

Submission  
No 5

**INQUIRY INTO ENVIRONMENTAL PLANNING AND  
ASSESSMENT AMENDMENT (HOUSING AND  
PRODUCTIVITY CONTRIBUTIONS) BILL 2023**

**Organisation:** City of Sydney Council

**Date Received:** 7 June 2023

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Sue Higginson, MLC  
Chair  
Portfolio Committee No. 7 – Planning and Environment  
NSW Parliament Legislative Council

Via: <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/lodge-a-submission.aspx?pk=2962>

Dear Sue,

**Submission on the Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023**

The City of Sydney Council (the “City”) sees merit in a new State-based infrastructure contribution framework that guarantees new infrastructure contributions are used to support growing neighbourhoods and commercial centres. **The City’s support, however, is predicated on there being no adverse impact on the operation or viability of councils’ local infrastructure contribution frameworks and affordable housing programs.** The City seeks the Government’s continuing assurances in this regard.

The City considers the Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023 (“the HAP Contributions Bill”) an improvement on its predecessor, the Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021. **The City welcomes the fact that the HAP Contributions Bill does not contemplate changes to local infrastructure legislation, and that no changes are proposed which would allow the deferral of payment of local contributions until the point of occupation of a development.**

The continuation of the status quo with local infrastructure contributions will ensure that councils can continue to provide the right infrastructure at the right time to meet the needs of their resident, worker and visitor populations.

The City wishes to highlight the following areas of concern with the HAP Contributions Bill and recommends that amendments be made to make the proposal fairer, more transparent, and better positioned to deliver NSW’s growing communities the infrastructure they need.

**1. The Region sizes are far too large and challenge the principle of nexus**

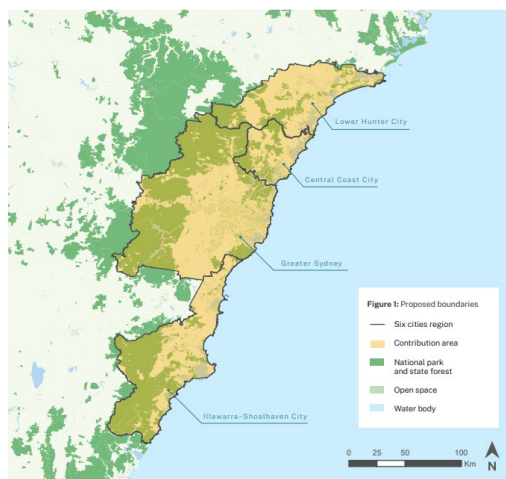
Infrastructure planning in NSW has long been based on the principle of nexus – where new development contributes towards the cost of infrastructure that will meet the additional demand it generates and benefits from. The proposal to apply a broad base charge across a huge geographical area means that there may be very little relationship between where a HAP Contribution is collected and where it is spent. This can be unfair

to communities, particularly high density communities which will be required to make the most HAP Contributions, but risk not seeing these contributions converted into infrastructure investment near them as a result of the large geographical regions proposed.

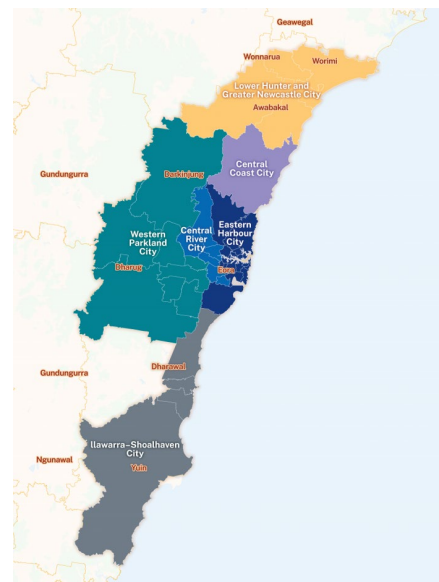
The City maintains this specific concern raised with the previously proposed Regional Infrastructure Contribution (RICs) – that the Greater Sydney region is too large. This region stretches from the East Coast across to the Blue Mountains in the west, and then from the Hawkesbury River in the north down as far south as Picton. For example, it is not fair that infrastructure dollars paid in a high density community such as Green Square could be spent as far away as the Blue Mountains, rather than on infrastructure to support the growing Green Square community.

The City recommends further refinement of the Greater Sydney region so that it is divided according to the three cities for this region identified within the Greater Cities Commission Act 2022. These are the Eastern Harbour City, the Central River City and the Western Parkland City. This way, HAP fund spending can be informed by District Plans and stronger nexus between development and infrastructure could be achieved.

See **Figures 1 and 2:**



**Figure 1:** The City is concerned with the proposed size of the Greater Sydney Region, where HAP Contributions paid by developments in the City could potentially be spent on infrastructure as far away as the Blue Mountains.  
Source: NSW Government Housing and Productivity Contribution Guide, May 2023.



