

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

Organisation: Bayside Council

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15 July 2021

The Hon Cate Faehrmann MLC
Chair, Parliamentary Inquiry into Infrastructure Contributions Reforms
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Ms Faehrmann

Re Parliamentary Inquiry into Infrastructure Contributions Reforms

The Bayside Local Government Area (LGA) is a complex environment which contains infrastructure that is integral to the functioning of Greater Sydney and Australia. Bayside has seen consistent strong growth in residential development, employment activity related to sea port and airport uses, and increasing freight activity through the vital road and rail corridors that are contained within the LGA.

The above characteristics bring both constraints and opportunities that must be considered when planning for future growth, particularly in terms of the provision and maintenance of infrastructure. Funding for infrastructure is increasingly challenging for Bayside, as a high-growth LGA. Developer contributions are necessary to fund the infrastructure required to minimise pressure on existing services that results from intensification. An increase in infrastructure contributions, combined with rate peg reform, is necessary to deliver the infrastructure required to service future community needs.

Bayside Council welcomes the opportunity to provide a submission in response to the Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021 (the Bill). Whilst a review of the current contributions system is required, Council is of the view that many of the changes proposed in The Bill are likely to leave local government and the community worse off. Council does not support The Bill in its current form and takes the view that further consideration of the economic impacts and consultation with key stakeholders and the community is required.

Background

On 3 August 2020, Bayside Council prepared a submission in response to the *Review of Infrastructure Contributions Issues Paper* ('Issues Paper'). In the submission, a number of matters were raised with the expectation that the review would result in an increase to local government revenue to pay for necessary infrastructure, without causing any additional strain on community resources. One key issue raised was that the delayed payment of contributions would be problematic for the timely delivery of community

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infrastructure. Additionally, it was requested that consideration be given to expanding the essential infrastructure list to include all open space embellishment, indoor sports facilities and the construction of community facilities.

The Bill

Bayside Council's key matters of concern are summarised below and explored further in the submission:

1. The lack of consultation with local government and the community
2. Insufficient evidence provided to justify the Bill
3. The relationship between the Bill and the other proposed reforms
4. Reliance on Rate Peg reform to close the funding gap
5. The loss of Council revenue from changes to s.7.11 Contributions, s.7.12 Contributions, and permanent deferral of contribution payment
6. The uncertainty surrounding the Regional Infrastructure Contributions
7. The negative impacts to community amenity, perceptions of the planning system, and the hindering of economic productivity
8. Solutions to obstacles that prevent Council accessing contribution funds

1. Consultation

The changes proposed within the Bill have not been through a process of public consultation. The breadth and significance of these changes to economic activity, residential amenity and the ability of local government to provide infrastructure should be recognised as requiring genuine consultation that should not be rushed.

2. The Evidence Base

Council recognises that the planning and contributions system in NSW is complex and in need of review to ensure that infrastructure can be better delivered to sustain a growing population and economy. Bayside supports the intention to support economic growth through encouraging development.

However, much of the content contained within The Bill is derived from strategic direction that has not been justified through demonstrated economic modelling. This alone should be enough to pause the progression of this Bill and ensure that a detailed review of potential impacts is undertaken.

Additionally, there is insufficient detail relating to aspects of this Bill such that Council to fully understand how this will impact the Bayside. For example, there is little detail as to how Land Value Contributions (and other items which appear to be more skewed to support development in green-field areas) will impact infill areas.

3. The relationship between The Bill and other proposed reforms

Bayside Council is concerned with the lack of consideration of the Bill in relation to the suite of proposed changes to the planning system, such as the reforms to Complying Development, Employment Zones and the Rate Peg. These proposed reforms do not seem to have been considered holistically and there may be unintended consequences as a result.

4. Rate Peg Reform

There has been no analysis of how the proposed changes will interrelate with proposed rate peg reform. Bayside Council supports rates revenue growth to align with increasing population, however, there is concern that the benefits of the proposed changes will be largely offset by a reduction in revenue from contributions and planning agreements.

Bayside Council prepared a submission in response to IPART's *Review of the Rate Peg to include Population Growth*. This submission highlighted the need to recognise the demand for improved service provision and the need for increased service capacity in local infrastructure. For infill councils, such as Bayside, the demand on community assets like parks, open spaces, libraries, sports fields, and pools is significantly greater due to the almost all new dwellings being apartments. Additionally, existing land constraints and the very high cost of acquiring land further restrict Council's ability to fund the necessary infrastructure for a growing community.

Population density also creates an ongoing need for maintenance of existing infrastructure. Bayside conducted a high-level analysis of average ordinary rate per capita vs average operating cost per capita for the 18/19 and 19/20 financial years and identified an existing deficit. The rates paid for each new dwelling do not cover the recurrent costs of providing services to the new residents. Pegging rates at a level below inflation worsens the shortfall over time.

5. Loss of contributions income and the creation of new obstacles

Section 7.11 Contributions

Council notes that much of The Bill does not reflect what was initially proposed in the Issues Paper. For example, it was proposed in the Issues Paper that the "trigger threshold" for the IPART review of plans would be increased. However, the Productivity Commission's recommendation for this to be restricted to development contingent infrastructure only was not communicated. Council also did not anticipate that the NSW Government would accept the proposal to remove further non-development contingent items from the Essential Infrastructure list.

It is also proposed that IPART determine the infrastructure to be listed on the Essential Works list, however, a review of the existing list has not yet been undertaken by IPART. There is insufficient detail to calculate the financial implications of these changes.

Section 7.12 Contributions

The Bill proposes that S7.12 contributions are to be levied when there is an increase in floor space. This creates difficulty in infill areas such as Bayside Council, where intensification can occur without an increase in floor space. This will add pressure to existing services without the provision of funding to enable Council to maintain and upgrade infrastructure to meet growth.

