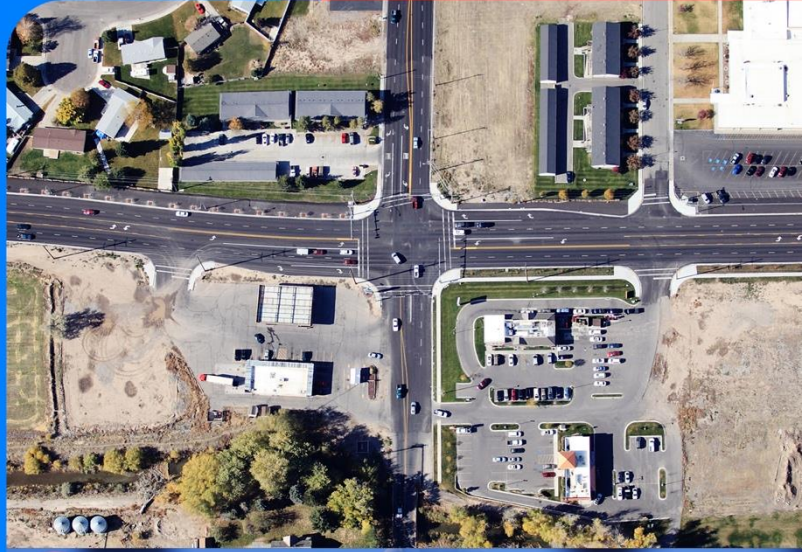


DRAFT SUBMISSION

**Draft
Community
Improvement
Districts (CIDs)
Bill 2023**

May 2024





Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

OVERVIEW OF THE LOCAL GOVERNMENT SECTOR



Local government in NSW employs **55,000 people**



Local government in NSW is responsible for about **90% of the state's roads and bridges**



Local government in NSW looks after more than **\$177 billion** of community assets



NSW councils manage an estimated **4 million tonnes of waste** each year



Local government in NSW spends more than **\$2.2 billion** each year on caring for the environment



NSW councils own and manage more than **600 museums, galleries, theatres and art centres**



NSW has more than **350 council-run libraries** that attract tens of millions of visits each year



NSW has more than **400 public swimming and ocean pools**

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Opening

Local Government NSW (LGNSW) welcomes the opportunity to provide its views to Transport for NSW (TfNSW) on the *Have your Say for Community Improvement Districts*¹. The principle of a partnership between local government, community and business all working together for a common goal of improving local spaces is supported by LGNSW. However, the legislation in its current form is lacking detailed consideration of certain aspects which, if not addressed, could lead to unintended consequences and/or a failure to deliver its intended outcomes. The fact that the Bill leaves much of this detail to be worked out in yet-to-be-drafted regulations raises many questions.

This submission responds in structure to the key terms as highlighted in the online survey and **A Guide to the Draft Community Improvement Districts Bill**.

This submission is informed by the policy positions of LGNSW and consultation with councils. Please note this submission is provided as a draft, pending endorsement by the LGNSW Board at its next meeting. We will advise of any amendments to the submission in due course.

Background

The NSW Government has released draft legislation to establish Community Improvement Districts (CIDs) in NSW. This follows earlier consultation in September 2022² and February 2023³, as well as the NSW Government's recently announced vibrancy reforms and 24-hour economy legislation⁴.

Transport for NSW is now inviting public feedback on the following documents:

- Draft Community Improvement Districts Bill 2023
- Guide to the Draft Community Improvement Districts Bill 2023

The functional name of Community Improvement Districts (CIDs) has until last year been Business Improvement Districts (BIDs) in NSW. Historically, where CIDs (or their equivalent) exist, local councils are at the centre of administering and directing the outcomes of the CID to foster local community collaboration and enable economic growth.

