



4 August 2020

Email to: ICReview@productivity.nsw.gov.au

Subject: **Better Planning Network Submission to the Productivity Commission's Review of Infrastructure Contributions in NSW.**

Key: Recommendation Responses of BPN shown as *** after the Productivity Commission's key is recommendation goals shown as * :

The goal of this Review is to deliver a set of recommendations that will:

- fund the infrastructure needed to support our growing communities

***** The BPN Submission Parts A, B, C and D make recommendations relevant to this and are usually shown in bold type. See especially BPN's strong Part A objection to DPIE's Draft Practice Note section 2.3 recommending against Value Capture. Also, in Part A section 4.5 on Public participation and notification, BPN notes that the public is at a great disadvantage because of the complexity, inaccessibility and inadequate transparency of information, policies and procedures. For 'growing communities' to be properly supported, a recommendation is essential that this must be rectified. Council staff and Councillors are also often blindsided by this problem too. Planning proposals and development agreements must also be publicly notified longer in advance to the community before decisions are made on them.**

▪ lead to an infrastructure contributions system this is simple to understand, transparent and principles-based

***** The BPN recommends a contribution system including the elements of our Parts A, B, C and D with a public value capture (public value share) of independent expert assessed (independent valuers must be appointed by individual Councils from a Panel of valuers and the cost of the valuation invoiced by Council to the developer)land value uplift for quality development.BPN will consult further about the possibility of supporting phasing in a 75% public share policy similar to the ACT's "betterment levy". As the current surge of fast-track development (often with a 50% public value share of land value uplift) eases, offering sustainable development proposals a value uplift share greater than 25% should not be necessary.**

However, BPN would prefer on the other hand, that site-specific and spot rezoning planning proposals be prohibited.

For example, in Wickham, Newcastle recently, we understand a site specific building height increase was approved from the usual maximum of 10m to 28m in an area known for potential subsidence due to underground mining. The lack of transparency and community consultation has caused great community concern that the development's public value share contribution is not worth the potential cost and related safety risk to the building occupants and nearby residents.

Where Planning agreements are used as a trade-off against existing planning controls, they undermine confidence in the planning system and are often viewed by the public as a form of legal bribery. In a letter to Customer Services Minister Victor Dominello last month, the Independent Commissioner Against Corruption's chief commissioner, Peter Hall, QC, said "In the commission's experience, deviations from development standards are often associated with alleged and actual corrupt conduct". This is also a risk with spot rezoning and site specific agreements.

The public trade-off for those planning agreements is always at a loss to the community e.g. increased congestion; safety concerns; loss of bushland; loss of deep soil planting zones; loss of privacy and overshadowing of neighbours by increases in height; significant increases in density not foreseen in planning controls from changes to Floor Space Ratios.

Planning agreements for developments within current zonings but with deviations from standards are, in many LGAs, negotiated at a Council officer's discretion for developments under \$30 million. This is understandably viewed with distrust by the community, particularly neighbours that bear the brunt of the loss of amenity. It has the potential to be a pathway for corruption.

▪ meet the objectives of certainty and efficiency to support our stakeholders and boost investment in New South Wales.

***** BPN believes that good development having increased section 7.11& s.7.12 contributions and an acceptable public value share(inclusive of any State SIC levy where relevant)independently assessed will give certainty that there are sufficient funds for the resulting increased community infrastructure needs. This arrangement should also be efficient, transparent and provide the currently missing fairness caused by inadequate public value share.**

As part of a peer review of the City of Parramatta’s draft planning agreements policy, the public business paper for Council of 25 June 2018 reported on Council’s consultant’s response to a number of submissions raising concern that the value sharing component of the policy will impact upon development feasibility and will reduce housing affordability as the developers ‘pass on’ these costs to end purchasers. The business paper states that Council’s consultant “SGS Planning and Economics have reviewed this matter and provide the following response:

‘Following adoption by Council the Planning Agreement policy should not have a negative impact on the feasibility of future development or housing affordability.’

Clear reasons were given for this statement and BPN agrees this should be the case.

BPN Submission Details (grouped as per DPIE’s Contributions Review) with responses to Table S.1Discussion Questions at the end before the photos.

