

**Submission
No 3**

**INQUIRY INTO ABILITY OF LOCAL GOVERNMENTS TO
FUND INFRASTRUCTURE AND SERVICES**

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Standing Committee on State Development
Parliament House
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INQUIRY INTO THE ABILITY OF LOCAL GOVERNMENTS TO FUND
INFRASTRUCTURE AND SERVICES

Having worked in Local Government, it is clear that there are significant funding shortfalls. These are likely to be accentuated by the additional development density facilitated by the proposed diverse and well-located housing planning reforms. My submission pertains specifically to the Section 7.11¹ development contribution caps which form an important income stream for councils, supplementing capped rates. In particular, I have two suggestions:

1. Improve transparency
2. Remove the caps

1. Improve Transparency

As you would be aware, in April 2009, \$20,000 conditional² caps were introduced on Section 7.11 contributions per dwelling as an “affordability threshold”, following concerns over the impact on housing prices.³ In 2017, some of the caps were removed and determining where they still apply is often not immediately clear. There have been numerous Directions issued⁴ and Practice Notes released and the cap has been removed for some local government areas following an IPART review. This has cumulated in a complex and convoluted system where the public cannot readily understand whether the caps would apply to their development. The confusion has resulted in several court cases.⁵ The law must be transparent to be effective and it is suggested that a centralised register or the like be created to create a “one-stop-shop” for ascertaining whether the caps apply.

¹ *Environmental Planning and Assessment Act 1979* (NSW).

² I.e. it could be varied by the Minister.

³ Department of Planning, *Planning Circular PS08-017: Review of Infrastructure Contributions* (NSW Government, 2008) 2. This circular also states “the imposition of levies can have an indirect impact on house prices” (4). Caps on greenfield development were introduced in 2010.

⁴ The *Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2012* (NSW) was amended by the *Environmental Planning and Assessment (Local Infrastructure Contributions) Amendment Direction 2017* (NSW).

⁵ See *Satmell Holdings Pty Ltd v Blacktown City Council* (2019) 239 LGERA 178; [2019] NSWLEC 94; *TC (Tallwoods) Pty Limited v Camden Council* [2021] NSWLEC 1212.

2. Remove the Caps

While the contribution rates are indexed,⁶ the caps on section 7.11 contributions are not, resulting an increasing proportion of development reaching the caps. There does not appear to be any planning justification for this, particularly at a time when construction costs and the infrastructure burden is rising. While the cap can be removed for a particular local governmental area after an IPART review, this is generally not attractive to councils due to the narrow works list requirements.

The increasingly dated cap encourages councils to replace section 7.11 contribution plans with a section 7.12 levy for all development in an attempt to keep up with inflation. This is problematic as it removes nexus from infrastructure funding. This follows the recently introduced Housing and Productivity Contribution (HPC) in forming a hypothecated tax rather than a more equitable user-pays model. The HPC is another funding stream centralised in State Government rather than accessible to councils.⁷

The unsuccessful Liberal reform of 2020-2021 sought to remove the cap on section 7.11 contributions once and for all. It is strongly suggested that at least this element of the reform be pursued.

Yours faithfully

Willem van Wyk
Town Planner

⁶ *Environmental Planning and Assessment Regulation 2021* (NSW), s 207.

⁷ Although the Department of Planning and Environment's *Housing and Productivity Contribution: Implementation Guideline* pledges \$1 billion of the revenue back to councils over the next 10 years, disadvantaged areas of Sydney in and around the growth areas could, in effect, be contributing to more affluent and settled inner and northern Sydney areas.