Benchmarked costs for contribution plans

There has been no detail provided to enable Council to understand the financial impacts of this aspect. It is unclear if these benchmark costs will be set for individual councils, and if they will consider the higher construction costs, land values and development complexities which arise when proving new facilities in established infill areas.

The Permanent Deferral of Contributions Payments

This approach contradicts the intended purpose of development contributions, being to ensure that infrastructure is delivered at the right time. If funding is delayed, necessary infrastructure will not be in place for new residents. It is likely that by removing the financial obligation to developers, the provision of infrastructure may slow down as councils attempt to minimise debt. As with other items in this Bill, a lack of modelling has been provided to support permanent deferral.

Further, additional risk that should be borne by the developer is passed on to councils, who also be burdened with the additional cost of managing compliance.

6. Regional Infrastructure Contributions

In 2018, Bayside Council provided a submission to the Department of Planning and Environment regarding the Bayside West State Infrastructure Contribution (SIC). This submission raised a number of issues surrounding the limited information about SIC governance arrangements between the Department and Bayside Council. A summary of key issues at the time are outlined below:

- Insufficient detail regarding the timing of infrastructure delivery
- Insufficient detail regarding the governance arrangements associated with SIC funding, the scope of each deliverable and the allocation of responsibilities.
- Council requested clear guidelines and information about arrangements from the Department so that the necessary infrastructure could be delivered.

Bayside Council has not yet received this information from the Department, and so is not able to consider the changes proposed in the Bill in their full context.

7. Impacts to the community

The loss of amenity and confidence in planning

A key concern to Bayside is the implication that this Bill will have on the quality of amenity for local residents, as the ability for Council to provide infrastructure will be impacted either by delay, or may not be provided at all due to lack of funding.

As residents experience a decline in services and facilities, the community confidence and trust in the planning system will diminish.

Community opposition to new and increasingly denser development is already a challenge for Bayside. If essential services and facilities are delayed in conjunction with increasing development, this may further restrict the ability for council to meet the required dwelling targets that have been set by the State Government, due to community opposition to any new development.

The lack of community consultation on this Bill, as well as the direction for contributions to be managed by the treasury, will further negatively influence public perception of the planning system.

Cost Shifting

Bayside Council is concerned that reducing the infrastructure contributions for developers and a redirection of this funding source through a rates increase is shifting the cost of infrastructure from the developer to the existing community. This approach unfairly burdens those existing ratepayers who contribute to the cost of but will most likely not benefit from the new infrastructure because they do not live nearby.

It is increasingly difficult to fund infrastructure for local government. Bayside Council maintains the view that infrastructure must be funded from a combination of both a rates increase, and an increase in developer contributions. Additionally, Bayside Council requests that the NSW Government assist in the provision of infrastructure where possible, as certain financial responsibilities have been increasingly passed from State to local government, without the provision of additional assistance.

There is currently not a mechanism in place to equitably distribute the uplift in land value when it is made available for development. The current contributions framework goes some way to ensuring that the owner/developer passes on some of the windfall to fund infrastructure required to support their new development, however, a disproportionate amount of the financial gain is realised by individuals. Changes to the system should not exacerbate this by shifting more of the burden for providing infrastructure on to the existing community.

The potential disruption to economic productivity

Bayside Council is concerned at the significant impact that this Bill will have on the local and State economy. There are two major trade gateways located within the Bayside LGA, being Port Botany and Sydney Airport. These gateways are supported by industrial and employment areas and maintaining and improving infrastructure within these areas is critical for their ongoing productivity. Transport infrastructure is particularly important for logistics operations, and there is risk that the proposed Bill will create additional obstacles which slow the provision of essential upgrades required to support economic activity.

8. Proposed Solutions – accessing current contribution balances

Bayside Council recognises that distributing finite amounts of funding is difficult, particularly when there are so many viable projects and upgrades which require support. Bayside Council also understands that this is a complex matter and is eager to work with NSW Government to find new solutions that will make better use of existing avenues of funding, to lessen the burden on the community and industry.

Bayside Council holds a substantial balance of developer contributions. However, much of this is difficult to access under the current principles of apportionment. As there are challenges in sourcing funds for infrastructure, Council is essentially locked out of accessing contributions and is therefore limited in its ability to support and encourage development within the Bayside LGA.

Consider this example:

Council has a contributions balance of \$300M. If the apportionment between the existing and new community is for a new or upgraded community facility is, for example, a 50% each, Council would need to find another \$300M from other sources to facilitate the spending of its contributions balance.

If Council is unable to source the funds to match this balance, the scheduled work is unable to proceed.

A proposed solution to this issue, would be for the State Government to consider a mechanism of apportionment that recognises land owned by the existing community as its contribution, so that new works can be funded 100% from the developer contributions. This would be beneficial to the community and developers, whose contributions would be used to provide the intended infrastructure to support and enhance.

Another opportunity to better use contribution funds, would be to allow councils to transfer an accumulated balance from S7.11 contributions plans into a S7.12 levy plan. This would then remove the requirement to match funds and removes the obstacle that delays or prevents the timely delivery of works.

Conclusion

Bayside Council urges State Government to withdraw the Bill and consider the long-term impacts of the recommendations on public life and economic activity, particularly in relation to other planning reforms. Consultation and economic modelling must also be conducted to ensure that this Bill is representative and based on sound evidence.

Due to the short window of opportunity to make this submission, it has not been before the elected Council for consideration. The content is, however, based on and consistent with submission made previously by Council on this subject matter.

Yours sincerely

Meredith Wallace
General Manager