



## Council of Social Service of New South Wales

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Planning Reform  
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Dear Sir or Madam

NCOSS welcomes this opportunity to comment on draft exposure planning reform bills released by the NSW Government on 3 April 2008 following the earlier discussion paper *Improving the NSW planning system*.

NCOSS provided the Department with its response to the discussion paper on 7 February. We do not propose to restate the comments we made at that time. Our comments in this submission are restricted to the provisions of the draft Environmental Planning and Assessment Amendment Bill 2008 in relation to developer contributions for community facilities and those dealing with affordable housing. Unless otherwise indicated, references in this submission to 'the draft Bill' are to the draft Environmental Planning and Assessment Amendment Bill 2008 and those to 'the principal Act' are to the Environmental Planning and Assessment Act 1979.

NCOSS makes no comments on the draft Building Professionals Amendment Bill 2008. We welcome related proposals by the Office of Fair Trading to improve the rights of purchasers of new apartments but have not had the opportunity to consider the specific provisions of the draft Strata Management Legislation Amendment Bill 2008.

The 3 week time frame given for public comments on the two draft planning bills, which in total contain 170 pages of often quite technical amendments to the existing legislation, has been totally insufficient for us to consider any other elements of the proposed changes. There thus may be other aspects of the draft Bills that NCOSS would wish to comment on at a later date.

### Developer contributions

The provisions within the planning system that allow councils and other consent authorities to require developers to contribute to the cost of providing new community facilities that arise from new developments are of critical importance to NCOSS and its member organisations. Historically councils and communities have found it virtually impossible to obtain capital funding from Federal and State Governments for community facilities such as neighbourhood centres and youth centres in areas experiencing growth. The introduction of the system of 'section 94' developer contributions in 1979 has provided a partial solution to this problem.

We would note that the system of developer contributions has been subject to multiple reviews in the intervening period. These reviews have invariably found that the system was generally working well, but that incremental reforms were required. To the extent that there have been problems with the system these have related to the failure of State and Federal Governments to provide recurrent funding for services to operate out of community facilities built with section 94 funding.

The most recent review was the February 2004 report of the Section 94 Contributions and Development Levies Taskforce, chaired by Ms Gabrielle Kibble AO, entitled *Funding Local Infrastructure*. This was followed by significant changes to the legislation in 2005 that were largely welcomed by relevant stakeholders including NCOSS. There were further changes made to the legislation in 2006 to rectify an unintended consequence of the 2005 changes. Given that these changes have been in place for a relatively short period of time, NCOSS questions whether there is a pressing need to debate further wholesale changes to the developer contribution system at this time.

Schedule 3 of the draft Bill inserts a new Part 9 into the principal Act dealing with development contributions. In his media release of 3<sup>rd</sup> April accompanying the release of the draft Bills Minister Sartor claimed that the proposals “contained provisions to create a more accountable system for levying and delivering community infrastructure”. He went on to claim that the changes would clearly define the key community infrastructure for which levies can be charged, ensure that funds are spent within a reasonable timeframe and “for the first time” define issues that councils must take into accounts when developing contribution plans. Our submission touches on a number of these claims.

#### *Definitions of ‘community infrastructure’, ‘key community infrastructure’ and ‘additional community infrastructure’*

Under the draft Bill developer contributions for local facilities are renamed ‘community infrastructure contributions’. ‘Community infrastructure’ is defined broadly as ‘public amenities and public services’ but excludes ‘water supply or sewerage services’, for which separate arrangements apply. However councils and other local consent authorities will only be entitled to seek contributions for ‘key community infrastructure’, which will be prescribed by regulation.

The Government has said that ‘key community infrastructure’ will include local roads, parks, drainage and water management works, and ‘sporting, recreational, cultural, civic and social service facilities’. The draft Bill (clauses 908 and 921) says that ‘key community infrastructure’ is to be prescribed by regulation. Draft amendments to the Environmental Planning and Assessment Regulation 2000 appear on pages 105-109 of the draft Bill and includes (clause 4 p.108) a definition of ‘key community infrastructure’ for the purposes of clauses 908 and 921. No explanation is provided as to why the basic definition of ‘key community infrastructure’ quoted by the Department is not to be included in the principal Act, to be supplemented by a more detailed regulation.

The draft Bill creates a further category of ‘additional community infrastructure’, being community infrastructure that falls outside the definition of ‘key community infrastructure’. Developer contributions for particular ‘additional community infrastructure’ can only be imposed upon application by a particular council to the Minister. It is assumed that such approval will be difficult to obtain.

The draft Bill allows for two forms of community infrastructure contributions. The higher category of 'direct contributions' can only be imposed by establishing a nexus between the development concerned and the community infrastructure to be provided and in accordance with a detailed contributions plan. 'Indirect contributions' do not require any such nexus to be demonstrated, or the preparation of detailed contributions plans, but such contributions are limited to a maximum percentage of the value of the development concerned. It is proposed that the precise arrangements for 'indirect contributions' will be set out in regulations, rather than in the legislation.

In support of these changes the Government claims that some councils have been using developer contributions to fund extraneous facilities, such as dog and cat pounds, computer upgrades, information rest bays, lookouts and extensions to council administration buildings. It has given no information, however, on how many council contribution plans include these facilities. NCOSS would be happy for the Government to exclude these from the definition of 'key community infrastructure'. Equally we believe that it is vital that any changes to the current system are made in a transparent and considered way. We do not want to see new communities miss out on essential community facilities as an unintended consequence of rushed or unbalanced changes to the system.