Part A - Draft planning agreements policy framework (including DPIE’s Practice Note)

Part B - Improving the review of Local Infrastructure contributions plans discussion paper (section 7.11)

Part C - Criteria to request a higher section 7.12 percentage discussion paper

Part D - Draft Special Infrastructure Contributions (SIC) guidelines

Part E - Proposed amendments to the EP&A Regulation

General Comments

1. BPN's objectives include advocating for the principles of ecologically sustainable development, community well-being and quality of life. However, BPN's strong feedback from its members is that the density of development for some years is not providing anywhere near enough necessitated community infrastructure for the needs of people, for a healthy environment or for the enhancement of community well-being - social, environmental and economic. The BPN aims to ensure there is adequate opportunity for public involvement and participation in environmental planning and assessment, that protects our environment, including natural and cultural heritage, but believes that this requirement is not being satisfied by the current arrangements around planning agreements or the related planning proposals or development applications.

BPN is a supporter of "Planning for People - a Community Charter for Good Planning in NSW" (thecommunitycharter.net.au), along with many other supporting MPs, groups and organisations.

Examples of inadequate Infrastructure contribution from the land value uplift and profit from development:

- (i) Central Newcastle Interchange – Wickham Street Development - footpaths of inadequate width and unsealed, not compliant for people with a disability. This also highlights the need for stronger inspection and enforcement provisions to ensure in-kind works are properly compliant. **(Photos included)**. Newcastle, the largest regional city already had a backlog of "\$114 million of degraded, irreparable infrastructure" in 2007 (Percy Allen Report) and cannot afford further degradation from inadequate development contributions.
- (ii) Parramatta CBD - in 2017 Council estimated that even using rates, grants, previous section 94/94A and section 7.11/12 and public value share (development contribution) from planning agreements, for the current planning proposal build out there would still be a \$200 million shortfall for community infrastructure required to support the developments. By 2020 the shortfall for

necessitated community infrastructure has now been estimated to be more than \$1 billion.

(iii) Suburban Fringe Greenfield – Development at Minmi for 3,000 dwellings. It is understood there is nowhere near enough value capture for a library, community centre, shared pathways, district sport facility, cycleways, playgrounds, affordable housing and definitely not enough for a solar farm or Olympic pool, but there should be enough. Also, will a State levy for essential State infrastructure reduce even further the development contribution that is needed for community infrastructure?

Regional communities are also not getting enough community share of high development profits and have started to get angry, like city communities about the NSW government supporting inequitable community share of high developer profits! After many years of mostly ignored consultation feedback, objections and submissions on LEPs, DCPs, Planning Agreements, 2030 plans and Master Plans, even further degradation of the environment and livability will be resisted.

2. For these reasons and more the BPN does not support site specific or spot rezoning planning proposals, as these cannot be properly assessed outside a broader LEP or master planning process. These planning proposals often set unsustainable precedents which a Planning Agreement cannot compensate for. To compound the problem, planning proposals and agreements are often inadequately notified in advance to the community even for those impacted near the development. Some councils publicise them only on their website as little as 6 days before Council makes a decision on them. A much longer public notification period is recommended.

3. The planning agreements that relate to these planning proposals are especially problematic as in some areas they would be seen to be a form of "legal bribery" to encourage councils to support an inappropriate development in return for some

social infrastructure. Council budgets are constrained by state government rate capping and cost shifting making the promise of a new library, repairs to swimming pools etc. tempting. In other cases they are recommended for gateway by councils even though there is apparently totally inadequate provision for the community infrastructure needs that the developments require. These problems are now exacerbated by council revenue lost because of the COVID-19 restrictions and by continuing funding constraints from state and or federal governments.

4. BPN understands that the development industry would like more uniformity in the public value share or development contribution arrangements for public community infrastructure relating to planning proposals, but BPN accepts that the needs of different developments are varied depending on their location and the provision of state and council public infrastructure already existing or planned.

5. BPN cannot understand why the state government is still procrastinating in some areas about the application of a special infrastructure contribution (SIC) levy, whereas if it had been applied five years ago when originally discussed, it would have raised billions of dollars of funding that the state government desperately needs now for the infrastructure relating to that public development, including transport, affordable housing, water and energy services. This long delay has also caused some councils to agree to a lower public value share for development in their formulae as a result of an assumption that this SIC levy would be applied in the near future. There also has to be consideration of the different infrastructure needs in a CBD situation as compared to a more suburban situation. Also the land value uplift of a development in different areas will have different values per m² for the same increase in FSR.

It is understood that in the ACT there was a formula in which the government received 75% of the value of land uplift in a planning proposal to adequately compensate for the resulting community infrastructure needs and in some places for example in some Canadian cities 100% of the land value uplift was required, to discourage unsustainable spot rezoning overdevelopment.

6. In keeping with the suggestion that one of the original intended functions of planning agreements was to fund innovative infrastructure solutions, the **BPN suggests** there could be some fair compensation arrangement for design excellence and high-performing energy and water efficiency building standards above and beyond the normal requirements (which should be improved by legislation), but in a form that doesn't approve spot rezoning inconsistent with broader planning requirements.

