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Cities and Active Transport
Community Improvement Districts Bill 2023
231 Elizabeth Street
SYDNEY NSW 2000

Dear sir or madam

Submission - Community Improvement Districts Bill 2023

Thank you for the opportunity to make this submission on behalf of the NSW Revenue Professionals Inc. (NSWRP).

The NSWRP is the peak body of NSW Local Government revenue employees and was formed in order to:

- unite in a common organisation, those Local Government employees who are engaged in rating and revenue functions
- improve and elevate the technical and general knowledge of Local Government employees who are engaged in rating and revenue functions
- distribute amongst its members, and the regional NSWRP groups, information on all matters affecting or pertaining to the profession of rating and revenue management within Local Government by way of meetings, newsletters, conferences, or any other method available to the Committee
- promote a professional image of Rating and Revenue practitioners in Local Government New South Wales
- promote quality services to Local Government in New South Wales through the dissemination of best practice
- encourage members to keep up to date with finance related activities and legislative changes through continuing professional development
- identify the skills and knowledge needed by employees and facilitate training and education
- make the expertise of members available to professional bodies and government departments as required.

Although this matter does not appear to have a direct impact on NSW councils' capacity or need to levy any rates or charges it is an area of significant interest to us and one that collectively we have extensive knowledge and unique skills.

Our submission highlights some areas of concern and identifies areas that we suggest could benefit from our service delivery in this space. We have set out our response based on the order in which they appear in the bill.

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[3] Item (b) refers to levies, the whitepaper refers to the levies as charges, generally a charge would be a fixed amount and levies are usually based ad-valorem (sometimes with a base or minimum amount) or by some other type of scale.

Page 3 and 4

[8] (4)(b) *may include the owners of non-residential land within the CID, and*

(c) must not include a person by reason solely of the person's ownership of land categorised as residential by a council for ratings purposes under the Local Government Act 1993 or would be categorised as residential if it were rateable land under that Act, and

(d) must not include other persons prescribed by the regulations.

We are concerned with what will be in place for this information to be shared and the impacts that will be placed on council resources to supply the information.

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[10] *It is a requirement that the CID entity, before submitting a CID proposal to the Regulatory Authority, must consult with the following about the CID proposal—*

(a) each local council whose area is within the boundaries of the CID

This is noted and it is assumed that this requirement of notifying the local council is purely to ensure any public spaces are not impacted or for awareness of the CID.

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[12] (2) *The Regulatory Authority must not approve a CID proposal under subsection (1)(a) or (b), unless each local council whose area is within the boundaries of the CID has, by resolution, supported the CID proposal (a council veto).*

It appears that this section gives the local council the power to effectively prevent the CID from progressing. Is there a proposal to provide some support to local government Councillors so they will be able to make informed decisions in the longer term independent of officer recommendations?

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[13] (2) *A levy must not exceed the maximum levy determined by the Minister and published in the Gazette.*

We assume that this will be in the form of a fixed number (say \$200) and the calculation methodology will be described elsewhere. Accordingly, whatever the methodology used the amount of the levy would not be able to exceed the amount stated in the gazette.

We are assuming that a levy will be in the form of a rate x land valuation, although this is not outlined in the draft. If this assumption is accurate the fixing of a rate each year will be extremely problematic. Each council area will have differences in the value of land, as an example, the value of land in the City of Sydney will be higher than those in Greater Hume Shire. By setting a rate each year or maximum rate the limit will most likely be exceeded in the councils with higher values and not met in those with lower values.

Land valuation data is available by each Local Government Area (LGA) from the Valuer-General.

We have previously mentioned that the fee payable has been mentioned as levies, and also as a charge, it is difficult for us to provide any substantive conclusions without first landing on the approach being proposed.

[13] (4) *The regulations may deal with the imposition and collection of levies, including the determination and calculation of levy amounts.*

We assume that the calculation methodology will be provided in the regulation.

[15] (2) *The charge ranks on an equal footing with a charge on the land under any other Act but takes priority over other charges or encumbrances.*

This provision is of concern, it appears to us that this gives priority to a CID debt, and this is inequitable. We submit that the section should be amended to '*The charge ranks on an equal footing with a charge on the land under any other Act*' and remove the words - but takes priority over other charges or encumbrances.

