



26 June 2020

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

Dear Sir or Madam

**Re: Submission to the discussion paper *Criteria to request a higher s7.12 percentage***

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Thank you for the opportunity to make a submission and provide feedback on the discussion paper *Criteria to request a higher s7.12 percentage*.

In particular, we want to note our thanks for agreeing to our request for an extension to 26 June 2020, for SSROC to make this submission.

The Southern Sydney Regional Organisation of Councils Inc (SSROC) is an association of eleven local councils in the area south of Sydney Harbour, covering central, inner west, eastern and southern Sydney. SSROC 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 about 1.7 million, one third of the population of Sydney. SSROC seeks to advocate for the needs of our member councils and bring a regional perspective to the issues raised.

SSROC welcomes the opportunity to provide comment on the discussion paper *Criteria to request a higher s7.12 percentage*. Councils are currently forced to make difficult decisions and choices about funding for community based infrastructure. Notwithstanding the constructive feedback contained in this submission, the DPIE is congratulated for providing a pathway for councils to provide a more meaningful contribution amount.

## Overview of proposed reforms

Section 7.12 of the EP&A Act enables councils to levy flat rate contributions to fund local infrastructure, meaning that contributions are charged as a percentage of the proposed development cost. Under the EP&A Regulation a maximum percentage of 1% is set, which councils may levy under a section 7.12 contributions plan. However, select areas identified in the EP&A Regulation may be subject to higher maximum percentage levies. Councils are able to make requests to the Department for higher percentage rates for s7.12 contributions. At present, six local government areas are identified as having higher maximum percentage levies.

To ensure its process for assessing and determining requests for higher maximum percentage levies is efficient and transparent, the Department is proposing to adopt a set of clear criteria and evidence required of councils to assist with its assessment and determination of submissions made by councils to increase maximum percentage levies in specific areas.

Contributions can only be imposed in accordance with a local contributions plan adopted in accordance with the procedure under the EPA Act and Environmental Planning and Assessment Regulation 2000 (EPA Regulation).

The proposed criteria revolve around those areas identified:

- in a strategic plan as a strategic centre, local centre or economic corridor; and
- as having an existing or identified potential for significant employment growth.

Furthermore, the council's planning controls will need to reflect and support the planned increase in population and employment capacity of the identified area.

Under these guiding principles, two sets of potential assessment criteria, for requesting an increase of the maximum percentage either up to 2%, or up to 3%, have been proposed by the Department.

## Key Recommendations

Many of the reforms are welcomed and will give greater transparency to the contribution system however, others are considered to unnecessarily limit a council's ability to enhance the liveability of neighbourhoods and meet the needs of our future communities. There are potentially more opportunities to make the process of the adoption of the percentage levy more streamlined and efficient.

Productivity and liveability are given equal importance under the Greater Sydney Region Plan and the District Plans, yet the amendments focus primarily 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 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.

SSROC welcomes the opportunity to make a constructive contribution to the discussion paper *Criteria to request a higher s7.12 percentage* and has the following recommendations and comments.

- A higher levy of 3% should form the base level 7.12 contribution available across all areas of infill development undergoing high population and or employment growth. Much of Greater Sydney is undergoing unprecedented rapid growth in response to NSW Government housing supply targets. This higher levy should apply to both employment

growth and/or residential population growth and be available to Councils in centres corridors and areas of infill undergoing densification without having to meet additional criteria.

- The proposed criteria for a higher s7.12 percentage should allow some flexibility for councils to justify a rate higher than 3%.
- The proposed change to allow Plan Administration cost to be built into a s7.12 levy plan is supported to monitor and maintain the plan.
- To provide further efficiencies in maintaining a s7.12 levy plan, Section 25J of the Environmental Planning & Assessment Regulation 2000 should be reviewed to avoid confusion on the cost items that are exempt from s7.12 levy calculations.

