



Australia's property industry

Creating for Generations

28 May 2021

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Dear Jeremy

Draft Community Infrastructure Incentives Policy

The Property Council of Australia welcomes the opportunity to provide the following comments to the City of Newcastle to inform its Draft Community Infrastructure Incentives Policy (The Policy).

The Property Council of Australia is the leading advocate for Australia's biggest industry – property. It champions the interest of more than 2,200-member companies representing a broad cross section of the property industry.

The Property Industry represents 13% of Australia's GDP and employs more than 1.4 million Australians. Our members are the nation's major investors, owners, managers and developers of properties of all asset classes. They create landmark projects, revitalised urban precincts and communities where people can live, work, shop and play. The property industry shapes the future of our cities and has a deep long-term interest in seeing them prosper as productive and sustainable places.

We welcome the City of Newcastle's (CN) initiative to enhance the delivery of community infrastructure to support urban renewal in the city of Newcastle. We appreciate that urban renewal is an important process in recreating communities and increasing liveability, and acknowledge efforts to work with developers through a sustainable and realistic development incentives program but caution against a policy that increases costs and creates further uncertainty and duplication of contributions.

CN needs to define how any monetary contributions will be used and ensure the nexus between collection and spend is relevant. We encourage Council to ensure that transparency occurs on funds collected, where they are spent and when they are used.

We ask CN to consider The Policy and how it relates to current mechanisms such as developer contributions, Clause 4.6 variations and planning agreements, that achieve these same or similar outcomes. We further encourage CN when developing this policy to improve clarity and certainty for potential development to ensure the delivery of enhanced community infrastructure.

Further to a meeting with Council recently we understand this is an infrastructure enabling policy with a move away from value capture. The Property Council sees no case for adopting broader value capture techniques while retaining a range of other contributions and taxes.

The contribution should only apply to and where a development relies on uplift from the existing base controls. We further support the policy as an opt in, voluntary process. We note the recent Review of Infrastructure Contributions by the Productivity Commissioner and put to Council that the incentive policy must be consistent with the recommendations adopted by the State Government.

Comments

2.2 CN will implement this Policy by the following means:

2.2.1 Including provisions within the Local Environmental Plan (LEP) that enable an increase in density as an incentive, on land identified by the Floor Space Ratio (FSR) and/or Height of Buildings (HOB) map, where proposed development delivers community infrastructure. The LEP provisions will identify the maximum incentive available on the land.

2.2.2 A Development Control Plan (DCP) that identifies the community infrastructure CN seeks to deliver, for which the LEP incentives may apply to. The DCP guides how the level of incentive is determined having regard to the value of the community infrastructure proposed and the incentive Gross Floor Area (GFA) rate.

2.2.3 Publishing the 'Incentive GFA rate' in CN's annual Fees and Charges for the land to which the incentive applies in the LEP.

2.3 This Policy does not provide a means of varying development standards for individual proposals outside the parameters identified above.

The above states that the Local Environmental Plan (LEP) will set a maximum incentives provision for Height and Floor Space Ratio (FSR), and that there will be no mechanism to vary the standards above this. How will the maximum be set? In relation to the Wickham area, projects have exceeded the limits set in the Masterplan to ensure their commercial viability. In those cases, the projects would need to rely on another variation to Council's LEP or they would not be able to proceed. This removes incentive and certainty for development potential. Additional height has also resulted in a better product with no additional floor space which means no additional pressure on infrastructure or services.

It is also noteworthy that the Height of Buildings (HOB) and FSR can be varied to any extent under Clause 4.6, so it is unclear how a local clause might override that mechanism.

"Clause 4.6 of the Standard Instrument LEP provides flexibility in the application of development standards in certain circumstances allowing consent authorities, such as local councils, to approve a variation to development standards".

While the Government is currently reviewing the way 4.6 operates in order to provide greater certainty to industry and councils, we would ask CN to provide an understanding of how this mechanism will work with Clause 4.6 and the state-wide changes expected to that mechanism.

6.1 In areas identified as suitable for supporting a change in land use/s and/or an increase in density of existing uses (as outlined in Section 2.1), CN will determine the maximum development incentives available based on the potential development standard to be applied, on potential development sites, where satisfied that the potential development outcomes meet the following criteria:

6.1.1 reflect the envisaged character and scale of the local area.

