File Ref: [redacted]

3 August 2020

Executive Director
Planning Policy
Department of Planning, Industry and Environment
Locked Bag 5022
Parramatta NSW 2124

Dear Sir/Madam

RE: Improving the infrastructure contributions system

Thank you for the opportunity to comment on the review of the infrastructure contribution system. Further to Council's previous correspondence dated 11 June 20020, please find following Council's submission considered and endorsed by Council (report PLN026-20) on 27th July 2020. In particular it is noted that Council supports greater transparency in accounting for contributions.

Many of the reforms are welcomed and will give greater transparency to the contribution system however, others are considered to unnecessarily limit Council's ability to enhance the liveability of neighbourhoods and meet the meets of our future communities.

Productivity and liveability are given equal importance under the Greater Sydney Region Plan and the District Plans, yet the amendments tend to focus on employment generating development and the site specific needs of new development. This misses the opportunity to take a place based approach to delivering public infrastructure. As councils reshape local plans to meet the challenges of future growth and try to put in place strategies that will deliver great places, they must be supported with funding mechanisms that can facilitate improved amenity for residents. More open space, recreational facilities that meet the needs of all ages and abilities, safe cycle paths, more shade trees and places for communities to meet are critical to the achievement of the liveability goals of the Regional and District Plans. Development contributions and Planning Agreements must be able to help fund such critical social infrastructure if councils are to adequately meet the challenges ahead.

The following comments are submitted for your consideration:

<u>Voluntary Planning Agreement (VPA) reforms</u>

Planning Agreements are currently voluntary and are proposed to remain so. However, it is often the case that the need for the Agreement is part of the merit assessment of the application that is explored as part of the determination of the application. Take for example the determination of the Woolooware Bay Development (Sharks Leagues Club) by the Planning Assessment Commission. In this case the PAC required the applicant to enter into a VPA as a condition of consent for a modification for increased floor space. The VPA provides a monetary contribution towards cycle links to the train station essentially to help mitigate poor access to public transport. The applicant agreed to this approach as part of the determination process. This approach would be ruled out by the proposed amendments. The PAC also required the applicant to enter into a VPA to provide affordable rental housing and housing for

first home buyers as part of the development. This was agreed to by the applicant but not initially offered as part of the application. Again this significant community gain would be lost under the draft changes.

All of Council's current Voluntary Planning Agreements provide infrastructure or public benefits that serve the greater community, beyond that which would be required solely by the corresponding development. Many VPA's help improve the public domain and liveability of the locality, which are important planning outcomes given greater focus by the Greater Sydney Region Plan and District Plans. However, the Direction to comply with the draft Secretary's Practice Note regarding negotiating planning agreements will limit Council's ability to negotiate wider community benefits. This is because the Direction limits contributions to elements that are directly related to the infrastructure needs of the subject proposal. Given that Agreements are voluntary, there is little need to reduce their scope to purely meeting the needs of the development.

Often developments the subject of Planning Agreements have benefited from increased development potential (beyond the current planning provisions) and have the ability to help provide much needed community infrastructure. Unlike other planning frameworks around the world, the NSW planning system has no mechanism to 'capture' the increased value delivered to owners when a site directly benefits from changes to planning controls. Planning Agreements are the only mechanism in which the community at large may in some way benefit. The potential of value capture needs to be addressed as part of the current review of funding mechanisms for community infrastructure.

The following detailed comments on the Practice Note reforms are provided for DPIE's consideration:

- The Practice Note states: *The progression of a planning proposal or the approval of a development application should never be contingent on entering into a planning agreement.* In practice, Council has found that the timing of agreements is often difficult. Only when the agreement is entered into, is there surety that the public benefit will be delivered. The amendment to the plan or development proposal are exhibited concurrently with the Planning Agreement where possible and required by the legislation. However, this approach requires the agreement to be a condition of development consent or a condition of State Significant Development. Without it there is no commitment for the applicant to actually sign or enter into the agreement once the consent is issued.

  However, there is no such 'condition' for an amendment to a plan. In practice the signing of an agreement is the only way to give certainty to a project and it is required prior to the finalisation of a plan amendment. Once the LEP amendment is made there is nothing to compel the applicant to still enter into the agreement. The land has been rezoned, the community has been informed of the community benefit that will result, yet under the draft Practice Note council cannot compel the developer to enter into the agreement. The Practice Note should give greater recognition of the limitations in timing of an agreement, particularly where it involves an amendment to a plan.

- Planning agreements can support broader strategic infrastructure planning, but it should be recognised that Council's LSPS is unlikely to identify all infrastructure associated with a particular development, particularly if that development has not been previously envisaged. The Practice Note should give greater recognition that infrastructure needs of an 'unplanned' development are rarely included in an LSPS.

