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Australia's property industry
Creating for Generations

17 June 2020

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

Attention: Ruth Murphy

Email – ruth.murphy@planning.nsw.gov.au

Dear Ms Murphy,

Draft special infrastructure contributions (SIC) guidelines

The Property Council welcomes the opportunity to provide comments to the Department of Planning, Industry and Environment on the draft Special Infrastructure Contributions (SIC) Guidelines.

As Australia's peak representative of the property and construction industry, the Property Council's members include investors, owners, managers and developers of property across all asset classes. We are pleased to provide the following comments in respect of the draft guidelines released in April 2020.

This proposal is one of five that were developed ahead of the COVID-19 pandemic and prior to the announcement of a broader review of contributions by the NSW Productivity Commission. We support the process of reforming development contribution arrangements and look forward to the implementation of most of the changes contemplated in the five issues papers.

General comments on SIC

The Guideline, if implemented, is an excellent step forward and will provide a level of clarity and certainty regarding the application, preparation and implementation of SICs. Additionally, the Guideline will address uncertainty within industry and the community regarding which areas will be subject to a SIC, the timing for SIC implementation and the method of calculating SIC rates.

The status given to the final version of the Guideline will be important and should be consistently applied to any future SIC plan. Therefore, we submit that the Guideline should be referenced within the *Environmental Planning and Assessment Regulation 2000*.

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There are areas of the guidelines that could be made clearer and stronger. These are discussed below:

Aims, Purpose and Parameters

It is important that the aims, purpose and principles for preparing, adopting and implementing SIC plans are transparent and clear, to provide sound basis for reviews, and potential challenges, and to ensure all stakeholders have a consistent understanding of what is required.

For example, Section 1 should strongly and explicitly describe the aims, purpose and principles that must be applied during the formulation and implementation of SIC plans.

Aims and Purpose

- Contribute to achievement of the 'objectives for a place', by facilitating desirable development and protecting public safety and amenity.
- Coordinate private and public capital investment in growth areas so new housing and employment uses benefit from the delivery of new infrastructure, while simultaneously contributing funding and supporting the viable operation of that infrastructure.

Parameters

- SIC plans will be formulated with collaboration between councils, agencies, land-owners the development industry and the community.
- SIC plans must demonstrate that:
  - There is a nexus between infrastructure items and the contributing project;
  - That the contributions are reasonable, proportional, applicable and apportioned equitably; and
  - That the infrastructure will support adopted planning, social or economic strategic objectives for the SIC area.
- General State Government taxation revenue, rather than SIC plans, should be used to fund infrastructure that:
  - Addresses existing infrastructure deficiencies;
  - Supports an area's underlying 'natural growth';
  - Supports growth occurring elsewhere;
  - Addresses broader population growth or change that is not specifically related to the SIC area; and
  - Generates funding for purposes that are unspecified and/or unrelated to the contributing projects.

Collaboration

Principle 4 of the SIC framework seeks a SIC that is 'relevant, current and outcome based'. However, it does not mention the role of landowners and developers, who make decisions on the type, volume, timing and location of new housing and employment projects.

Coordinating public investment in infrastructure with private investment in new projects is a more efficient use of public resources and achieves the planning aim of well served new or urban renewal areas, and unlocking the potential of developable land Without the input of landowners and developers, public investment decisions will be made without all market insight, which could result in perverse outcomes whereby major infrastructure assets are delivered to areas that cannot be developed. Both of these outcomes are contrary to good planning principles.

We suggest that Principle 4 should incorporate the ability to coordinate public and private investment to create or renew urban areas and deliver on key policy outcomes. The following additions (underlined) are proposed to Principle 4:

- *The SIC will be regularly reviewed to reflect **project delivery times**, infrastructure needs and strategic priorities in consultation with the development industry and landowners;*
- *SIC expenditure will be scheduled for a SIC area when sufficient funds for delivery and construction have accumulated (if budget allows **or to facilitate delivery of projects where SIC infrastructure can be delivered with that project);***
- *SIC expenditure will be programmed in accordance with an understood and accepted investment decision framework **and the anticipated delivery of projects within the SIC area**.*
- *SIC expenditure will align to capital planning programs managed by other State agencies, State-owned corporations and councils **and the anticipated delivery of projects within the SIC area**.*

Consistency

It is usual for developers to deliver regional infrastructure to facilitate commencement of their projects, and for the cost to be offset or credited against SIC contributions through planning agreements.