**Figure 2:** The City recommends that the Greater Sydney region be divided into a further three cities, as per the Greater Cities Commission Act 2022. This would result in a better connection between where HAP contributions are collected and spent on infrastructure.  
Source: <https://www.nsw.gov.au/building-our-way-forward/what-were-building/six-cities-vision>

## 2. No feasibility modelling has been published for HAP Contributions

In its submission to the NSW Government on the previously proposed RICs, the City raised concerns about the feasibility of the proposal and highlighted flaws in the feasibility analysis undertaken. It is therefore of concern that the reworked proposal has been put forward in the Bill without the publication of any supporting evidence to indicate that this new contribution will not adversely impact on the feasibility of development.

In the HAP Contribution Bill's first reading, the Minister for Planning and Public Spaces said *"Modelling by Planning and Treasury indicates that this new system will have a negligible impact on the feasibility of development projects and represents a tiny fraction of the land value uplift arising from the right to build additional dwellings."* This modelling has not been publicly released. This modelling and any phase in affecting the modelling should be published, particularly given the current housing supply crisis where any potential feasibility issues may negatively impact on housing delivery.

It is critical that the proposed HAP Contributions also do not prejudice councils' ability to continue to collect local infrastructure contributions now or in the future, nor councils' ability to enter into voluntary planning agreements with developers.

### **3. Funding "recurrent expenditure" for regional infrastructure**

Noting that development contributions cannot be used to fund maintenance or ongoing costs associated with local infrastructure, it is of interest that section 7.24(2)(c) of the HAP Bill proposes to permit the provision of regional infrastructure *"by funding recurrent expenditure relating to providing the regional infrastructure"*.

Clarification is needed in relation to what "funding recurrent expenditure" means in relation to regional infrastructure. There is the potential for these to be significant costs associated with recurrent expenditure on infrastructure items.

### **4. Governance and transparency**

The City acknowledges that the governance arrangements for the HAP Contribution appear more robust and transparent than those proposed for the previous version of this state-based infrastructure contribution (RICs) which is welcome.

The City supports the development of Infrastructure Opportunities Plans for each of the regions, albeit with the recommendation for the Greater City region to be divided into another three cities (See section 1 of this letter). The City notes that councils will be well placed to review infrastructure opportunities identified in these Plans and provide input to the shortlisting of projects for funding priorities. The establishment of a Special Deposits Account for the purpose of collecting HAP funds is appropriate.

In the same way as councils are required to keep a publicly accessible development contributions register; the NSW Government should also be required to keep a public register relating to all consents where a HAP Contribution condition has been applied. This register should contain details of each development application and complying development certificate a HAP Contribution is payable for, the amount payable and document when contributions have been paid. While ensuring transparency, it would also provide the NSW Government with a useful tool to ensure compliance with HAP Contribution conditions.

Councils are also required to keep accounting records for development contributions which identify all contributions received and provide details on the total amounts spent in accordance with the local contributions plan. Councils' annual reports must also disclose how development contributions have been used or expended each year. It is appropriate for the NSW Government to also keep and publish accounting records in relation to HAP Contributions which details how they are spent. This will ensure that there is public visibility on how HAP Contributions are being allocated and spent.

## **5. Deferral of contributions payment to Occupation Certificate stage would exacerbate infrastructure lag and set a dangerous precedent**

The current proposal is for the HAP Contribution to be paid before a Construction Certificate or Subdivision Certificate is issued for a development. The City supports this approach as it assists in ensuring that infrastructure is delivered in a timely manner.

The City understands that there are calls from within the property industry for the deferral of payment of HAP Contributions until the Occupation Certificate stage of a development - this being the point in time when a development is ready to be occupied.

The City would be strongly opposed to any proposal to allow payment of HAP Contributions at the Occupation Certificate stage. If HAP Contributions are payable at Occupation Certificate stage, then the funding will be received too late to ensure that regional infrastructure is delivered and operational when occupants of new developments move in. Infrastructure lag behind new development is already a long held concern by the property industry, and a key challenge under the current infrastructure system. These problems would inevitably be exacerbated if HAP funding is only received after populations have increased.

The deferral of payment from Construction Certificate stage to Occupation Certificate stage would bring with it a risk of delinquency by developers and private certifiers, as there is no strong incentive for them to ensure payment at Occupation Certificate stage. Even if the NSW Government were to put in place measures to address this risk, in the City's experience that a small number of developers and private certifiers fail to properly attend to their obligations. The NSW Government, and ultimately, its communities, would lose out if contributions are not paid and subsequently essential infrastructure is not delivered. The benefits of contributions would be eroded by Government expenditure on compliance.

The City considers that if the NSW Government were to allow payment of HAP Contributions at the Occupation Certificate stage, this would set a dangerous and challenging precedent for the same to occur with local infrastructure contributions. The previous Government's Covid-19 related Direction allowed the deferral of millions of dollars in local infrastructure contributions which the City has still not received. Any plans to reintroduce such a measure would be met by strong opposition from the City.

Should you wish to speak with a Council officer about the above, please contact Ben Pechey, Executive Manager Strategic Planning and Urban Design, on \_\_\_\_\_ or at \_\_\_\_\_

Yours sincerely,

**Graham Jahn** AM LFRAIA Hon FPIA  
**Director**  
City Planning | Development | Transport