## General Comments

### An appropriate percentage levy

#### *Critique of the 1% levy*

- Collectively our SSROC Strategic Planning Working Group has advised that the existing 1% levy does not have a strategic justification. A levy based on a percentage of the development costs, originally used in commercial and industrial areas where a user pays s7.11 contribution (s94 at the time), could not be used as this is calculated on a per dwelling basis. It is not based on demand and was not based on any modelling of infrastructure requirements. In summary, it is not based on robust evidence.
- The idea came from the City of Sydney, who had a similar levy in the City of Sydney Act 1988. The 1% levy became the de-facto option for employment areas and dense inner city suburbs, where new development generated the need for additional infrastructure, but where it was difficult to calculate nexus and apportionment for dense localities. In inner city / infill areas, it is very difficult to draw a clear apportionment between development and infrastructure demand, which is why many inner city councils rely on the 7.12 contribution.
- The current 1% levy does not provide sufficient funds and does not establish a link between increases in density and maintaining or improving liveability standards. Additional development can confer positive benefits such as critical mass to support greater provision of goods and services. However, additional development and increases in density also create costs and negative impacts in the form of congestion, loss of visual amenity and overshadowing as well as greater pressures on, and demands for, public space and community amenities.
- The 1% levy – being equivalent to slightly over \$4,000 per dwelling – is insufficient to provide infrastructure to meet the needs of new residents. It also will not offset the negative impacts of new development with positive impacts from improved or upgraded local infrastructure provision for existing residents.
- A review is urgently required to determine a more adequate baseline to fund local infrastructure and in what contexts and settings such a baseline has appropriate application. The current 1% levy is inadequate, arbitrary and minimal.
- “The intent of fixed percentage levies is to deliver an efficient outcome for both developers and the consent authority by providing a low-cost charge on development in areas where

nexus (the connection between proposed development and the demand created) and apportionment (the share of the total demand that the developer must pay) may be difficult to establish.<sup>1</sup>”

- Arguably s7.12 contributions satisfy many of the criteria for transparency and efficiency, once the approach to nexus is accepted. Implementation is straightforward, clear and unambiguous.
- The issue of low cost is understood as a relative term in comparison to s7.11. costs. With concurrent proposals to increase the size of s7.11 contributions thresholds<sup>2</sup>, it is only appropriate and reasonable that s7.12 levies are also reviewed and increased to maintain a degree of parity, and are based on real world costs while still remaining a ‘low-cost’ alternative.

### A 3% base level levy in high growth locations

- A higher levy of 3% should be the base level 7.12 contribution across all areas of infill development in Sydney undergoing high growth and upzoning. The 3% levy – being equivalent around \$12,000 per dwelling – in many settings will more adequately provide infrastructure to meet the needs of new residents. However, the levy should not be arbitrarily capped at the maximum 3% as is currently set for applications to increase the s7.12 rate from the present 1% maximum levy. Councils should be allowed to justify the levy rate that is needed to fund infrastructure required to meet the demands of growth, respecting the capacity of developers to pay and the role the levy plays in the planned funding mix for infrastructure provision.
- A s7.12 levy of 3% would provide a commensurate low-cost option when compared to the s7.11 contribution threshold of potentially \$35,000/dwelling.<sup>2</sup> Maintaining a 1% base level levy would equate to a significant decline in relative value of 7.12 contributions.
- By linking increases in density to infrastructure improvements, a higher s7.12 levy not only takes account of increased demand generated by additional persons, but also links the planning impacts associated with additional development to maintaining levels of liveability. A higher s7.12 levy creates a connection between increased development and liveability. The importance of this connection or nexus is critical given the NSW Government’s intentions to accommodate further growth in existing urban areas. Planning for housing supply should not be considered in isolation from other planning outcomes.
- Sydney’s population has been growing at an unprecedented rate. DPIE has stated that in ‘Greater Sydney, where rates of growth are highest, 30,000 - 40,000 homes are expected to be built each year for the next five years. A further 1 million homes will be needed by 2041’<sup>3</sup>.

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<sup>1</sup> Department of Planning Industry and Environment, *Criteria to request a higher s7.12 percentage*, Discussion Paper, April 2020 page 2

<sup>2</sup> Department of Planning Industry and Environment, *Improving the review of local infrastructure contributions plans* Discussion Paper, April 2020

<sup>3</sup> Department of Planning Industry and Environment, *A Housing Strategy for NSW*, Discussion Paper, Summary May 2020

- Councils should be able to simply demonstrate that their area is expected to experience growth and change and that this will require new infrastructure to offset negative impacts associated with new development (e.g. traffic congestion, overshadowing, wind tunnel, inadequate open space).
- Given the above driver, SSROC's recommendation is that a higher levy should not be spatially limited to a strategic centre, local centre or economic corridor – but should apply to all areas undergoing substantial growth and accompanied by upzoning. However, if this proposal to broaden the coverage is not accepted, the proposed application of a higher levy to strategic centres, local centres or economic corridors is supported.
- The higher levy of generally 3% percent is therefore needed to improve liveability for new and existing residents of communities undergoing record population growth. Furthermore, an arbitrary cap of 3% should not apply – a level should be simply based on merit.