¹ [Community Improvement Districts | Have Your Say \(nsw.gov.au\)](https://www.nsw.gov.au/transport/road-transport/have-your-say-community-improvement-districts)

² White Paper - [Enabling Local Business Improvement Districts](#)

³ Policy Paper - [Next Steps for Business Improvement Districts](#)

⁴ [Vibrancy Reforms | NSW Government](#)

CID Policy Objectives

The draft CIDs Bill sets out the proposed legislation to establish CIDs in NSW. It will be supported by regulations and related guidance. The draft Bill has three objectives:

1. To provide for the establishment and operation of CIDs for the benefit of businesses and local communities,
2. To provide for the delivery of services, projects, and activities by CID entities in CIDs funded by CID levies, and
3. To regulate CID entities, CID proposals, CID proposal ballots and the delivery of services, projects and activities funded by CID levies.

LGNSW Position

LGNSW consolidates the voices of councils across NSW, reflecting the collective positions of local government on issues of importance and guiding LGNSW in its advocacy on behalf of the local government sector. Councils have an active role in encouraging investment, place management and activation, and supporting businesses of all sizes. In support of this role, LGNSW has longstanding policy positions⁵ which, among other things, seek:

- To reduce unnecessary regulatory complexity affecting the ability of local economies to support events, cultural and business uses.
- Policy and legislation to enable and regulate active transport.

A key starting point for supporting and promoting active transport is investment in the infrastructure to support it, such as footpaths and shared cycleways close to transport hubs, shops and schools.

It therefore may be appropriate that TfNSW hosts the CIDs initiative with its shared transport access improvement responsibility in centres. The concept of CIDs also complements the post-COVID resolution of the 2020 LGNSW Annual Conference to support economic recovery by investing in the night-time economy⁶. The 24hour Economy Commission may be also well placed to host the CIDs initiative by supporting business with economic incentives. However, the current proposal for CIDs to be established by a new, standalone regulatory authority with its own bespoke legislation is a surprise.

⁵ [Policy Platform | LGNSW](#)

⁶ See Resolution 85, p 27 - [Record-of-Decisions-LGNSW-2020-Annual-Conference-and-BOARD.pdf](#)

CID Key terms

The current *Have your Say* CIDs public consultation provides for completion of an online survey. In responding, LGNSW has tailored this submission to align to the CID survey and four key terms, each of which is explored below.

CID Regulatory Authority

In summary:

A new CID Regulatory Authority (the Authority) is proposed to be established within the NSW Government to manage the regulation of CIDs across NSW. The functions of the Authority, as drafted in the Bill, include the spatial declaration of CIDs, its constituents, ballot management, imposition and collection of CID levies from owners and to enter into formal contracts for services and projects. The draft Bill states that the Authority may be a Secretary of a Department, or a body established by an Act, and would have reporting and accountability functions to the relevant Minister.

Discussion:

The establishment of an independent authority to universally manage CIDs across NSW is supported in concept as this may help alleviate the obligation or expectation on councils to perform this function, in the event that the Government's proposal to enable CIDs is to proceed. However, LGNSW would like to see more detail in the draft Bill and supporting documents on the resourcing and governance of the proposed CID Regulatory Authority. Given the importance of any potential CID Regulatory Authority, the provisions in the Bill relating to the establishment and workings of the Authority need to be more fully developed and clarified.

In the absence of such clarity and detail, the following concerns are raised:

- LGNSW would not wish to see delegation (and therefore cost) of the Authority's duties (for example, gathering of rating and property data and community engagement tasks) inadvertently passed onto councils.
- LGNSW seeks assurance that councils' decisions on undertaking work to support CIDs proposals are respected and cannot be directed by the Authority.
- The operating costs of the Authority's duties and administration could potentially consume a significant proportion of the CIDs levies collected from landowners and this may be variable, depending on how and if councils are engaged in the process. LGNSW would like to see transparency in the Bill and any accompanying regulations that clearly articulates fees and charges.

- Councils need confidence that the regulatory authority would be appropriately and adequately resourced to undertake its role, including ensuring appropriate engagement between CID entities and local residents. This may require considerable initial investment by NSW Government to establish the authority.