7. Another problem with planning agreements arising from planning proposals is that often the provision of public open space from private ownership or public infrastructure although claimed to be freely available for public use often has access restricted in a manner that favours people in the private development and discourages public access. Planning agreements need to provide better design and enforcement of public access in such situations, such as to open space, exercise areas, swimming centres etc. next to or sometimes within the private property including on roof tops. **BPN suggests therefore that it would be good to make some reference in the Practice Note to such risks arising from in-kind works substituting for financial infrastructure contributions.**

8. **BPN is also concerned** that sometimes planning agreements result in population densities per hectare that cause poor livability and health conditions, particularly in cities on the east coastline, whereas better planning options may be further inland. **Planning agreements should therefore have guidelines for affordable housing standards and funding, as well as a maximum density requirement of perhaps about 1,000 people per hectare, but there must be some flexibility for individual Local Government Areas.**

9. Some Councils allow all Infrastructure Contributions to be replaced entirely by non-monetary Planning Agreements. While this can give more flexibility in the use of the development's public contribution, the developer can then negotiate an

Agreement that is less than the cost of a s7.11 or s7.12. Otherwise there is no benefit for the developer in doing so. In the end though, it is the community that loses out overall.

10. BPN is also concerned that infrastructure contributions in Planning Agreements often make insufficient provision for the burden Councils and communities face when developments use public spaces for waste bin storage regardless of whether they have sufficient provision for effective on-site management of waste or not. **(Photo attached).**

Practice Note Comments

Page 5 - There is reference here to Planning Agreements for Affordable Housing contributions. Affordable housing inclusion in Planning Agreements should be over and above any minimum requirements in District and Regional Plans. There should also be provision for Social Housing particularly in areas where rents in Affordable Housing are high. For example the most profitable Affordable Housing schemes in the past 15 years + have been in student housing. Minimum rents are around the \$390 + for a small studio without a kitchen. Affordable housing allows for a percentage of market rent and the housing can be removed from the affordable housing market in 10 years. Social housing remains as social housing until the government makes a decision to sell as is the case at Millers Point, the Sirius building and shortly Waterloo. In the post COVID-19 environment, the need for housing that is affordable for people who have lost jobs, homeless people, people with special needs, people on pensions will be critical for social wellbeing. Developers must contribute to supporting social cohesion and not focus only on maximising their profits from developments.

It also states here that the Practice Note is not applicable to mining projects, so this begs the question when will there be a Practice Note that applies adequate public benefits and protection to communities suffering unacceptable detriment from mining projects or in some cases, facing complete devastation? Currently insurance companies are resisting providing insurance to farmers whose land is subject to coal or CSG mining as the risk to their water, land and resulting viability of the farm is unacceptably high.

Page 6 – States that Planning Agreements “enable the NSW planning system to deliver sustainable development while achieving key economic, social and environmental objectives” and can provide “recurrent funding of public facilities provided by councils”. Unfortunately, BPN knows this is patently untrue. If developments in an area double the residential population of an area, is it seriously being suggested that development contributions in a Planning Agreement will be sufficient to double the area of public land for parks, reserves and bushland, double the capacity of local roads, footpaths, cycleways, libraries, community centres, playgrounds, utility services etc and provide ongoing recurrent funding for these?

2.1 Fundamental Principles

States that “ Public benefits offered by developers do not make unacceptable development acceptable”. This should be acknowledged, but sometimes the development may be acceptable in itself, but if (as the Practice Note says) “Strategic planning should ensure that development is supported by the infrastructure needed to meet the needs of the growing population” does not happens because inadequate public infrastructure contributions are provided, the development could be unacceptable.

“Planning agreements must be underpinned by proper strategic land use and infrastructure planning carried out on a regular basis and must address expected growth and the associated infrastructure demand.” **This statement is removed from reality, as BPN members attest** and simple observation demonstrates that the public benefit arising from developments almost always falls well short of what is needed to address “associated infrastructure demand”.

"The progression of a planning proposal or the approval of the development application should never be contingent on entering into a planning agreement." So, is this why planning proposals are no longer considered to be voluntary? So developers can refuse a planning agreement and still expect council and the community to support the progression of a planning proposal or DA which provides inadequate infrastructure contribution and breaches usual planning constraints such as in an LEP? **BPN objects strongly to this dot point.**

BPN also contests the proposed principle that "Planning agreements must not include public benefits *wholly* unrelated to the particular development" and suggests an amendment replacing "wholly" with "mostly".

