

**Submission  
No 17**

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

**Organisation:** Local Government NSW

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## **Draft submission**

# **Parliamentary inquiry into the Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023**

June 2023

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## Introduction

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

LGNSW welcomes the opportunity to make a submission to the parliamentary inquiry into the Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023 (Housing and Productivity Contributions Bill).

LGNSW has advocated for some years that the infrastructure contributions system requires a review to reduce its complexity and improve transparency. LGNSW notes that this Bill introduces a new state contributions regime to help fund regional infrastructure that supports and promotes housing and economic activity. It is proposed to come into effect from 1 October 2023.

To meet the consultation timeframe, this submission remains in draft form until endorsed by the LGNSW Board. Any revisions made by the Board will be forwarded as soon as possible.

## Opening

LGNSW appreciates and thanks the Minister for Planning and Public Spaces, the Hon. Paul Scully MP, for his positive and constructive engagement with LGNSW on the Bill and his willingness to be open and transparent about the intent of the Bill and to understand and consider any questions raised by our sector.

LGNSW also acknowledges the efforts of representatives from the crossbench and the Opposition to understand the local government sector's views on this proposed reform.

LGNSW welcomed the pause on the progress of the 2021 reform package and has appreciated engagement by the NSW Department of Planning and Environment (DPE) with LGNSW and councils to understand the local government sector's concerns.

It is evident that previous feedback from the local government sector has been heard, with this Bill including the following notable improvements compared to the reforms proposed in 2021:

- The Bill includes specific provision that local contributions collected by councils will not be affected by this new scheme<sup>1</sup>.

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<sup>1</sup> New section 7.23

- The Bill requires infrastructure funded through its contributions to be located within the region from which a contribution is collected<sup>2</sup>. (The only exception to this being in relation to strategic biodiversity approvals<sup>3</sup>.)
- The Bill incorporates stronger and more transparent governance arrangements:
  - Greater focus on strategic planning priorities - the Minister confirmed this in the [Second Reading Speech](#): *For money to be paid out of the fund, it must be in either a State strategic plan or the State Infrastructure Strategy prepared by Infrastructure NSW.*
  - A whole-of-government approach to infrastructure investment and provision to better align infrastructure investment with land-use planning and development<sup>4</sup>.
- The Bill will not require contributions from those who are replacing their existing home (knock-down and rebuild) or building secondary dwellings (granny flats) that are carried out under the Housing State Environmental Planning Policy (SEPP).
- The NSW Government has foreshadowed that the Bill will fund a grant program for councils to seek funding to deliver local infrastructure that may service a catchment that is beyond their local area.

## LGNSW position

LGNSW **does not oppose** the Bill introducing a more consistent framework for broad-based infrastructure contributions for state infrastructure.

This support is subject to councils being able to continue to levy their own local developer contributions. The Minister for Planning and Public Spaces, the Hon. Paul Scully MP has confirmed the government has no plans to change this, noting:

*This bill makes it clear up-front... that the new scheme will not affect the local infrastructure contributions currently paid to councils.*<sup>5</sup>

LGNSW **welcomes** the government's commitment that the Bill does not propose to make changes to local infrastructure contributions collected by councils. Ensuring local government has access to ongoing funding through infrastructure contributions is critical to assisting councils to provide the local infrastructure needed to support their growing communities.

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<sup>2</sup> New section 7.24(5)

<sup>3</sup> The Bill would permit contributions collected from one region to be used to fund biodiversity offsets sourced from outside the region to facilitate development within it. While LGNSW seeks for offsets to be secured in the same area where the impact occurs, this is increasingly challenging to achieve in urban areas in particular. Pages 27 and 28 of [LGNSW's draft submission to the Statutory Review of the Biodiversity Conservation Act 2016](#) provide more detail on this matter, and it is hoped that the statutory review, which is currently underway, will remedy these concerns.

<sup>4</sup> DPE guide: [Housing and Productivity Contribution](#), p 10

<sup>5</sup> [Second Reading](#) 23 May 2023

Confirmation from DPE that councils will not be required to collect these funds on behalf of the State Government has also been appreciated.