Recommendation 1: LGNSW is concerned that without further detail in the Bill, a new CID Regulatory Authority may undermine the authority of the local council. LGNSW recommends that the Authority must defer to local council decisions on all matters of a CID proposal.

Recommendation 2: LGNSW is concerned there is a risk that a new CID Regulatory Authority may absorb too great a portion of levies in administration and salaries of Authority officers. LGNSW recommends that fees deducted from the levy for administrative costs be declared and capped and made transparent.

Recommendation 3: LGNSW recommends that more information about the proposed resourcing and governance of CIDs and the proposed CID Authority be provided before this Bill is introduced to the NSW Parliament.

CID entity

In summary:

According to the draft Bill, a CID entity is a person who provides or undertakes services, activities or projects in a CID in accordance with an approved CID proposal. A CID entity may include an incorporated association or limited company with core functions in place management, economic development, town improvement, tourism or similar (e.g. chamber of commerce or business association). The functions of a CID entity are to prepare CID proposals to submit to the Authority, receive funds from the Authority to deliver services, projects or activities and to enter into formal arrangements with the Authority to deliver on actions. The detail of certain matters relating to CID entities, including what happens when a CID entity becomes insolvent or fails to deliver an approved CID proposal, will be left to the regulations.

Discussion:

The function and structure of a CID entity appears open to interpretation as there is insufficient detail in the Bill on the contractual rights and obligations of a CID entity regarding its motives and intent, governance and future responsibilities, such that these do not conflict with the understanding of the local community or council. Without transparency in this regard, the influence and controls of a significant CID entity may generate sensitivities with a community or council. Declarations of interest and resolution of potential disputes therefore need to be canvassed in the Bill.

In addition, there is a concern that the proposed system of one vote per land parcel is biased toward landlords. Landlords may not necessarily be a local business owner, may be absent from day-to-day activity, reside outside the local government area, and therefore may not necessarily have local interests at heart. A potential scenario is that a CID entity is set up by a developer/property owner who ultimately remain at arm's length from the CID locality leaving the ongoing entity not aligned to local business functioning. Businesses that are tenants but not landowners also need to be recognised as having equal if not greater interest in the success of the CID entity and be given the option to participate in a CID proposal.

Recommendation 4: LGNSW recommends that regulations accompanying the Bill include provisions that require declaration of interest of CID members.

Recommendation 5: LGNSW recommends that the regulations accompanying the Bill provide for processes for dispute resolution both within the entity and with the relevant council and affected businesses or community organisations.

Recommendation 6: LGNSW recommends that business tenants within a defined CID area be given access to participate in CID entities if they so wish.

CID proposal and ballot

In summary:

The draft Bill sets out the CID proposal and CID proposal ballot process which includes consultation to identify services, activities or projects and then estimates a levy that is submitted as a proposal to be voted on. Local council resolution to support the proposal is required for approval of the proposal. Examples of a CID proposal can include events, marketing and promotions to activate and revitalise places. It may also include safety and security services, cleaning services and environmental and amenity improvements. Other examples include data analysis and market research and projects to improve access, mobility and connectivity in a CID.

Consultation

The draft Bill requires a CID entity to consult with each local council within the CID boundary, relevant Local Aboriginal Land Councils and specified NSW Government land management agencies (as applicable) before submitting a CID proposal. The regulations may prescribe additional persons or bodies that must be consulted.

Discussion:

Centres where CIDs are likely to be proposed may typically comprise private land adjacent to public spaces managed by councils. LGNSW supports the requirement in the Bill for CID entities to obtain initial input of council(s) – this is critical, to ensure that

spaces remain inclusive and consistent with the desired objectives and direction of council and its community. Community engagement therefore also needs to be a mandatory part of the CID proposal process. The detail of this required consultation could be included in the accompanying regulations and/or guidelines.

The draft Bill references consideration of strategic plans of council(s). However, there are usually further commitments and resolutions of council(s) that clarify a forward delivery schedule of plans and infrastructure works that need to be taken into consideration so that CID proposals and wider initiatives are not at cross-purposes. This detail of how to approach this 'due diligence' could be included in the accompanying regulations and/or guidelines for CID entities.

