

**Item 10****Central Sydney Development Contributions Plan 2020****File No: S064204****Summary**

In December 2020, Council considered the Central Sydney planning framework including the Planning Proposal, Central Sydney Development Control Plan, Competitive Design Policy and the draft Central Sydney Development Contributions Plan 2020 (the Contributions Plan 2020). Council resolved to approve the Contributions Plan 2020, noting that it will commence only following the amendment of Clause 25K of the Environmental Planning and Assessment Regulation 2000 (the Regulation) and the making of the amendment to the local environmental plan. Council also resolved to request that the Minister for Planning and Public Spaces amend Clause 25K of the Regulation to allow for a contributions levy of up to three per cent to apply to new development.

In late December 2020, the request to modify Clause 25K of the Regulation was sent to the Department of Planning Industry and Environment (the Department).

Since that time the City has been working with the Department to progress the drafting of the amendments to the Sydney Local Environment Plan 2012 (the LEP) and the amendment to the Regulation. The Department has advised in the letter at Attachment B that the Regulation Amendment has been approved by the Minister for Planning and Public Spaces and Executive Council and will come into effect when published on the NSW legislation website. The Department has advised the timing for the publication of both the LEP amendment and the Regulation Amendment on the NSW legislation website is imminent.

The Regulation Amendment provided by the Department stages the introduction of the maximum three percent levy rate in response to the impact of Covid-19 on the business community. For developments where the development cost is over \$1 million, the levy rate will start at two per cent for development applications made on or before 30 June 2022 then increase to three per cent for those made on or after 1 July 2022. The reason for the staged introduction of the levy is to support business and jobs due to the impacts of Covid-19.

The staged introduction of the levy rates was not incorporated in the Contributions Plan 2020 as adopted in December 2020. The Contributions Plan 2020 needs to be amended to be consistent with the Regulation Amendment prior to it coming into effect to ensure consistency and certainty.

An amended version of the Central Sydney Development Contributions Plan 2020 (the amended Contributions Plan 2020) is at Attachment A. This updated version reflects the levy rates in the Regulation Amendment provided by the Department and also contains consequential amendments relating to the transition of the rates over time.

As the Contributions Plan 2020 has been approved by Council, it is necessary for a written request to be submitted to the Minister for a Ministerial Direction making the necessary amendments to the Plan.

It is important that the amended Contributions Plan 2020 is ready for implementation so as to align with the increase in development opportunity being delivered through the changes to the Central Sydney planning controls.

## Recommendation

It is resolved that:

- (A) Council note the advice from the Department of Planning, Industry and Environment as to the proposed wording of the amendment of Clause 25K of the Environmental, Planning and Assessment Regulation 2000 to allow for a contribution levy of up to three per cent to new development, with a transitional introduction levy of two per cent applying for new development applications made on or before 30 June 2022 with a cost of more than \$1 million as shown at Attachment B to the subject report;
- (B) Council note the draft amended Central Sydney Development Contributions Plan 2020 at Attachment A as shown at Attachment A to the subject report;
- (C) authority be delegated to the Chief Executive Officer to provide a written request to the Minister for Planning and Public Spaces, via the Department of Planning, Industry and Environment, to amend the Central Sydney Development Contributions Plan 2020 as set out in Attachment A to the subject report;
- (D) Council note that, subject to the Minister making the requested Direction, the amended Central Sydney Development Contributions Plan 2020 will commence upon the publication of the amended Clause 25K on the NSW Legislation website; and
- (E) authority be delegated to the Chief Executive Officer to make any minor amendments, correct drafting errors or make necessary changes to implement the requirements of Clause 25K prior to the issue of any Ministerial Direction to amend the Central Sydney Development Contributions Plan 2020.

## Attachments

**Attachment A.** Draft Amended Central Sydney Development Contributions Plan 2020

**Attachment B.** Letter from Department of Planning, Industry and Environment dated 11 November 2021

## Background

### Previous Council resolutions

1. In December 2020, Council approved the Central Sydney planning framework including the Planning Proposal, Central Sydney Development Control Plan, Competitive Design Policy and the Central Sydney Development Contributions Plan 2020 (the Contributions Plan 2020).
2. Council resolved to approve the Central Sydney Development Contributions Plan 2020, noting that it will commence only following the amendment of Clause 25K of the Environmental Planning and Assessment Regulation 2000 (the Regulation) and the making of the amendment to the local environmental plan. Council also resolved to request that the Minister for Planning and Public Spaces amend Clause 25K of the Regulation to allow for a contributions levy of up to three per cent to apply to new development.