LGNSW also **welcomes** the \$1 billion in grant funding over 10 years to help councils deliver larger and better local infrastructure, such as regional parks and sporting facilities, to tackle the immediate and long-term challenges of building more public infrastructure. Further clarification is needed on governance arrangements for these grants. For example, how will the funds be distributed, and will these grant opportunities be confined to councils within the four regions from where the contributions are collected?

LGNSW **welcomes** state infrastructure being linked to supporting housing and productivity growth.

LGNSW **supports** the Bill's improved transparency and governance arrangements for funding decisions.

LGNSW **recommends** that councils are consulted on setting and changing regions for allocation of contributions under this Bill.

## Role of infrastructure contributions

In general terms, infrastructure contributions are made by developers to help deliver the infrastructure needed as communities grow. They are a means of financing public infrastructure that is required as a direct or indirect result of new development. They are provided in the form of monetary contributions, the dedication of land and/or the provision of capital works.

This is based on a long-standing impactor/beneficiary pays principle of the existing planning system. That is, new development makes a contribution towards the cost of infrastructure that will meet the additional demand it generates and benefits from.

At a local scale, councils rely on development contributions to fund new infrastructure to support population growth and new development. Local government infrastructure responsibilities include local road, bridge, pedestrian and cycle networks, local water and sewerage utilities, stormwater and water management, buildings and facilities, regional airports and aerodromes, public domains, parks and open spaces, recreation, cultural, family and community services facilities, and a range of other infrastructure vital to local communities and important for creating liveable communities.

Council contribution plans are generally limited to the initial costs of providing this infrastructure. The ongoing life cycle costs of managing and maintaining infrastructure are not typically included in these plans and are generally funded through rates and other income streams.

## Specific comments on reform package and provisions in the Bill

### Defining regions for the collection and expenditure of contributions collected under this Bill

As the proposed framework is set out, the Bill allows the Minister for Planning and Public Spaces to set a contribution within a region or part of a region by Ministerial planning order, which is made publicly available on the NSW Planning Portal. The Ministerial planning order is required to specify the region, or part of the region, to which the housing and productivity contribution applies<sup>6</sup>.

While the current proposal is for the contributions to apply in four regions<sup>7</sup>, the consultation process for defining any new region(s) for this levy is unclear and there is nothing in the Bill that would prevent a future minister or government expanding the fund to other regions without consultation or public scrutiny. LGNSW would like greater clarification of how councils will be consulted. As the closest level of government to the community, councils can provide important local context on infrastructure needs and where development pressures are being most keenly experienced.

LGNSW recommends that councils and communities are consulted on setting and changing regions for allocation of state-based contributions under this new scheme. Any changes to the regions where the housing and productivity contributions scheme applies or any future expansion of the regions to which it applies should be subject to consultation with councils and communities through a public consultation process.

**Recommendation 1:** That the NSW Government provide a commitment to ensuring that councils are consulted on setting and changing regions for allocation of contributions collected under the new housing and productivity contributions scheme.

**Recommendation 2:** That changes to the regions where the housing and productivity contributions scheme applies or any future expansion of the regions to which it applies should be subject to consultation with councils and communities through a public consultation process.

### Replacement of SICs and transition to new scheme

The Bill contains savings and transitional provisions<sup>8</sup> for continuation of special infrastructure contributions ('SICs') that have been determined and required before the introduction of the new housing and productivity contributions scheme (see substituted Schedule 4 of the EPA Act).

In the majority of cases a 'region' referred to in this Bill will be a greater land area than what has been typically the case for land affected by the existing SICs. Understandably, this has

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<sup>6</sup> New section 7.26(1)(c)

<sup>7</sup> DPE guide: [Housing and Productivity Contributions](#), p 5

<sup>8</sup> See substituted (new) Schedule 4 of the EPA Act

raised questions about transitional arrangements from a number of councils that have SICs over development in their LGAs. They are concerned that SIC funds currently allocated or anticipated for certain infrastructure in their area could be diverted elsewhere.

Clarification of this aspect of the transitional arrangements is necessary to provide certainty to all stakeholders as to whether funding for infrastructure identified in a SIC would be guaranteed (subject to the development proceeding) under the new housing and productivity scheme.