Similarly, a CID proposal should ideally also carry out 'due diligence' with regard to gaining 'in-principle' support of council prior to formal lodgement of a CID proposal with the CID Authority. This would ensure that the relevant council(s) is able to support a proposal prior to engagement with other stakeholders. This detail of who, how and when to engage different stakeholders and community representatives could be included in the accompanying regulations and/or guidelines.

Recommendation 7: LGNSW recommends that consultation on CID proposals should be inclusive of community and public interests with open public engagement of proposals. The regulations to accompany the Bill should stipulate defined consultation processes with clear timeframes for response, similar to those used in the EP&A Act for development applications.

Recommendation 8: Council commitments to proposed infrastructure works, any contributions plans and strategic planning documents need to be taken into consideration as part of any CID proposal to ensure no conflict or duplication.

Recommendation 9: LGNSW recommends that council support be attained in principle prior to submission of a proposal to the Authority and prior to any public consultation, to ensure council is aligned and able to support the proposal in a public forum.

CID levy

In summary:

The draft Bill proposes that a CID levy would be charged when a CID proposal is approved by the Authority, after ballot. The Authority would notify landowners of the date/period of which the levy is due to be paid. The levy would be based on unimproved land value shared between the CID entity for the cost of the proposal but ultimately the Authority determines the cost. Government land (including council land) is not proposed to be levied, unless there is voluntary participation.

Discussion:

Experience of existing CID type entities in NSW is that many of the services offered are already provided by councils as funded by council rates. It will be important to avoid and manage any perceptions of 'double dipping', such as where businesses may consider they are being levied twice for similar services. If not managed properly, this could have the effect of eroding trust in the council services and possibly lead to a reluctance by businesses or landowners to the timely payment of council rates, in lieu of a perceived more targeted service to only CID entities.

LGNSW is concerned about the equity of levies charged and the impact of their imposition on landowners and the subsequent flow-down to businesses (which, under current provisions in the Bill, cannot vote on the CID proposal). Local government does not wish to see unintended consequences of levies being passed downstream to those who should not be charged or those who receive a lesser or neutral benefit because of the particular circumstances of their location in the CID entity area. For instance, professional suites located above or below street level may not gain the same benefit from a CID levy that is aimed at ground level retail businesses. Similarly, residents living in shop top housing may not be directly levied but could be subject to increased strata levy fees or rental increases resulting from a CID levy cost being passed on from the landlord. LGNSW would like to see clear regulations to ensure there is willingness and capacity to pay alongside direct correlation of benefits.

Recommendation 10: LGNSW recommends that CID levies consider the impact on the payment of pre-existing council rates and charges regarding the willingness and capacity of property owners to pay. The Bill should include provisions that will ensure that council rates are paid up to date prior to payment of CID levies.

Recommendation 11: LGNSW recommends a tiered or scaled approach to levies, that will enable landowners/businesses above (or below) street level to be levied at a lesser rate, calculated on their lesser reliance on footfall of street activity.

Recommendation 12: LGNSW recommends that regulations should be enforced to ensure that levies are not passed on to residents via strata fees who may be landholders within the defined CID area.

Conclusion

LGNSW welcomes the NSW Government's proposal to establish a CIDs Regulatory Authority with accompanying legislation. However, the Bill and Guide as currently exhibited raises many questions requiring consideration of consequences. LGNSW would like to see more detail and assurance in this regard.

LGNSW considers the name change from *business* to *community* improvement districts is central to acknowledging the need to include the broader community in the establishment of a CID entity, proposal and levy. Transparency and ongoing engagement with the community and council is key to the success of any CID proposal.

Summary of Recommendations

Recommendation 1: LGNSW is concerned that without further detail in the Bill, a new CID Regulatory Authority may undermine the authority of the local council. LGNSW recommends that the Authority must defer to local council decisions on all matters of a CID proposal.

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