However, the following principle and paragraph is included in the draft Guidelines:

> *The SIC will support the objectives of the broader planning system, such as major State or council led rezoning, land release or urban renewal process.*
>
> *In some situations, the government may consider growth areas for early release and rezoning on the basis that the release will incur no additional cost to government in relation to State or regional infrastructure. In this instance the SIC rate will be set with an assumption the developers have considered feasibility before making the offer to develop.*

This problematically suggests that credits or offsets wouldn't be available in some cases, despite regional, public infrastructure being delivered, and some Growth Areas will be prioritised for government infrastructure funding over others, irrespective of the contribution they make to supplying housing or employment uses that achieve social, environmental and economic objectives.

This will potentially generate inequalities, skew housing markets and discourage delivery of critical projects, and result in planning approval delays for some areas in order to leverage higher contributions.

In particular, this approach contradicts the purpose of SIC plans to represent a

> *… wider collaboration with local councils, utility providers and the development industry to coordinate capital investment in growth areas and deliver infrastructure that supports housing and employment growth.*

We suggest if an area is within an identified Growth Area it has already established strategic planning merit and can unlock the developable urban land that the community and economy require. Therefore, SIC plans applying to Growth Areas, and projects within Growth Areas, should be formulated using the same principles.

The principle on page 6 should be amended to read:

- *The SIC will support the objectives of the broader planning system, such as major rezoning, land release or urban renewal processes.*

Review

There are often discrepancies between the cost estimates prepared by the State agencies, and those of developers, and there is no process for independent review.

In those instances, we suggest a process for the independent review of SIC plans by IPART be incorporated into the guidelines. IPART would be well placed to advise on the type, scope and cost of infrastructure items included in a SIC plan. An appeal process to challenge the making of a SIC plan determination would be appropriate so that affected landowners could request their views to be heard beyond providing comments at the public exhibition stage.

Contribution amounts are based on cost estimates for infrastructure, which are prepared and incorporated into SIC plans before the infrastructure item is designed and delivered. Therefore, these cost estimates can be much higher than the actual cost of delivering the item. Contribution amounts may then be artificially inflated, an issue that will be exacerbated by the generous contingency amounts allowed for in the draft Guideline, in some cases up to 40%. Development projects are, or will be, burdened by contribution amounts that are well above what is reasonably required to deliver the required infrastructure.

We suggest the guideline must include a provision for reviewing the actual cost of infrastructure items, post-delivery and adjusting the applied SIC amount with a credit or refund. If a refund or credit model is not acceptable to the Government, we would suggest either an independent quantity survey estimate process or a more appropriate project contingency amount is mandated (for example 10% -15%).

Reasonableness

Cumulative Impact

The cumulative impact of SIC, section 7.11 or section 7.12 contributions, taxes, duties, charges and other costs imposed on development projects related to the planning approvals process needs to be taken into account. The introduction of a SIC plan should not be used as a mechanism to simply raise additional funds with no net public benefit - and should not be pursued at all costs. - The development must still remain viable to remain affordable from a buyer's perspective. In addition to the above contributions, taxes and levies, other similar cost impositions on development include:

- Affordable Housing Contributions (Section 7.32);
- Planning Agreements;
- Meeting architectural design standards, including cost of design competitions; and
- Application, State-agency and local council fees.

Value Sharing

The draft guidelines suggest the State should share in any additional value created by a rezoning. 'Value sharing'. To be clear, this is **NOT** current government policy, and therefore should **NOT** be referred to in the guidelines. Councils are unable to apply this principle in section 7.11 plans nor in planning agreements. The concept of value sharing ignores the contribution new development projects make to delivering on broader policy outcomes including planning, social and economic objectives and fails to take into account the considerable risks landowners and developers take to deliver that contribution, while simultaneously assuming that 'developer profits' are the only project outcome.

The 'value' of a particular development is therefore a difficult concept to define or quantify when viewed from such a narrow lense. .