**Recommendation 3:** That the transitional arrangements include a guarantee that (subject to the development proceeding) infrastructure identified in an existing SIC plan will be funded under the new housing and productivity scheme.

### **Governance and transparency of expenditure**

Local government is subject to a highly regulated and transparent framework as part of preparation of its local contribution plans. It is arguable that similar transparency should apply to state and regional infrastructure funding. This should include publication of information about the quantity of funds collected from particular regions, the development that has resulted in these contributions, and the infrastructure the funds are being directed towards.

The DPE's guide<sup>9</sup> outlines a proposed governance framework which includes:

- Infrastructure Opportunities Plans
- Urban Development Program
- Urban Development Program Oversight Committee
- Government Coordination Group

The framework outlined in the DPE guide suggests that information about infrastructure priorities and expenditure under the housing and productivity scheme will be publicly available. Further details about this aspect of the scheme would be welcomed.

### **Proposed \$1 billion grant fund for councils**

The framework recognises that some of the infrastructure that local councils provide functions at a district or regional scale and may not be fully funded through councils' local contribution plans. In his [second reading speech](#) for the Bill, the Minister noted that an additional \$1 billion will be available over the next 10 years in grant funding to help councils deliver larger and better local infrastructure, such as regional parks and sporting facilities, to tackle the immediate and long-term challenges of building more public infrastructure.

The Bill itself does not provide detail on these grants. More detail is needed to understand how the grant process will work, what the criteria will be, how grant funds will be prioritised and

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<sup>9</sup> Page 10-11



whether the funds collected under the housing and productivity contributions will be limited to councils within the four regions from where they are collected. LGNSW has long called for governments to commit to fairness, transparency, integrity and certainty of grant funding to councils.<sup>10</sup>

### **Role of councils and LGNSW under the proposed scheme**

LGNSW understands councils will be able to make submissions on the regional infrastructure that should be funded, by being involved in the development of Infrastructure Opportunities Plans. These will outline 0–20-year growth expectations and infrastructure projects (the ‘long list’) that will be eligible for funding for each Housing and Productivity Contribution region.<sup>11</sup>

The plans will be developed through an Urban Development Program coordinated by the DPE that includes state agencies, councils and industry, drawing from strategic planning. The Urban Development Program will provide forums for stakeholders to discuss the growth challenges for the regions where the Housing and Productivity Contribution will apply.

The opportunity for councils to input to this process is welcomed and LGNSW looks forward to understanding more details about how this will work in practice.

LGNSW welcomes its inclusion on a proposed new Oversight Committee, along with representatives of peak industry groups and key government agencies.

### **Conclusion**

LGNSW acknowledges the challenges involved in improving the infrastructure contributions system while balancing the interests of all stakeholder groups. As history has shown, these are important and complex reforms. LGNSW has welcomed the opportunity to talk with the Minister and senior departmental staff to understand more about what is proposed and to ask them to consider and respond to any questions from the sector.

### **Summary of recommendations**

In summary, LGNSW makes the following recommendations:

**Recommendation 1:** That the NSW Government provide a commitment to ensuring that councils are consulted on setting and changing regions for allocation of contributions collected under the new housing and productivity contributions scheme.

**Recommendation 2:** That changes to the regions where the housing and productivity contributions scheme applies or any future expansion of the regions to which it applies should

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<sup>10</sup> [LGNSW Submission to Inquiry into NSW Government grant programs.pdf](#)

<sup>11</sup> DPE guide: [Housing and Productivity Contributions](#), pp 10-11

be subject to consultation with councils and communities through a public consultation process.

**Recommendation 3:** That the transitional arrangements include a guarantee that (subject to the development proceeding) infrastructure identified in an existing SIC plan will be funded under the new housing and productivity scheme.

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LGNSW would welcome the opportunity to assist with further information during this Inquiry to ensure the views of local government are appropriately considered.

To discuss this submission further, please contact Strategy Manager Planning, Jane Partridge at \_\_\_\_\_ or on \_\_\_\_\_.