### Request to modify the Regulation

3. In late December 2020, the request to modify Clause 25K of the Regulation for the Contributions Plan was sent to the Department of Planning, Industry and Environment (the Department).
4. Since that time, City staff have been working with the Department to progress the drafting of the amendments to the planning controls in Sydney Local Environment Plan 2012 (the LEP) and the amendment to Clause 25K of the Regulation to allow for a contribution levy of up to three per cent to apply to new development. The contribution levy is required to assist in funding the infrastructure needed to support the growth envisaged through the LEP planning controls.
5. The Department have notified the City by letter dated 11 November 2021 that the making of the amendment to the LEP and the amendment to Clause 25K of the Regulation is imminent. A copy of the letter is provided at Attachment B.
6. In the forthcoming amendment to Clause 25K of the Regulation, the Department has advised there will be a staged introduction to charging a contribution levy of up to three per cent for developments where the proposed cost of carrying out the development is more than \$1 million. For development more than \$1 million, the levy will be two per cent up to and including 30 June 2022. The levies are shown in the table below.

<b>Cost of development</b>	<b>Levy</b>
Up to and including \$250,000	Nil
More than \$250,000, up to and including \$500,000	1 per cent
More than \$500,000, up to and including \$1 million	2 per cent
More than \$1 million	On or before 30 June 2022—2 per cent On or from 1 July 2022—3 per cent

7. The Department has advised that this transitional introduction to the commencement of the three per cent levy is to be included in the Regulation in response to the impact of Covid-19 on the business community. It has been the subject of discussions with the Department and the delay can be supported in the circumstances, given the ongoing Covid-19 related impacts arising this year. It is noted that for developments where the proposed cost of carrying out the development is less than \$1 million, Council already responded to the economic challenges in the draft contributions plan. As part of the City's March 2020 Covid-19 support package, Council supported a move from a flat three per cent levy to a sliding scale levy. This approach sought to ease the financial burden on small businesses impacted by the Covid-19 pandemic. The transitional implementation of the three per cent levy will further assist in the short term, while still ensuring the City receives adequate contributions to deliver the necessary infrastructure to support the development uplift embodied in the Central Sydney Strategy over the medium and longer term.

#### **The Contributions Plan and the Regulation need to align**

8. The Regulation will contain a transitional introduction rate of two per cent for developments with a value of more than \$1 million that was not included in the Contributions Plan 2020 as adopted by Council. The Contributions Plan 2020 has been approved but has not commenced because the Regulation has not yet been amended.
9. There is a need to align the Plan to the Regulation to ensure consistency and certainty for the purposes of implementation. To achieve this alignment, an updated version of the plan has been prepared and is referred to in this report as the amended Contributions Plan 2020 provided at Attachment A.
10. The table below sets out the minor differences between the rates in the Contributions Plan 2020 (December 2020 version), and the rates in the proposed amended Contributions Plan 2020 (November 2021 version). The November 2021 version aligns the Plan to the Regulation. The final column explains the change.

COLUMN A Central Sydney Development Contributions Plan 2020 (December 2020 version)		COLUMN B Central Sydney Development Contributions Plan 2020 (November 2021 version)		COLUMN C Explanation of change
Development cost	Levy	Development cost	Levy	Explanation
Less than \$250,000	NIL	Up to and including \$250,000	NIL	Minor drafting
\$250,000 or more, but less than \$500,000	1%	More than \$250,000, up to and including \$500,000	1%	Minor drafting
\$500,000 or more, but less than \$1,000,000	2%	More than \$500,000, up to and including \$1,000,000	2%	Minor drafting
\$1,000,000 or more	3%	More than \$1,000,000	On or before 30 June 2022 – 2%  On or from 1 July 2022 – 3%	Minor drafting and delay to start of three per cent levy

11. Consequential amendments have been made to the Contributions Plan 2020 to reflect the forthcoming Regulation's levy rates. Transitional arrangements have also been included to address the transitional introduction of the rate for developments of \$1 million or more.

#### Request for a Ministerial Direction

12. Amendment of the Contributions Plan 2020 is required imminently so that it can be applied to development applications lodged following the amendments to the LEP being legally made. Without this amendment there will be inconsistency between the approved plan (the December 2020 version) and the requirements of Clause 25K of the Regulation.

13. The City has already exercised its functions to approve the Central Sydney Contributions Plan 2020 in accordance with s 7.18 of the Environmental Planning and Assessment Act 1979 (the Act). Any substantive amendment to the Central Sydney Contributions Plan 2020 can only be made by the City by making a new contributions plan in accordance with the procedural requirements of the Act and the Environmental Planning and Assessment Regulation 2000.
14. However, Section 7.19 of the Environmental Planning and Assessment Act 1979 provides that the Minister can amend a contributions plan by making a Ministerial Direction if requested to do so in writing by a council. Any amendment made by way of a Ministerial Direction does not require compliance with the full preconditions for the making of a plan, as would be the case if the City were to make the amendment itself. The amendment is proposed directly as a result of the decision of the Minister to stage the implementation of the three per cent levy and it is appropriate that the amendment be formally made by the Minister in this way.
15. It is important the Contributions Plan 2020 be amended to align with the increase in development opportunity being realised through the changes to the Central Sydney planning controls. The planning controls will introduce the tower cluster provisions which will see the potential of up to 50 per cent floor space bonus.
16. The amended Contributions Plan 2020 is critical to the funding and delivery of public infrastructure needed to support the increase in floor space provided in the planning controls and ensure Central Sydney remains an attractive place for investment.