The Property Council suggests the guideline must stress that:

- Land is rezoned in line with its strategic merit and in accordance with meeting the broader social, environmental and economic objectives; and
- There must be a transparent nexus between any items of infrastructure to be delivered through a SIC plan and the recognition of the projects that will contribute to that infrastructure.

Any references to 'value capture or value sharing' must be deleted from the draft guidelines (particularly in Table 3).

Contributions towards Land and Works

Built facilities such as schools, hospitals and ambulance stations are required as a consequence of general population growth and are not associated specifically with the location of a project. Therefore, it is reasonable for land dedications to be made, but unreasonable for development projects to contribute toward constructing new hospitals, schools, justice or emergency facilities.

We suggest the deletion of the word 'facilities' from Table 1 – SIC Infrastructure (pages 8 & 9), in rows 'Education Facilities', 'Health Facilities', 'Justice and Emergency Services Facilities', Public Space, Community Cultural Facilities'.

Demand for additional infrastructure is not generated until new workers arrive and new residential move into their homes. This is also the point when landowners and developers receive revenue from their projects.

We suggest the payment of SIC contributions occur immediately before the Occupation Certificate or Subdivision Certificate is issued, whichever is applicable.

Transparency

We welcome the commitment to publicly publish SIC revenue and expenditure within financial reports. These should be supported by plainly worded explanatory information that indicates how SIC funds contribute towards the delivery of infrastructure to enable urban growth.

The intention to ensure a SIC does not unreasonably impact on development feasibility and investigate the impact of a SIC charge on general development viability is appropriate. We would encourage the Department to also publish the outcomes of its analysis of feasibility and provide a mechanism for this to be contested by developers.

To better improve the public understanding and acceptance of the SIC mechanism we suggest the Department establish a system for greater visibility about collection and expenditure of SIC funds. This should include consideration of a real time tracker on the NSW Planning Portal that provides the public with information about the value of SIC funds collected within a SIC plan area and a summary of the projects that have been funded using SIC funds. We would welcome the opportunity to work with the Department to explore how there can be greater transparency in respect to SIC areas.

Satisfactory Arrangements Clause

In some cases, where a proposal falls within a Priority Growth Area or Precinct, and is subject to urban release area provisions under the relevant Local Environmental Plan, Gateway, determinations will be conditional on the draft instrument including a 'Satisfactory Arrangements Clause', commonly known as 'clause 6.1'. Clause 6.1 prevents Councils from approving residential development in urban release areas unless there are satisfactory arrangements for the provision of State infrastructure.

There is no obligation for the State Government to identify what the infrastructure is needed, when it should be delivered or how much it will cost. This can be determined as part of the rezoning or when development applications are submitted and negotiated in Voluntary Planning Agreements between the developer and the Minister.

In our view, there is no transparent and certain process for determining what the State government agencies may require, and landowners and developers must commit to sites and development projects without certainty regarding State contributions.

We suggest that instead of relying on *Satisfactory Arrangements* clauses to fund State infrastructure, these charges should be incorporated into a SIC plan, developed in accordance with the proper statutory process including consultation with relevant stakeholders.

Savings and Transitional Arrangements

There is a lack of clarity in the draft Guidelines concerning the current range of draft SIC plans that have been exhibited (for example Bayside West, Rhodes, Crows Nest-St Leonards, Greater Macarthur and Wilton) and the application of the Guidelines to these areas.

The current arrangements mean that landowners and developers could potentially be making a commitment to a site within a SIC area - only to be subjected to a new, more onerous SIC plan prior to rezoning. This is an unsatisfactory outcome.

The final Guidelines should include a grandfathering provision to ensure landowners and developers in that position are not penalised. Further, we suggest that SIC plans should only apply prospectively and should not capture development the subject of an application lodged prior to the SIC being in force. This is critical for financial certainty.

We thank you for the opportunity to provide the Department with comments on the draft Guideline and would welcome the opportunity for our members to speak with the relevant officers on specific issues contained within our submission.

Should you have any questions regarding the content of this submission, do not hesitate to contact Troy Loveday, Senior Policy Adviser, on 0414 265 152 or tloveday@propertycouncil.com.au.

Yours sincerely

Jane Fitzgerald
NSW Executive Director
Property Council of Australia