

3 August 2020

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Mr Peter Achterstraat AM
NSW Productivity Commissioner
NSW Treasury
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Dear Mr Achterstraat

Re: Bayside Council Submission – Review of Infrastructure Contributions in New South Wales

Thank you for the opportunity to provide comment on the *Review of Infrastructure Contributions in NSW Issues Paper*. Having reviewed the Issues Paper, Bayside Council would like consideration to be given to the following matters.

Planning Agreements and value capture

Planning agreements are an important part of the developer contribution mix and have been used successfully by Bayside (and the former Botany and Rockdale Councils) to fund important infrastructure such as affordable housing, public domain improvements, upgrades to community and recreation facilities, childcare and monetary contributions.

It is noted that the use of planning agreements for the primary purpose of value capture is not supported by the Draft Planning Agreements Practice Note April 2020 (Department of Planning, Industry and Environment) as it is considered it leads to the perception that planning decisions can be bought and sold and that planning authorities may leverage their bargaining position based on their statutory powers. In particular Section 2.3 of this draft practice note addresses 'value capture' and specifically states that planning agreements '*should not be used to capture land value uplift resulting from rezoning or variations to planning controls*'.

Bayside Council has generally sought to capture 50% of the uplift in value associated with changes to planning controls. This value uplift is not created by the owner or developer of the land and Council considers it appropriate that part of this uplift is captured for the community via a planning agreement for the benefit of the community.

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As noted in the *Issues Paper* (pages 27- 28), rate pegging constrains the ability of Councils to increase their general income and respond to the costs associated with population growth and the provision of community infrastructure. Value capture is one means by which Council can respond to community needs generated by urban renewal and increasing population and provide the required facilities.

An alternative option that could also be considered is a density bonus provision similar to the Green Square Community Infrastructure bonus floor space provisions that are then implemented as part of a planning agreement. This approach is transparent and easily understood by the developer and the community as to the community benefit derived. In the Green Square example it also lists the infrastructure to be delivered thereby providing transparency regarding the nexus to the proposed development.

Council supports further consideration of value capture mechanisms or similar when land is rezoned to provide community benefit.

Timing of payment of contributions

The recently implemented changes to the timing of payment of contributions as a COVID 19 response is acknowledged as important during these uncertain economic times. However, in the longer term it is considered that delayed payment of contributions is problematic for the timely delivery of infrastructure to service the needs of the incoming community.

Whilst acknowledging there are programs like Department of Planning, Industry and Environment (DPIE) *Low Cost Loan Initiative* there can be issues with these such as debt servicing costs or potential risk that contributions do not cover the loan costs if development slows.

Should delayed payment of contributions be continued in the longer term then it is considered greater security should be provided to Councils.

One suggestion is that a positive or restrictive covenant/mortgage be prepared at subdivision/strata plan sign-off which includes a schedule of outstanding contributions owing on every newly created title in a particular development and outstanding contributions paid prior to transfer of title from developer to the first purchaser of property, or in the case of strata title, the issue of the occupation certificate.

Council does have concern that delayed payment of contributions will hinder the timely delivery of infrastructure required as a consequence of development.

Should the delayed payment continue, consideration must be given to mechanisms that provide greater security for Council.

Essential Infrastructure

The essential infrastructure identified for the purpose of IPART reviewed contribution plans needs to be reviewed, especially in relation to open space and community facilities.

Open space – currently only base level embellishment is included. This limits opportunities to provide high quality spaces which is particularly important when the quantity of space may be constrained due to lack of availability/high cost of acquisition in highly urbanised areas such as Bayside. It also does not include provision of indoor sport facilities which can complement provision of outdoor open space where the quantum of active open space is limited.

Community facilities – currently only land for community services is included, with cost of construction not part of the essential works list. This means that the cost of constructing the facility is borne by the general community and not by the incoming population. In addition, rate pegging limits Councils ability to deliver the required infrastructure.

Council would like consideration to be given to:

- *expanding the essential infrastructure list to include all open space embellishment (not limited to basic)*
- *inclusion of indoor sports facilities*
- *construction of community facilities*

Provision of open space

The Issues Paper states that 2.83 Ha per 1000 population provision of open space is a figure that is not based on evidence.

The draft *Open Space for Recreation Guide* (Government Architect's Office 2018) states that it is important to have equity of access to high quality open space to serve the needs of a growing population. The guidelines also recognise that in high density areas, good provision of public open space is essential to compensate for the lack of private open space to support active living and contribute to a more liveable neighbourhood.

Bayside Council is finalising a *draft Social Infrastructure Strategy* which has analysed the provision of open space by type across the Local Government Area (LGA). In total across the LGA there is an average of 2.6 Ha/1000 which is comprised of 1.6 Ha/1000 for general open space (parklands, foreshore, linear parks, bushland) and 1 Ha/1000 of sporting and mixed use (sport fields, mixed use, courts). However, the distribution of open space across the LGA is uneven, with the quantum of open space provision in the urban renewal areas (e.g. Mascot, Wolli Creek, Banksia and to a lesser extent Rockdale) being significantly under this quantum, with for example Mascot only having 0.96 Ha/1000. With future development this will further reduce to 0.76 Ha/1000.

This low provision of open space per 1000 population is evidenced in the relative lack of:

- local play spaces within 200-400m walking distance
- local recreation spaces within 300-500m
- active recreation spaces within 20 minute safe walking/15 minute safe cycling distance

Those areas of Bayside where the provision of open space is closer to the 2.83 Ha/1000 population by contrast do generally meet the performance criteria within the draft *Open Space for Recreation Guide*.

Therefore, 2.83 Ha/1000 population is supported as a target for open space provision. It is also acknowledged a move to a performance based approach with multiple activities and uses in current and planned spaces will be required, particularly in urban renewal areas which are already not well provisioned with public open space areas.

This latter approach also relate back to funding, with a focus on the quality of the outcome rather than just the quantity and requires the embellishment of these areas to be more than "basic" to accommodate the increased activation and use.

Council supports a target of 2.83 Ha/1000 in conjunction with a performance based approach to open space planning.

Government role in provision of open space

Within Bayside there is a diversity of parks and open space areas, however, only a portion of these are owned by Council as can be seen below.

	Ha
Bayside Council	248
Sydney Water	234
Crown Lands	173
DPIE	47
TfNSW	32

Whilst Council has some long term leases over land for the purposes of open space, there is no long term tenure over the vast majority of the open space land. It is considered that State Government has an important role in acknowledging and furthering opportunities for Council to plan its open space plans into the future.

Greater certainty is required for Councils in relation to the long term tenure of land currently used for public open space purposes.

In conclusion, it is considered the productivity Commission's review of Infrastructure Contributions is timely and Bayside Council would like consideration to be given to the matters raised in this submission.

If you have any further enquiries regarding this submission, please contact 

Yours sincerely