#### **Additional minor amendments to the 2020 version**

17. It is recommended that 2.4 (g) of the Contributions Plan 2020 be amended so that refunds can be considered within a 12 month period instead of within the same financial year in order to provide improved equity to those seeking refunds regardless of the month of the year.
18. It is also recommended that Appendix A.5 be amended so that the longer term works description for two additional City Squares be deleted as the current plans for the third square at Central will be on Transports for NSW land. An allocation to Railway Square ancillary works is unchanged at Appendix B.1.
19. It is also recommended that minor typos and the new name of the Bathurst Street Creative Hub be updated.

## Key Implications

### Strategic Alignment - Sustainable Sydney 2030

20. Sustainable Sydney 2030 is a vision for the sustainable development of the City to 2030 and beyond. It includes 10 strategic directions to guide the future of the City, as well as 10 targets against which to measure progress. This plan is aligned with the following strategic directions and objectives:
- (a) Direction 1 - A Globally Competitive and Innovative City - The amended Contributions Plan 2020 will fund delivery of infrastructure consistent with the range and quality of facilities expected of a global city. This investment will help retain our attractiveness as a place to live, work, visit and invest. The amended Contributions Plan 2020 proposes to fund works such as cycleways, walkability and public space initiatives under the 2030 agenda.
  - (b) Direction 4 - A City for Walking and Cycling - The amended Contributions Plan 2020 will contribute to our cycleway network and public domain works to further enhance cycling and walking options.
  - (c) Direction 5 - A Lively and Engaging City Centre - By funding improvements to the public domain (such as George Street) and parks and opens spaces (such as Hyde and Belmore Parks), the amended Contributions Plan 2020 will create an even more appealing and engaging city centre which attracts additional visitors, workers and residents who enhance its liveliness.
  - (d) Direction 7 - A Cultural and Creative City - The amended Contributions Plan 2020 proposes to provide part funding for creative and cultural facilities such as the fit out of the "Bathurst Street Creative Hub" and public art projects consistent with Direction 7.

### Risks

21. If the City does not prepare now for the Regulation amendment and LEP planning control changes that the Department has advised will be made concurrently and are imminent, there is a risk that the Central Sydney Contributions Plan 2020 as adopted will be inconsistent with the Regulations, creating confusion and uncertainty for proponents and the City. The City will not be able to levy contributions consistently with the provisions of the Regulation.
22. To address this risk, the City has prepared for the amendment to the Regulation to be made with the transitional introduction to the levy as advised by the Department. The amended Contributions Plan 2020 at Attachment A contains contribution levy rates that align with what the Department has advised will be in the Regulation Amendment, to be made imminently.
23. Following the endorsement of the amendments by Council, the Chief Executive Officer will issue the necessary written request to the Minister for a Ministerial Direction making the amendment of the plan. That written request will ask that the Ministerial Direction be made concurrently with the amendment to the Regulation.

### **Financial Implications**

24. The City did not budget for the commencement of a new Central Sydney Development Contributions Plan before December 2021. Therefore there has been no financial impact from the current delay experienced since the request to amend the Regulation was submitted to the Department in December 2020.
25. The City estimates that the financial impact of the decision to include a time delay to the commencement of the full three per cent levy rate would be in the order of a \$13.5 million loss of development contributions funding.
26. Noting the challenges faced by the development industry and businesses in the City due to the Covid-19 pandemic, the transitional introductory rate can be supported.

### **Relevant Legislation**

27. Environmental Planning and Assessment Act 1979
28. Environmental Planning and Assessment Regulations 2000

### **Options**

29. If Council does not agree to send a request to the Minister to amend the Contributions Plan 2020, this will mean that the Regulation and the contributions plan will not align which will create significant uncertainty and confusion for proponents and the City.
30. The City could proceed to exhibit the proposed amendments and follow the full process under the legislation to make the amended contributions plan. This is not recommended as the City would not be able to comply with all legislative requirements prior to the commencement of the amended Regulation. The amendments proposed arise directly from the terms of the amended Regulation as agreed to by the Minister so it is appropriate that the amendment be made in the manner proposed in order to ensure that the Regulation and contributions plan are consistent at the time the Central Sydney planning controls commence.

### **GRAHAM JAHN AM**

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