NCOSS would therefore recommend that an Expert Panel, including representation from the non-government human services sector, should be convened to draft the proposed regulation covering 'key community infrastructure' (as per draft clauses 908 and 921). This Panel should also give advice to the Minister on the proposed Minister's directions (as per draft clause 911) dealing with the calculation of contributions, maximum contribution levels or rates for direct and indirect contributions respectively, the types of development on which contributions can be imposed, and the process for preparing joint contribution plans by 2 or more councils. Draft regulations and Minister's directions prepared on advice from the Expert Panel should then be placed on public exhibition for a period of not less than 56 days.

#### *Key considerations*

The draft Bill proposes to introduce a new clause 903 setting out 'key considerations' for the development contributions system. It is understood that this clause is designed to govern local contributions plans, State infrastructure determinations, voluntary planning agreements and determinations regarding additional community infrastructure.

The suggested key considerations are essentially:

- can the public infrastructure funded by the contribution be provided in a 'reasonable time' (which is not defined),
- what will be the impact of the contribution on affordability of the development,
- is the contribution based on a reasonable apportionment between existing demand and new demand for public infrastructure created by the proposed development, and
- is the contribution based on a reasonable estimate of the cost of the proposed infrastructure.

In our view this clause, as currently drafted, is totally unbalanced and directed towards reducing the scope of contributions plans and minimizing the level of contributions. It does not even require decision makers to consider the need to ensure that residents of new developments have access to an adequate range of community facilities and services. We would also note that while the Department's community guide and fact sheet both say that a key consideration will be the impact of the contribution on 'housing affordability', the actual

text of the draft Bill refers to the affordability 'of the development', which is an entirely different matter.

NCOSS recommends the deletion of this clause.

#### *Accountability requirements*

Clause 904 of the draft Bill empowers the Government to develop regulations requiring councils and other consent bodies to collect and publish information concerning the provision of public infrastructure and the determination, collection, application and use of developer contributions.

NCOSS supports this proposal, which should considerably improve the transparency and accountability of the developer contribution system.

#### *Six Growth Centre councils*

The draft Bill includes provision for the NSW Government to manage developer contributions to the six local councils in Sydney's North West and South West Growth Centres. The trust fund for these contributions is to be managed by Treasury in consultation with the Department of Planning.

NCOSS opposes this change. In our opinion it would complicate the management of such contributions and blur the accountability for the timely provision of local community facilities in these six local government areas.

#### *State infrastructure contributions*

Under the provisions of the draft Bill 'State infrastructure contributions' may be imposed on developers for the provision of 'public infrastructure' in a 'State contributions area'. The imposition of such contributions can only be made by the Minister for Planning. For this purpose 'public infrastructure' is defined as including 'public amenities and services', 'affordable housing', and 'transport infrastructure' but excludes 'water supply or sewerage services'. State infrastructure contributions are additional to community infrastructure contributions payable to local councils and are presently imposed in the designated North West and South West Growth Centres under the Metropolitan Strategy.

NCOSS supports these arrangements. We are disappointed, however, that no contributions are currently required for the provision of affordable housing, which is desperately needed.

#### Provisions relating to affordable housing

Proposed Division 5 of Part 9 of the principal Act will deal with developer contributions to councils for the purpose of affordable housing. These provisions are set out in clauses 924 to 927 of the draft Bill.

These sections of the draft Bill do not provide any real guidance about the circumstances in which the State Government will allow councils and other consent authorities to require developers to make contributions for the provision of affordable housing. Under clause 924 such contributions can only apply to 'an area' specified in the relevant State Environmental Planning Policy or Local Environmental Plan, as agreed by the Minister for Planning. Further, such contributions cannot be imposed in relation to development within a State contribution

area, regardless of whether or not the applicable 'State infrastructure contribution' makes provision for affordable housing. (As noted previously, the State infrastructure contribution system is not currently being utilized by the Government to generate any affordable housing).

NCOSS is extremely disappointed with this section of the draft Bill. For several years we have been seeking guidance from the NSW Government about the circumstances in which the planning system can be used to expand the provision of affordable housing. Such guidance was promised by the Government in its Metropolitan Strategy *City of Cities: A Plan for Sydney's Future*, released by the Premier in December 2005. Section C4.3 of that strategy says that the Government will:


- provide advice on the use of negotiated developer agreements for affordable housing,
- provide advice on the use of density bonus schemes for affordable housing,
- provide for inclusionary zoning which requires an affordable housing levy from development, and
- provide for affordable housing as part of the standard Local Environmental Plan (LEP).

NCOSS is not aware of any action to progress these commitments. We recommend that the Department complete work on these elements of the Metropolitan Strategy by December 2008, and that in doing so it consult formally with NCOSS and Shelter NSW.

### Conclusion

If you require any further information on the matters raised in this submission, please do not hesitate to contact Mr Warren Gardiner, Senior Policy Officer, on 9211 2599 ext 112 or email [warren@ncoss.org.au](mailto:warren@ncoss.org.au)

Yours faithfully



Alison Peters  
Director