27 January 2017

The Secretary
NSW Department of Planning and Environment
Attn: Levies and Operational Policy
GPO Box 39
Sydney NSW 2001

Dear Secretary

Re: Improvements to Voluntary Planning Agreements

The Southern Sydney Regional Organisation of Councils (SSROC) is an association of eleven councils. SSROC advocates in the interests of the regional and provides a forum for the exchange of ideas between our member councils, and an interface between governments, other councils and key bodies on issues of common interest. Together, our member Councils cover a population of over 1.6 million, or one third of the population of Sydney.

In order to make this submission within the timeframe of the review, it has not been possible for it to be reviewed by councils or to be endorsed by the SSROC, therefore, consider this submission a draft, and we will contact you further if any issues arise as it is reviewed.

The details of SSROC comments are as below.

General Comments

The SSROC Secretariat welcomes the initiative by the Department of Planning and Environment to improve the practice and outcomes of Voluntary Planning Agreements. In particular, the goal of improving the VPA framework so that they are considered on merit as part of broader planning assessment rather than on financial outcomes, the increase in transparency of the process and clarity that there should be links between development and infrastructure are most welcome. Further work needs to be done to make the strategy more collaborative and responsive to the needs of the community. Key comments, suggestions and recommendations are highlighted below.

Specific Comments

Voluntary Planning Agreement Planning Proposals

While many SSROC member councils identify with Voluntary Planning Agreements as a method of seeking reasonable community benefits from development, there are some concerns that VPA is voluntary. This implies that if a would be developer does not prefer this pathway, Councils have no option other than Section 94/94A Developer Contributions and Section 80A conditions of consent – which may not be sufficient to meet the infrastructure needs impact of development. This is particularly so, as the relative value of Section 94 contributions keeps decreasing over time as a result of the cap in the amount that can be charged per dwelling and increasing infrastructure development costs.

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Of particular emphasis here is the issue of Voluntary Planning Agreement and Planning Proposals.

It is arguable that Voluntary Planning Agreements are important mechanisms that can leverage infrastructure and public benefits in the rezoning process to meet community needs. This is because it is difficult for Section 94/94A Plans to keep pace with the rate of uplifts in land in Sydney and least equipped to address increased density that often result from apartment and mixed development. Furthermore, one weakness inherent in Section 94/94A Plans is that the plans are an exercise in articulating future development based on the Planning Controls and Strategic Plans at the point that the plans are developed. It is possible for Section 94/94A Plans not to take into consideration future potential rezoning and the level of infrastructure required as the plans are usually reviewed every 5 years.

Planning Authorities and Voluntary Planning Agreement
Planning authorities cannot refuse to consider or refuse to forward a Planning Proposal for gateway determination because a Voluntary Planning Agreement has not been entered or offered. This is a concern as currently structured.

The draft papers state that:

- The procedures for negotiating and entering into planning agreements should be identified by the planning authority and made clear to a developer.
- It is not acceptable for planning authorities to refuse to consider or refuse to forward a Planning Proposal for gateway determination because, regardless of its merit, a Voluntary Planning Agreement related to land value uplift has not been entered or offered to be entered into.

The following suggestions and insertions are proposed:

a. *The need to enter into a Voluntary Planning Agreement should be identified by the planning authority and made clear to a developer preferably before lodging a Development Application or Planning Proposal.*

b. *In the case of a Planning Proposal, a Voluntary Planning Agreement for public benefits, if needed, should be negotiated ahead of the submission of the Planning Proposal for a Gateway. The draft Voluntary Planning Agreement with any supporting documents should be concurrently exhibited.*

   This is because if a Planning Proposal is to result in a significant increase in development potential, which in turn will generate greater demand for public infrastructure and facilities, without the negotiation of a Voluntary Planning Agreement, the Planning Proposal would create a bigger gap in the provision of infrastructure and facilities. Once the Planning Proposal goes ahead (example, land is upzoned), planning authorities could have nothing to fall back on.

c. The second dot point could be revised to:

   It would be reasonable for planning authorities to refuse to consider or refuse to forward a Planning Proposal for Gateway determination if the requirement for a Voluntary Planning Agreement is already made clear to the developer/applicant, regardless of whether before or after the Planning Proposal lodgement.

New Mechanism for Planning Proposal
Some SSROC member councils have no hesitation in retaining the current VPA largely unchanged for Development Applications, but would largely prefer a new system to be introduced for Planning Proposals. The preference is that under the new planning mechanism, planning authorities such as

Councils could refuse Planning Proposals if established that the proposal applicant refuses to offer to provide by agreement, adequate infrastructure and public benefits to meet community needs and make the proposal more acceptable.

For example, the new mechanism should mandate that planning authorities, including councils, publish relevant policies outlining what is expected in a Planning Proposal. One of such policies could require developers to calculate the possible financial uplifts associated with rezoning potential.

The new approach could also have inbuilt methodologies to determine the type and scope of "public benefits" for different development sites and more measurable or verifiable approach for Planning Proposals to reasonably pre-empt subsequent development and mitigation options.

Planning benefit: development profit versus land value uplift
The SSROC Secretariat has reservations over the draft Practice Note's preference for the capture of a portion of development profit compared to capture of an increase in residual land value / land value uplift. The preference would be for land value uplift rather than development profit in value capture and assessing of planning gain.

Development profit is often dependent on several factors that are typically commercial-in-confidence information on purchase, investment and financing costs and information. Reliance on development profit could be unrealistic, opaque and introduce uncertainty. On the other hand, SSROC member councils such as the City of Sydney have effectively and with impressive results relied on the capture of a proportion of land value uplift rather than development profit. Land value uplift has the advantage of being measurable, transparent and easily verifiable before and after a change to planning controls.

Clarity on Value Capture and approach
The Department of Planning and Environment's draft guidelines are unclear as to whether Voluntary Planning Agreements can be used for value capture. This is more so as the draft guideline's emphasised that Voluntary Planning Agreements should not be used to capture "windfall gain" while what constitutes "windfall gain" was not defined.

The draft guidelines should set out in clear terms the approach or methodology for calculating value capture. This could eliminate ambiguity, provide consistence in approach and also possibly address the guidelines' concern that a Voluntary Planning Agreement must not threaten the economic viability of development. The guidelines are silent on this most important issue.

Effective Councils' engagement and collaboration in the review process
The Department of Planning and Environment should explore more collaborative approaches to engage with Councils in the review of the draft Practice Note. Since the last review about a decade ago, councils as key planning authorities have acquired lots of experience on the issues, challenges and prospects that could benefit the review process and enhancement of a revised Voluntary Planning Agreement Practice Note.

Issue of peer review of planning agreements
The draft Practice Note states that Councils and other planning authorities should ensure that Voluntary Planning Agreements are preferably *'independently peer reviewed'*. Considering that parties to the agreement usually engage their own legal and technical expertise and draft agreements are publicly exhibited, there may not be much value-add from an independent peer review. This could also attract further costs and time to the process.

Template planning agreement
A provision should be made where a planning authority could use their own Voluntary Planning Agreement template where it contains all the issues specified in the Department of Planning and Environment template and does not contain any details that are contrary to the Practice Note.

Conclusion
Thank you for the opportunity to provide comments on the draft Voluntary Planning Agreement documents. If you have any queries please contact Vincent Ogu, Strategic Planning Manager on 8396 3800.

Yours sincerely,

Helen Sloan
PROGRAM MANAGER
Southern Sydney Regional Organisation of Councils