- Public benefits to be delivered by development are often unrelated to the development and provide broader benefits to the wider community. Limiting such agreements to benefits directly related only to the subject development is often too restrictive in practice. Local government has no mechanism to fund city shaping improvements that can enhance

liveability and productivity. Planning Agreements provide an opportunity for capital investment in local infrastructure that is not possible otherwise.

- When a developer makes the development/rezoning application to the relevant authority, it is not accompanied by a full legal draft planning agreement that has been signed by the developer and the associated explanatory note. Negotiation and legal drafting will often form the final version of the 'signed' VPA. This negotiation and drafting takes considerable time and cost. It is unrealistic to expect that it be submitted at the outset because parties have no certainty that the application will be successful. Again, the Practice Note does not recognise how agreements are negotiated in practice.

- Concurrent notification is preferred but rarely practicable (see above).

- Re-notification of an amended VPA is required where there has been a material change – whether this includes amendments to timing of payment is not clear.

- A developer may not wish to enact the VPA if the development does not go ahead (for example, if development is no longer financially feasible due to market conditions). Developers will be reluctant to enter in to an agreement before there is certainty that the development will proceed. This could be up to 5 years after the consent is issued. This is a reason why conditions of consent requiring the agreement to be entered into are regularly used by councils.

Levy Plan indexing

The changes propose increasing the 7.12 contribution levy limit to up to 3% where there is significant economic/employment growth. For Sutherland, the proposed changes could apply to Miranda and Sutherland which are identified as strategic centres in the South District Plan. However, the Discussion Paper performance criteria for an increase above 1% requires significant employment generation, which will be difficult for Sutherland to attract, being on the fringe of Sydney.

Demonstrating the required increases in employment generation for a 2% levy, as suggested by the Discussion Paper, requires Council to accurately estimate future market conditions. Creating permissible floor space does not necessarily result in jobs. What tools will be provided to Council, or assistance given, to test feasibility or market demand?

Demonstrating that there will be 25% more new jobs than new residents, or 25% more employment opportunities than currently available, will likely require mandated percentages of commercial floor space. Alternatively, demonstrating an additional non-residential gross floor area greater than 20% of existing total non-residential gross floor area may be difficult to achieve in what has traditionally been suburban town centres and predominantly a residential market. Also what is the assumption to be used between floor space and employment? Is an assumed employment density for metre to be provided to assist councils?

Demonstrating all three criteria would be onerous on any council and mandating a high percentage of commercial floor space may simply discourage any redevelopment. Again what planning mechanisms will the Department provide Councils to achieve these outcomes? Will the Department support a mandated percentage of commercial floor space in LEPs?

A 3% levy requires provision of wide-reaching infrastructure which is generally undefined by the Paper. For any levy increase, the works schedule must be prepared in consultation with the Department. However, it is not clear whether expenditure can be used for place making infrastructure or whether it will be limited to essential works.

While encouraging greater employment floor space is supported, this should not be the only criteria where high contributions are justified. To make great centres and great places to live,

as required by the Greater Sydney Region Plan and District Plans, requires investment in place making infrastructure and public amenities. Such invested is needed to enhance liveability and correct shortcomings of past infrastructure planning. Contributions above 1% are equally important to support liveability as they are to enhance productivity.

Dwelling Threshold indexing

The reforms propose to increase or index the current 7.11 contribution threshold of $20,000 per dwelling contribution. Indexing with CPI is supported as it is a widely accepted standard. Alternatively, raising the threshold is also acceptable. It is noted that the increase in the thresholds will mean that contributions plans below the threshold will not be required to go through the IPART review process and will not be limited to the essential works list.

However, the proposed changes do not allow indexing of outstanding contributions, from consents issued up to 5 years ago, where the actual rate has already surpassed the threshold. As there are many outstanding contributions that have been issued in the recent construction boom. Will the indexing of issued consents be supported because inflation erodes the contribution ultimately received?

Accounting reforms (Regulation)

The reforms will require council to provide greater accounting transparency as to when the contributions were received and expended. Greater transparency is supported, however it will require greater allocation of council resources. The Regulation requires councils to specify *details of the projects (and the specific components of those projects) to which the contributions and levies have been used or expended. '*Components' has not been defined. Generally, infrastructure works in established areas aim to augment the provision of facilities to meet growing demand. The works project is often fully funded by the contributions - comprising design, construction, and landscaping. The land component (often the most expensive part of the project) is often the portion attributed to the existing population. It is considered that more guidance on 'component' is required.

Council still experiences difficulties in relying on Private Certifiers to collect contributions. It would be appreciated if greater guidance could be given regarding cost estimates. Clause 25J of the EPA Regulations requires clarification, particularly what constitutes 'fittings and furnishings, including refitting or refurbishing' (25J(3)(g)). Many applications propose significant structural building work that does not necessarily fit this criteria but it is being excluded from the estimated costs.

Should you require any further information please contact [redacted]

Yours sincerely

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