BUSINESS NSW

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Cate Faehrmann MLC
Portfolio Committee No. 7 – Planning and Environment
Legislative Council
Parliament House, Macquarie Street
Sydney NSW 2000

INQUIRY INTO THE ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (INFRASTRUCTURE CONTRIBUTIONS) BILL 2021

Business NSW welcomes the opportunity to respond to the inquiry into the proposed bill. *Business NSW,* alongside our partner organisations *Business Sydney* and *Business Western Sydney*, addressed many of the issues raised by the bill in its response to the NSW Productivity Commissioner's review in 2020. The Productivity Commissioner highlighted four high-level criteria as the test of success for infrastructure contributions reform: efficiency, equity, certainty, and simplicity. As we noted at the time, while those are admirable goals to strive for, in practice there are bound to be tensions and trade-offs between these goals. The legislation as presented will be insufficient to assess how these trade-offs will be resolved; much will depend on the implementation decisions and operational activities of Department of Planning, Industry and Environment (DPIE), Councils and other relevant bodies.

Value capture

Business NSW has supported the use of 'value capture' to supplement resources available for infrastructure investment and to prevent windfall gains from public infrastructure development. There are several problems that 'value capture' could potentially address. Windfall gains to private property owners from the increase in value of their property due to public investments in infrastructure (e.g., a new Metro line) leaves a discrepancy between those who gain from infrastructure and those who pay for it.

Those distortions can have further consequences in the development of infrastructure, potentially leading to less-than-optimal investment in infrastructure if the value of benefits cannot be captured. It can also distort the political and planning process associated with particular projects, as participants in that process seek to maximise their windfall gains rather than pursuing the best choices for the whole system.

However, 'value capture' appears better suited as a targeted measure alongside major projects with relatively localised impacts (such as new transport lines, roads or major urban redevelopment initiatives). The intent of the legislation to enable identification of land subject to value-based contributions is a necessary step but its use should be reserved for those situations where value capture is most applicable.

Level 15, 140 Arthur Street, North Sydney NSW 2060
Tel 13 26 96 | contact@businessnsw.com | businessnsw.com
ABN 63 000 014 504

For everyday infrastructure – footpaths, schools, parks – other funding options will be more appropriate. Addressing local government funding arrangements must be part of the strategy.

Certainty and Simplicity

One of the key concerns we raised in response to the Productivity Commissioner's review is the complexity, and especially the opacity, of contribution plans. The ability for contribution liabilities to function as a price signal for infrastructure development is lost when relevant parties cannot tell what the price is. In establishing the power to create regional infrastructure contributions schemes, and in establishing powers for consent authorities to impose local infrastructure or levy conditions on development, the bill potentially adds to complexity.

Proposed Section 7.13 is described as making "it clear that a local infrastructure condition and a local levy condition must be authorised by, and determined in accordance with, a contributions plan and imposed in accordance with the regulations and relevant Ministerial directions." Those Ministerial directions will be pivotal in determining the impact of the new infrastructure contributions regime. *Business NSW* would like to see a framework established, either through the legislative or regulatory processes, that ministers direct conditions that are predictable, publicly visible in advance of decisions, and proportionate to the development proposed. Schedule 7.16A grants that "the regulations may" make provision about how these are to be calculated for local infrastructure, and Schedule 7.25 the equivalent for regional infrastructure, but it is in the regulation setting, not the legislation, that the real impact will be felt.

Furthermore, establishing additional funding channels for infrastructure does not guarantee that money will be spent prudently. Oversight of spending from Regional Infrastructure Contributions Funds and Strategic Biodiversity Component funds will need to be put in place. The RIC and SBC Funds should not become new pots of money to enable discretionary spending with limited oversight. We support the measures proposed in Schedules 7.30 and 7.31B that guide how payments out of the funds should be managed, and that provide for oversight by the Treasurer and oblige having regard for strategic infrastructure plans.

Council funding

As noted above, changes to infrastructure contributions need to be considered alongside other local government funding arrangements.

Business NSW supports the requirement that councils review their local strategic planning statements every 5 years instead of every 7 years. However, we note that during the Productivity Commissioner's review, the Issues Paper cited 37 per cent of councils with plans over a decade old. It is not sufficient merely to raise expectations on councils without also doing more to ensure they uphold their obligations.

Unfortunately, not all Councils across NSW welcome development in their areas. Councils that oppose developments should not be allowed to use out-of-date plans and cumbersome application processes as non-price barriers to development. However, we recognise that for some Councils it is a lack of resourcing, rather than obstructive intent, that has led to plans not being updated.

If you have any questions about our submission or would like to discuss in more detail, please feel free to contact me at simon.moore@businessnsw.com.

Yours sincerely

Simon Moore
Policy Manager, Infrastructure, Business NSW