Environmental Planning and Assessment) Local Infrastructure Contributions – Timing of Payments) Direction 2020* was issued that enabled councils to defer payment of contributions until prior to the issuing of an occupation certificate (OC). The Ministerial Direction was issued as a response to the COVID-19 pandemic and is effectively in place as a sunset provision. The Bill seeks to introduce permanent provisions to enable the Minister to set the timing of contributions at any time beyond the prescribed period under Section 10.17 of the Act.

Concerns are raised in relation to the impact that this may have on local councils' cashflow and the ability to deliver infrastructure in a timely manner. Permanent deferral of contributions payments to be made prior to issue of an OC will delay the provision of essential community infrastructure. This will particularly affect local councils that do not have the financial capacity to forward fund projects and that would depend on these costs to be recovered at a later stage.

There is also increased risk that councils will be burdened by a shortfall due to unpaid contributions arising from private certifiers issuing OC's before a contribution requirement is fully satisfied. The burden of enforcing payment prior to OC will likely fall onto council with a high risk of revenue loss.

Council officers object to the permanent deferral of contributions payments to OC stage for the reasons outlined above.

#### **Recommendation 4.11 Increase the maximum rate for section 7.12 fixed development consent levies**

Section 7.12(5) of the Bill seeks to broaden the scope of the Regulation in determining the calculation for contributions under Section 7.12.

Whilst Council officers welcome the opportunity for the scope to increase the maximum amount of a levy that may be imposed, clarification is requested in terms of the Regulation amendments to achieve this. It is recommended that any proposed amendments to the Regulation be made available for comment and consideration prior to any changes being made.

#### **Recommendation 4.12 Planning agreements consistent with the principles-based approach**

The Bill seeks to require that a proposed planning agreement, including any amendment or revocation of planning agreement, be publicly exhibited for a minimum period of 28 days.

This is already in practice, based on Clause 7.5(1) of the Act, with the only noticeable difference being the use of terms of “public exhibition” rather than “public notice”.

Council officers support the amendment.

Furthermore, Council officers support the removal of the requirement for hard copies of planning agreements to be made available to the public given that they will be made available online.

**Recommendation 5.1 Adopt regional infrastructure contributions, Recommendation 5.3 Adopt transport contributions for major projects, Recommendation 5.4 Create a new category of contributions specific to biodiversity**

The Bill seeks to introduce Regional Infrastructure Contributions (RICs) to replace Special Infrastructure Contributions (SICs). Parts of the Camden Council LGA is currently captured within Western Sydney Growth Areas SIC.

The proposed amendments are supported in-principle, however, Council officers seek further clarification in relation to the transitional arrangements to be made under the Regulation, based on proposed Schedule 4 Part 1 provisions.

Clarification should also be sought on the definition of the Region, i.e. a contribution collected from Leppington been attributed to infrastructure in the Airport area does not directly benefit Leppington residents. At the minimum, there needs to be a nexus test. This is requested in light of Section 7.28. With the proposed application of RICs being required under a State environmental planning policy (SEPP), it is imperative that Council is consulted prior to introducing a RIC.

**Recommendation 6.1 Develop and implement a centralised contributions digital tool**

Section 7.18(2) of the Bill requires that a contributions plan be prepared in accordance with the Regulation and Ministerial directions. This essentially seeks to build upon existing ePlanning provisions.

Council officers support the amendment.

**Recommendation 6.5 Better synchronise state and local strategic planning frameworks**

The Bill seeks to review timeframes for local strategic planning statements to be changed from seven to five years to align with review requirements for State infrastructure strategies and regional plans.

The proposed timeframe is supported as it aligns with the typical review of contributions plans of five years.

## Conclusion

Camden Council welcomes the review of the current infrastructure contributions framework.

Upon review of the Bill, it is clear that there is a lack of detail in terms of the operational application of the proposed provisions. There is a strong reference to the Regulation, however no proposed amendments to the Regulation were provided nor accompanied the Bill. It is reiterated that any proposed amendment to the Regulation needs to be provided for comment and consideration prior to any change being made.

Yours sincerely

Tina Chapell  
**Director Sport, Community and Activation**