

6 June 2019



Mr Jim Betts
Secretary
Department of Planning, Industry and Environment
320 Pitt Street
SYDNEY NSW 2000

By Email: jim.betts@planning.nsw.gov.au

Dear Jim,

RE: Environmental Planning and Assessment Amendment (Contributions Plans) Regulation 2019

The Urban Development Institute of Australia (UDIA) NSW is the leading industry body representing the interests of the urban development sector. UDIA NSW advocates for better planning, timely and affordable housing, and the building of vibrant communities to increase local job opportunities.

On 25 January 2019 the *Environmental Planning and Assessment Regulation 2000* was amended, without any industry consultation, to prevent consent authorities from determining a development application for urban development unless there is a section 7.11 contribution plan or executed Voluntary Planning Agreement in place.

While on face value this may seem a small amendment, and that was prepared we understand in response to a specific issue that emerged in a Land and Environment Court matter, it has broad and significant repercussions for development in NSW. Specifically, it impacts:

- The timely granting of development consents with significant potential for assessment processes to become unnecessarily extended and approvals delayed;
- The ability for parties to negotiate voluntary planning agreements for local infrastructure in a fair and reasonable manner consistent with the 'voluntary' nature of planning agreements. Specifically, the amendment to the regulation gives positional power (ie leverage) to the Planning Authority in any negotiation situation. This jeopardises the maintenance of a fair, reasonable and constructive atmosphere, conducive to realising good planning outcomes via the VPA framework. Potentially, it can lead to intentional, or unintentional, misuse of power by Councils; and (as part of the above)
- The relationship between Councils and proponents/applicants.

Immediately following the change to the regulation UDIA NSW spoke with Acting Deputy Secretary, Brett Whitworth, and wrote to Mr Whitworth expressing our concerns.

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UDIA understood that this matter would be resolved following the election. However recently we have observed behaviour by certain Councils that have, unfortunately, substantiated our concerns and illustrate the unintended consequences we warned that could come from the amendment. For example,

1. Wollondilly Council has amended its s7.11 plan to remove the Wilton New Town Priority Growth Area from its plan citing that the existing plan was unprepared for the development at Wilton. This may be so, however the amendment has not been supported by the immediate adoption of a new plan. We understand that the new plan is in its infancy and its exhibition is some time away. This has effectively prohibited the lodging of any major development application in Wilton, unless it is accompanied by a VPA. As the Regulation and Council amendments are not grandfathered, current development applications are now frozen. They are on hold in a state of uncertainty until the contributions planning regime catches up or the application enters into a "Voluntary" planning Agreement in order to unlock the assessment of their application.
2. In Wilton, the power asymmetry that has been created by the regulation change has resulted in VPA proponents "voluntarily" offering contributions that are both unreasonable and prepared in a coercive negotiation atmosphere. For example a Draft VPA currently on exhibition in that Council area includes an offer by the proponent for a cash contribution to maintain certain Council owned facilities in perpetuity (the construction of which is being offered by the proponent). This is fundamentally unreasonable, contrary to IPART guidance and due to the added costs, further exacerbates the housing affordability crisis in Sydney.

UDIA NSW is seeking urgent resolution of this matter and would wish to meet to resolve this matter. Please contact Elliott Hale, General Manager Policy, Media and Government Relations on (02) 9262 1214 or at ehale@udiansw.com.au to arrange.

Yours sincerely



Steve Mann
Chief Executive

Attached

- A) Letter to Brett Whitworth Environmental Planning and Assessment Amendment (Contributions Plans) Regulation 2019

11 February 2019

Mr Brett Whitworth
Deputy Secretary
Department of Planning and Environment
320 Pitt Street
SYDNEY NSW 2000

By Email: brett.whitworth@planning.nsw.gov.au

Dear Brett,

RE: Environmental Planning and Assessment Amendment (Contributions Plans) Regulation 2019

The Urban Development Institute of Australia (UDIA) NSW is the leading industry body representing the interests of the urban development sector. UDIA NSW advocates for better planning, timely and affordable housing, and the building of vibrant communities to increase local job opportunities.

On 25 January 2019 the *Environmental Planning and Assessment Regulation 2000* was amended to prevent consent authorities from determining a development application for urban development unless there is a section 7.11 contribution plan in place.

We recognise that it is important developers contribute to the provision of adequate infrastructure in a timely manner.

However, we are concerned this amendment could unreasonably delay development for the following reasons:

- Applicants do not have control over the section 7.11 plan process, which includes exhibition, Council resolutions and IPART review.
- Councils could hold up the section 7.11 plan process to prevent development.
- There are many development applications that are for the purpose of urban development but do not currently trigger section 7.11 contributions, such as access roadworks, bulk earthworks, infrastructure relocation/augmentation, and procedural subdivision.

For this policy to not delay development, UDIA NSW recommends the NSW Government:

1. amends clause 270A subclause 3 by adding:
 - (c) *the consent authority has otherwise reasonably determined that there will be a reasonable provision of local infrastructure as part of the proposed development or as a requirement of a condition of the development consent.*
2. ensures 'minor nature' is defined as to apply to any development application that does not comprise a final residential lot. The relevant contribution is payable at the subdivision certificate stage. This would allow enabling works to get underway.

We would be pleased to meet with you to discuss this matter further. If you have any queries, please do not hesitate to contact Elliott Hale, General Manager Policy, Media and Government Relations on (02) 9262 1214 or at ehale@udiansw.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Steve Mann', with a stylized flourish at the end.

Steve Mann
Chief Executive