

## REPORTS TO COUNCIL - FOR COUNCIL DECISION

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<b>ITEM NUMBER</b>	13.4
<b>SUBJECT</b>	Public Exhibition of Housekeeping Amendments to Parramatta City Centre Local Infrastructure Contributions Plan 2022
<b>REFERENCE</b>	F2022/03176 - D09145577
<b>REPORT OF</b>	Senior Project Officer

**CSP THEME:** INNOVATIVE

**WORKSHOP/BRIEFING DATE:** NIL

### PURPOSE:

The purpose of this report is to outline the administrative changes proposed to the Parramatta City Centre Local Infrastructure Contributions Plan 2022 as part of a housekeeping amendment to the Plan. The report recommends that Council endorse the *Draft Parramatta City Centre Local Infrastructure Contributions Plan 2022 (Amendment No. 2)* for the purposes of public exhibition.

### RECOMMENDATION

- (a) **That** Council endorse the *Draft Parramatta City Centre Local Infrastructure Contributions Plan 2022 (Amendment No. 2)* provided at **Attachment 1** for public exhibition.
- (b) **That** the draft Plan be publicly exhibited for a minimum of 28 days commencing in late January 2024.
- (c) **That** the outcomes of the public exhibition be reported to Council.
- (d) **Further, that** Council delegate authority to the Chief Executive Officer to correct any minor anomalies of a non-policy and administrative nature that may arise during the plan making process.

### BACKGROUND

1. The Parramatta City Centre Local Infrastructure Contributions Plan 2022 (the Plan) originally came into effect on 14 October 2022, at the same time as the commencement of Amendment 56 to Parramatta Local Environmental Plan 2011, which introduced increased height and densities to the Parramatta CBD.
2. The Plan allows Council to collect money via development application or complying development certificate conditions of consent, with the funds put toward items specified in the Works Schedule of the Plan.
3. Amendment 1 to the Plan came into effect on 30 June 2023, to reflect an amendment to the Parramatta CBD planning controls within the block bound by Phillip Street, Smith Street, the Parramatta River and Charles Street. Amendment No.1 matched the contributions for that block to other nominated areas of the CBD.

4. This current amendment (Amendment No. 2) seeks to make changes to the Plan as outlined below:
  - (a) bring forward the timing of payment of the contribution to Council from prior to the issue of an occupation certificate, to prior to the issue of a construction certificate whilst providing a clause which allows Council (at its sole discretion) to consider the deferral of contribution payments, subject to strict guidance and provision of appropriate security.
  - (b) strengthen controls relating to the obligations of certifiers, including to make clear that Council (not the certifier) will determine the cost of development and contribution applicable for any development approved (including complying development certificates).
  - (c) include notations that discounts to contributions will not be applied and that credits will not be made for existing development.
  - (d) include a definition relating to affordable housing and social housing exemptions within the Plan.
  - (e) make minor administrative changes to the Plan to better align with language outlined within the Environmental Planning and Assessment Act and Regulation, fix minor typographical errors, include reference to relevant Ministerial Directions, include a Plan amendment table, and update the referenced options for payment of development contributions.

The key changes are outlined in further detail in the Issues section below.

## **ISSUES**

### Change timing of payment to Construction Certificate Stage

5. At the time of drafting of the original Contributions Plan, the State Government had released draft legislative reforms to the development contributions regime. The original contributions plan was based on draft legislative reforms. One change proposed by the reforms included deferral of development contribution payment until prior to the issue of an occupation certificate, as opposed to prior to the issue of a construction certificate – the usual practice across NSW. This change was on the basis that the later payment timing would reduce the cash flow burden of developers until the last stage of the process and reducing overall holding costs.
6. The counter side to this payment timing is that Council's ability to deliver infrastructure to meet the increased residential and worker demand from these developments, is delayed. The delay is potentially up to 2-3 years while construction is occurring.
7. Since the draft reforms were released, the State Government has confirmed that it will not be pursuing the change to the timing of payment to occupation certificate stage. In addition, the State Government has released its own regional level monetary contribution, known as the Housing and Productivity Contribution (HPC), which requires the payment of the HPC prior to the issue of

a construction certificate, as outlined below in Section 20(1) of the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023:

**20 Time by which a housing and productivity contribution must be made**

*(1) The housing and productivity contribution for HPC development must be paid before the issue of the first construction certificate in relation to the development or before the commencement of any work authorised by the development consent (if no construction certificate is required), unless otherwise provided by this clause.*

8. Council's experience is that it is difficult to regulate and administer the payment of development contribution levies at the occupation certificate stage, where construction is already complete.
9. Requiring the payment at the construction certificate stage enables any non-compliance matters to be rectified by the developer and certifier during the construction process. Council has greater ability to enforce non-compliances during the construction process as a developer is still involved - as opposed to post occupation certificate matters where the developer may have sold the development onto individual owners or a strata body (for example in the case of a residential flat building). Similarly, in the case where a developer may enter into administration during the construction process it may be harder for Council to seek final contribution payments if it is not a secured creditor.
10. Furthermore, Council's existing contribution plan relating to the remainder of the LGA (excluding the CBD) known as the City of Parramatta Outside CBD Local Infrastructure Contributions Plan, currently requires contributions payment prior to the issue of a construction certificate.
11. Therefore, to ensure that Council's collection of contributions and subsequent delivery of infrastructure is not delayed, to improve Council's ability to regulate non-compliances; and to ensure consistency with Council's Outside CBD Contributions Plan and the NSW Government, it is recommended that Council amend the Parramatta City Centre Local Infrastructure Contributions Plan to require the timing of payment to prior to the issue of a construction certificate.
12. Currently the Plan does not allow payments to be deferred as the payment was required at the last stage of the development, being the occupation certificate stage. As this report is seeking to amend the Plan to require payments prior to the issue of a construction certificate, it is recommended that Council include a clause that does enable Council (at its sole discretion) to consider deferring the contribution in part. The proposed clause would still require 50% of the payment to be made prior to the issue of a construction certificate with the remaining 50% to be deferred to the occupation certificate stage, subject to the provision of a bank guarantee as security. Council would only apply this in circumstances considered appropriate, not as an everyday occurrence.