[16] (1) *The Regulatory Authority may charge interest on any levies imposed by the Regulatory Authority that are due but unpaid.*

(2) *The maximum rate at which interest may be charged under this section is the rate chargeable under the Civil Procedure Act 2005, section 101 in relation to unpaid judgment debts.*

Subsection 2 (above) provides for the maximum rate of interest in accordance with section 101 of the Civil Procedure Act 2005 but does not extend to the methodology which is also included in section 101. We recommend that the methodology also be included in the draft bill.

Also, section 101 of the Civil Procedure Act 2005 relates to 'interest after judgement', if the court has not entered a Judgement against the defendant then is it appropriate to charge interest under this section. It may be more appropriate to consider interest under section 100 of the Civil Procedure Act 2005.

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[26] (1) *For this Act, the Regulatory Authority may, by written notice given to a local council or the head of a government sector agency, require the local council or government sector agency to do either of the following within the period stated, not less than 21 days, in the notice—*

(a) *give the Regulatory Authority information described in the notice*

(b) give the Regulatory Authority a document described in the notice that is in the person's custody or control.

This requirement is very broad ranging and without any limitation. Some relevance or limitation should be added to this section to prevent it being misused or from becoming a burden on local councils.

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[32] (2) Without limiting subsection (1), the regulations may adopt, with or without modification, the provisions of Local Government Act 1993 and the regulations under that Act for the purposes of this Act.

We have noted this based on our interpretation that the proposed section is to adopt parts of the Local Government Act and/or the Local Government (General) Regulation 2021 and not have any effect on the Local Government Act or the Local Government (General) Regulation 2021.

Page 16

[4] (1) The Regulatory Authority may approve parts of land being treated as if they were separate lots (deemed lots) for the purposes of the Act.

(4) The Regulatory Authority may approve the application if the Regulatory Authority is satisfied that each deemed lot is identifiable using—

(a) an apportionment factor recorded in the Register of Land Values for the land, or

(b) if no apportionment factor is recorded in the Register—an apportionment factor approved for the land by the Regulatory Authority taking into account how an apportionment factor is determined by the Valuer-General under the Valuation of Land Act 1916.

The determination of an apportionment factor should be the domain of the Valuer-General and not the rating or taxing authority. We recommend that any reference to the Regulatory Authority determining its own apportionment factor be removed from the draft legislation as it will certainly cause confusion for the land owner.

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non-residential land means land other than the following—

(a) land categorised as residential by a council for ratings purposes under the Local Government Act 1993 or would be categorised as residential if it were rateable land under that Act,

Note— See the Local Government Act 1993, section 516 for categorisation of land as residential land.

(b) land of a kind prescribed by the regulations for the purposes of this definition

We are concerned with the references to the *Local Government Act* as a source of information and how it is to be shared. There is provision in the proposed legislation for this to be a significant burden on councils, the broad statements in section 26 and section 29 could result in inappropriate disclosures or significant requests for information or documents.

General observations and comments.

Hardship: There does not seem to be any provisions made for hardship and dealing with instances of hardship that may arise from time to time.

Penalty interest: We note that interest will apply but cannot see any mention of methodology, is interest to be applied using the simple method or compound method, will interest apply to interest?

Certificate as to amounts due: There does not appear to be any mention of a certificate that a purchaser can apply for to determine if any levies are unpaid. Given that the proposal is for the levies to be a charge on the land anything unpaid will be encumbered to the land and become a liability for any bona fide purchaser. It is recommended that a certificate is subject to an approved fee set annually or subject to an annual CPI adjustment determined by the relevant Minister.

Accounting records: There does not seem to be any provision for accounting records and how the CID's will be constituted.

Audit: Will the CID's be subject to external audit by the Audit Office as a government entity?

Rate or Charge: There are three methods available in the Local Government Act for the calculation of land rates, these may be useful when deciding on the methodology and can be found under section 497 of the LGAct.

Valuation objections: If calculating a rate against the land value it will be necessary to consider what implications a review of the land value will have on the levied amount. How and when an adjustment to the levy takes effect and what happens if this results in a shortfall to the funds required by the CID.

Thank you for the opportunity to comment on the draft legislation, if you have any questions in regard to our submission please do not hesitate to be in touch.

Yours faithfully



Andrew Butcher
President NSW Revenue Professionals