6.1.1 states the extra density must reflect the envisaged character of the local area. This is positive and provides clarity, but it will rely on CN's development of character statements for areas where future growth is already enabled or otherwise preferred. There have been several examples where the current DCP has not adequately provided this, creating complexities to address. The Property Council does note and acknowledge CN's current work around local character studies with work progressing on the Tighes Hill area.

6.2 CN will identify and determine the cost of delivering potential community infrastructure, which:

6.2.1 address the immediate, intermediate, and long-term needs of the area likely to experience change.

6.2.2 improve the amenity of the public domain.

6.2.3 expedite implementation of actions identified within an adopted plan or strategy.

6.2.4 are not otherwise provided for within an adopted contribution plan.

6.2.5 meets the required standards determined by CN.

Clause 6.2 describes the scope of 'community infrastructure' outcomes. One of those (6.2.3) includes outcomes that will 'expedite implementation of actions identified within an adopted plan or strategy'. This could include a project that entirely delivers a line item in a Public Domain Plan. However, several mentions are made (including at 8.1.3) to reiterate that this approach does not influence the imposition of 7.11/7.12 developer contributions, which would be ordinarily funding those items. It is important that Council is transparent and does not implement a mechanism to 'double dip' when it comes to outcomes in order to be incentivising to developers.

6.4 The 'Incentive GFA Rate', will be determined having regard to the following:

- 6.4.1 the estimated cost for providing identified community infrastructure within the identified urban renewal area, expressed in dollars.*
- 6.4.2 the potential incentive GFA that will be made available within the identified urban renewal area, expressed in square meters.*
- 6.4.3 the Incentive GFA Rate, being the proportion calculated by dividing the cost of community infrastructure projects (in 7.4.1) by the total GFA uplift in the urban renewal area (in 7.4.2) and expressed as dollars per square metre.*
- 6.4.4 Feasibility testing to compare likely development scenarios using a feasibility modelling approach, to determine if the proposed 'Incentive GFA rate' enables a more viable outcome than the current LEP development standards to an extent where the outcome represents an incentive worth pursuing when weighed up against the potential additional risk.*
- 6.4.5 Where feasibility testing determines the incentive to be unviable, CN may review the priority or scope of potential community infrastructure projects.*
- 6.4.6 Despite the above, in certain circumstances CN may identify that an increase in density does not equate to improved development feasibility outcomes, regardless of the Incentive GFA Rate. In such circumstances the envisaged development outcomes may require further consideration to determine if increased density is warranted under current property market conditions.*

6.4 the methodology used differs to the approaches that have been taken thus far and is more in line with how contributions are worked in new growth areas. To work out the GFA rate CN will first determine the total cost of the community infrastructure then divide that by the total potential GFA uplift for an area, not using an increase in residual land values. Incentives must provide a feasible rate and would only be purposeful if set in a timely manner. While it is the intention for feasibility testing to occur, this may still lead to a situation where a development would rely on more height or FSR than the LEP incentives limit allows, precluding any incentive. The flow on impact stands to see proposed community infrastructure put at risk.

7.5 Notwithstanding this part, CN may enter into an individual Planning Agreement, made under Section 7.4 of the Act, with a planning proposal seeking to achieve increased density, where consistent with Newcastle Planning Agreement Policy and justified:

- 7.5.1 having regard for the principles of this Policy.*
- 7.5.2 using the approach of this Policy to identify specific community infrastructure to be delivered under the agreement.*
- 7.5.3 having regard for the value of the community infrastructure offered and the additional GFA the planning proposal will deliver, to determine the Incentive GFA rate*
- 7.5.4 based on the delivery of a net positive benefit to the local community.*

The Property Council acknowledges the ability of individual planning agreements to provide some flexibility and paths to alternative options and welcomes this consideration. We would ask for clarity of the terms in 7.5.4 to clearly interpret the intent of 'net positive benefit to the local community'. This will assist in providing a common understanding for all parties and show relevancy to where parameters have been established for this already. This clarification could include a definition of 'public benefit' in the glossary with common examples of what this might be, providing a workable and clear basis for comparison in future projects.

In addition to this method, Council could consider other incentives to assist with feasibility, which should be described in this policy so they can be linked into the process. These could include waiving assessment fees, concessions on parking or other elements of the development and application to 7.11/12 developer contributions (depending on location/circumstance).

Conclusion

The Property Council and our members are grateful for the opportunity to provide feedback on this draft policy.

We invite and look forward to further engagement on details relative to controls and this matter.

Should you have any questions, please do not hesitate to contact me on 0439 253 710.

Yours sincerely



Anita Hugo
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Property Council of Australia