Obligations and role of registered certifiers (also known as accredited certifiers)

13. The Plan has been amended to strengthen the wording around the obligations of registered certifiers when issuing complying development certificates, as well as construction certificates and occupation certificates as required by existing

legislation. This includes the obligations of certifiers to include a condition of approval regarding a development contribution in the case of a complying development certificate; and to ensure development contributions required by conditions of consent are paid prior to the issue of any construction certificate, and/or occupation certificate according to the EP&A Act and Regulations.

14. Further, the Plan has been amended to clearly state that Council will determine the cost of development for the purpose of calculating the development contribution fee applicable - as opposed to a registered certifier being able to determine the value of the development and the ultimate value of the development contribution.
15. The Plan currently states that 'the consent authority, either "Council or an accredited certifier" is to calculate the contribution payable'. This is inconsistent with the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation).
16. Section 208(1) of the EP&A Regulation provides that the proposed cost of carrying out the development must be determined by the 'consent authority' by a mathematical process. In this legislative context, only the Council is a consent authority under the Environmental Planning and Assessment Act 1979 (EP&A Act), a registered certifier is not. Properly construed, section 208 of the EP&A Regulation requires that the Council, not the certifier, determine the proposed cost of development.
17. It is therefore recommended that Council amend the Plan to state that only Council may determine the cost of works and contribution payable pursuant to Section 208 of the EP&A Regulation.

#### Administrative changes

18. Other amendments made to the Plan are minor and administrative in nature. These include:
  - a notation that discounts to contributions will not be applied and credits will not be made for existing development. This is because the Plan is made under Section 7.12 of the EP&A Act which allows contributions to be levied as a percentage of the cost of development. Section 7.12 does not require the contribution to be linked to any increase in population or infrastructure demand as is the case with Section 7.11 of the EP&A Act.
  - providing a definition of affordable housing and social housing exemptions within the Plan.
  - better aligning with language outlined in the EP&A Act and Regulation, to reference the term 'registered certifier' and include a footnote that this also means 'accredited certifier.'
  - correcting minor typographical errors.
  - reference to relevant Ministerial Directions that need to be considered as per Section 7.17 of the EP&A Act.
  - a Plan amendment table to record current and future amended versions of the Plan.
  - updating payments options for development contributions to those currently accepted by Council.

## CONSISTENCY WITH LOCAL STRATEGIC PLANNING STATEMENT

19. The housekeeping amendment to the Plan is considered to be consistent with Council's Local Strategic Planning Statement (LSPS), in particular Planning Priority 6 (provide for community infrastructure and recreation opportunities).

## CONSULTATION & TIMING

### Stakeholder Consultation

20. The following stakeholder consultation has been undertaken in relation to this matter:

Date	Stakeholder	Stakeholder Comment	Council Officer Response	Responsibility
N/A	Community	N/A	No action undertaken to date. Public exhibition of the proposed amended Plan will be undertaken in accordance with legislative requirements	City Planning and Design

### Councillor Consultation

21. The following Councillor consultation has been undertaken in relation to this matter:

Date	Councillor	Councillor Comment	Council Officer Response	Responsibility
27 November 2023	All Councillors invited	Report finalised prior to briefing session	Report finalised prior to briefing session	Group Manager Infrastructure Planning and Design

## LEGAL IMPLICATIONS FOR COUNCIL

22. Section 215 of the EP&A Regulation 2021 allows for councils to amend or repeal a contributions plan. Further, Section 215(5) of the Regulation allows for councils to amend a contribution plan without preparing a new plan for a limited number of reasons, including "minor typographical corrections".
23. Council staff have determined that the housekeeping amendments proposed fall outside the scope of Section 215(5) of the Regulation. As a result, the changes proposed would require Council endorsement for the purposes of publicly exhibiting *Draft Parramatta City Centre Local Infrastructure Contributions Plan 2022 (Amendment No. 2)* provided at **Attachment 1**.

**FINANCIAL IMPLICATIONS FOR COUNCIL**

24. If Council resolves to approve the amended Plan post its exhibition, this will amend the timing of payment of required development contributions to the construction certificate stage as opposed to the occupation certificate stage. This will result in Council receiving income at an earlier point in time and enable improved and timely delivery of infrastructure for new and existing residents and workers in the Parramatta CBD.
25. The draft Plan itself does not result in any changes to approved expenditure, it will only change the potential timing of receipt of future income. The cost of publicly exhibiting the Plan will be funded from the City Planning and Design budget.

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**Chief Executive Officer**

**ATTACHMENTS:**

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|---|------------------------------------------------------------------------------------------------------------|-------------|
| 1 | Attachment 1 - Draft Parramatta City Centre Local Infrastructure Contributions Plan 2022 (Amendment No. 2) | 49<br>Pages |
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**REFERENCE MATERIAL**