### Growth centres not just employment centres

- Encouraging greater employment floor space is supported, but this should not be the only criterion where higher 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 investment is needed to enhance liveability and correct shortcomings of past infrastructure planning. Contributions are equally as important to support liveability as they are to enhance productivity.
- Areas of high residential growth require contributions for local infrastructure upgrades as much, if not more than employment areas. If DPIE seeks to encourage employment growth in centres, then there are other more appropriate mechanisms. Counter to this intention a higher levy targeted to employment centres may create a disincentive for developers providing this form of land use.
- New residential developments (particularly high rise) create negative impacts that require additional public infrastructure provision. Arguably new residents may require more infrastructure provision than new office or retail workers, therefore there is likely to be a greater justification for having a higher levy based on increased residential uses rather than commercial uses. At the same time increasing numbers of people are working from home.
- Very dense environments, and high rise in particular, create their own impacts on and demand for services and infrastructure. Existing communities are important stakeholders and are often not enjoying any benefits or trade-offs from new development.
- Strategic centres and development corridors have borne the most of infill residential redevelopment and will continue to do so based on Councils' LSPSs. Existing and future residents of inner city suburbs rely on the public domain of their centres as their outdoor living room. A higher levy is required to fund enhanced open space.
- Despite the LEP controls indicating a greater capacity for jobs in employment centres, these centres are not experiencing large scale employment development. In other centres, Liverpool, Wollongong, Newcastle, Burwood and Willoughby – the overwhelming majority of recently constructed and approved development in these centres has been residential.

- It is therefore recommended that the 3% levy apply to areas of growth regardless of whether that be from residential or employment or a combination of the two.

### Local planning controls will need to support growth

- At face value this principle is reasonable, however, the criteria of local planning controls are nebulous. A Council's Local Housing Strategy will embody District Plan supply growth targets, and these should be relied on as evidence in inner and middle ring suburbs.
- In already dense urban areas 'salt and pepper' infill should be able to levy a reasonable rate (i.e. higher than the existing insufficient 1% levy) on new development.

### Consultation questions

#### **Should all the criteria be mandatory for a s7.12 plan to be considered for a higher percentage levy?**

- No. None of the criteria should be mandatory. A more flexible approach should apply. The criteria should be considered as guiding principles and any increases to the levy should be based on merit.
- 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?
- Demonstrating all three criteria would be onerous on any council and mandating a high percentage of commercial floor space may simply discourage any redevelopment.

#### **Are there any alternative criteria that should be considered?**

- The overarching principles could be as outlined in the discussion paper, 'meet local needs, are place appropriate, enhance local character and align with broader economic strategies.' The majority of the proposed criteria are reasonable, with the exception of Criteria 1.2, 1.9, 2.1 and 2.2.
- This submission therefore makes the case that a higher levy should replace the inadequate 1% levy, have a much larger application, and be easily accessible for Councils that choose to apply it.
- Higher contributions often face arguments that a higher levy will be passed on to homebuyers or could impact the development feasibility. These arguments are countered below.

*A higher s7.12 levy would not be passed on to home buyers*

- This argument is not borne out in the evidence and does not reflect the determinants of house prices. The price of dwellings is determined by the market – the balance of supply and demand. House prices are determined by how much the market is willing to bear. Additional development costs cannot be passed on to the home buyer beyond the achievable market price for a dwelling. The assumption that developers could pass on the additional planning costs necessarily implies that developers are currently selling houses below their market price; a highly unlikely proposition.
- The price of new dwellings will reflect the price of established dwellings, rather than the cost of development. In the short term, if a developer had not accounted for a cost (such as a higher % levy), then these costs would be borne by the developer. In the medium to long term, the expectations of these costs would be built into the development cost profile before a site is purchased and would therefore reduce the price landowners could achieve for development sites. Hence a higher levy would not be passed on to the consumer (end-buyer) but is reflected in lower land prices received by the landowner.
- It should be the goal of the housing system to having a functioning housing market that is affordable to more of its residents. A higher levy will moderate land prices and assist with dampening house price inflation and speculation.

*A higher s7.12 levy would not impact development feasibility*

- Development feasibility is nebulous and changes regularly and rapidly. Feasibility testing was completed on a range of scenarios, including an increase of the s7.12 levy. Modelling available to one of SSROC member councils demonstrates that an increase to the levy only has a negligible impact on development profit margin, especially compared to other factors that influence development margin. An increase from a 1% to a 3% levy would only change the profit margin by a maximum of 2 percentage points. Therefore, given such a negligible impact, it should not form part of a consideration as a criterion.
- Another key reason why higher contributions do not impact on development feasibilities is because ultimately developers do not pay contributions, landowners do through lower prices they receive after the developer accounts for the contributions in the price that is to be paid. For example, before a developer purchases a site, they undertake a Residual Land Value feasibility assessment to calculate how much they should pay for the land. It is during this due diligence feasibility assessment that developers' price in or account for the increase in contributions. An increase in the levy could also be phased in over time to allow developers to factor this cost into their feasibilities.

***C1.2: Considering the different ways 'significant' employment growth can be measured, what would be the most effective? E.g. options:***

- ***Supporting at least 25% more new jobs than the number of additional residents planned to be accommodated in the contribution area.***
- ***Facilitating an increase of at least 25% more employment opportunities than currently available.***
- ***An increase in additional non-residential gross floor area greater than 20% of existing total non-residential gross floor area.***
- As noted above there is a flawed rationale for focussing only on employment centres and not high-rise residential centres. Accordingly, this criterion should not apply. The levy should apply to all development as new residents need public infrastructure (improved public domain, improved parks, etc.) just as much, if not more than employment development.

- Notwithstanding, there are inherent difficulties associated with measuring this criterion. If development capacity (i.e. what the controls allow vs. what is currently on the ground) was the key metric, which the first two dot points suggest, this may not relate to any market fundamentals. For example, a centre can have abundant commercial capacity (B3 zone), but the development economics may not stack up for developing new (or significant) employment floorspace.
- The issue with the third dot point is measurement. For example, over what time period does the 20% apply? Some centres could take 50+ years to develop. If a council did not deliver on the 20% non-residential floor space, then does the levy revert back to the lower levy? Do they have to refund the higher levy back to the developers?
- What does a council do about residential DAs in the meantime? For example, each new residential DA in a B4 zone, which most large centres are covered by (with maybe a small portion of B3), will absorb future development capacity. Once residential development reaches its threshold share of floorspace (compared to non-residential), does a council then refuse all future DAs for residential, as the rest are required to be commercial purposes?

***C1.9: Changes to the works schedule require approval from the Minister  
Is this requirement necessary?***

- No. Any changes to the works schedule should be assessed by the DPIE infrastructure planning team. As indicated above, once transitioned a higher levy will not affect development feasibility and DPIE planning officers have the professional skills and judgement to determine what are appropriate changes to the works schedule.

***C2.1: The contribution plan must include funding and delivery of district-level infrastructure, representing at least 10% of total value of the contributions plan  
District level infrastructure remains generally undefined. Should the Department publish a list of acceptable district-level infrastructure items or should it be determined on a case by case basis?***

- It will be difficult to include district level infrastructure such as major parklands and sports fields in many inner and middle ring centres and corridors. Additionally, some centres may require new district libraries and other district level community facilities, but more importantly there may be a series of local infrastructure interventions that have greater justification to accommodate a population increase in a centre.
- A more flexible approach will be required based on the local and district opportunities to meet growing needs for infrastructure.
- This proposal, however, does provide further argument for applying a higher levy of 3% in infill areas to reflect the higher land costs in built up locations.
- The DPIE infrastructure assessment team should be able to use their discretion as to whether the list of infrastructure is appropriate – perhaps a series of principles, such as those outlined in c2.2 ‘meets local needs, are place appropriate, enhance local character and aligns with broader economic strategies’.



## Conclusion

SSROC member councils cover a large part of Greater Sydney and have a direct interest in supporting and advocating for changes to improve the process *to request a higher s7.12 percentage*. We welcome the consultation and recommend that the issues raised, and recommendations proposed in this submission be given further consideration.

SSROC supports the review and reform of s7.12 levies to address the capacity of councils to deliver livable communities. The current funding arrangements are not designed to deal with the speed and scale of our unprecedented current and forecast growth.

In order to make this submission within the timeframe for receiving comments, it has not been possible for it to be reviewed by councils or to be endorsed by the SSROC. I will contact you further if any issues arise as it is reviewed. If you have any queries please do not hesitate to contact me or Mark Nutting, SSROC's Strategic Planning Manager on 8396 3800.

Again, thank you for the opportunity to comment on the discussion paper *Criteria to request a higher s7.12 percentage* and we are keen to participate in any further stages of a reform process, in particular consultations about changes that will particularly impact on local councils.

Yours faithfully



Helen Sloan  
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**Southern Sydney Regional Organisation of Council**