BPN also requests that an additional fundamental principle should be added which states that "Developments must contribute to a fair proportion of public facilities necessitated by the development, consistent with commonly used and accepted benchmark provision of public facilities for the related population increase."

2.3 Value Capture

Although the reference to "the use of planning agreements for the primary purpose of value capture is not supported" is not unacceptable, **the suggestion they "should not be used to capture land value uplift resulting from rezoning or variations to planning controls" is absolutely NOT acceptable to BPN**, as this suggests for example, that 100% of the often millions of dollars of profit from a site-specific or spot zoning planning proposal should be retained by the land owner and/or developer, without any fair contribution to the additional associated public infrastructure necessitated by the population growth in that uplift. An acceptable development could be rendered unacceptable simply by insufficient related infrastructure contributions. **BPN would prefer on the other hand, that site-specific and spot rezoning planning proposals be prohibited.**

2.5 Acceptability Test

This section states that planning agreement outcomes are required to "meet the general values and expectations of the public and protect the overall public interest"!

BPN supports this provision absolutely but has not seen much evidence that this test has been satisfied by most developments and is particularly concerned that in the current COVID-19 pandemic environment of fast tracked development that the public interest is being run rough shod over, for example by 24X7 construction noise, dust and other disruption caused to residents often confined to their dwellings due to pandemic restrictions, and by development approvals contrary to clear community and Council opposition for valid social and environmental reasons.

2.6 Policies & Procedures for Planning Agreements

BPN finds that there is gross hypocrisy in the suggestion here that these constitute "safeguards to protect the public interest and the integrity of the planning process". Planning Agreement policies "should have published and accessible rules and procedures", "provide for effective formalised public participation" and "extend fairness to all parties", but BPN's feedback is that this just does not happen adequately, as policies and procedures are complex, opaque and difficult to access, particularly given that staffing levels in councils are often insufficient for the community's demand for information and explanation. There also needs to be strengthened accountability for regulatory compliance.

4.5 Public participation and notification

As referred to in 2.6 above, the public is at a great disadvantage because of the complexity and inaccessibility of policies and procedures, and this section of the Practice Note does little to improve this situation.

Planning proposals and agreements are often inadequately notified in advance to the community even for those impacted near the development, and before Council makes a decision on them, as some councils publicise them only on their website as little as 6 days in advance. BPN asks that this section be expanded with provision for improved timelines for public participation, wider public notification and increased notification periods including with community and environmental organisations.

There should also be greater prescription of the support necessary for encouragement of the public to participate, such as information sessions, and plain English and other language explanations.

Part B - Improving the review of Local Infrastructure contributions plans discussion paper

BPN seeks to have these issues rectified in any future planning agreements policy framework, by at the very least dramatically increasing section 7.11/7.12 levies and increasing the dollar threshold per dwelling unit significantly.

The current section 7.11 provision is completely out of date with increased costs of land acquisition for open spaces and construction of community infrastructure.

Of the proposed reforms, BPN believes that the best option is Option 3 for a \$45,000 (per dwelling or lot) threshold on local s7.11 development contributions before the review process is triggered. This is because BPN believes that Councils receive insufficient funding from developments to provide the resulting necessitated community infrastructure and that having to do a review below \$45,000 will create unnecessary planning process delays and impose an unnecessary burden on constrained Council resources. Further, BPN supports the indexation of this threshold in a manner that is appropriate to the increased infrastructure costs that Council would be required to provide.

Part C - Criteria to request a higher section 7.12 percentage discussion paper

BPN seeks to have these issues rectified in any future planning agreements policy framework, by at the very least dramatically increasing section 7.11/12 levies and increasing the dollar threshold per dwelling unit or lot significantly.

Consistent with the BPN's view expressed frequently that inadequate provision is made for development contributions towards the cost of infrastructure needed to support that development, s7.12 contributions generally need to be increased. BPN

also thinks that the proposed criteria and evidence to assist the assessment and determination of an increased maximum percentage of s7.12 levies in specific areas are reasonable. BPN is however concerned that in some areas that the currently proposed 3% maximum is totally insufficient, especially if there is to be no associated development land value uplift capture.

Part D - Draft Special Infrastructure Contributions (SIC) guidelines

Although BPN supports a SIC levy in principle, provided it is genuinely used for state infrastructure that improves the value of property in the area of its application, BPN is concerned that given the inadequate funding of local infrastructure necessitated by developments that the SIC levy not reduce the local public value share benefit required from the relevant development. This should not happen if the state SIC levy is strictly reflective of a fair proportion of land value uplift arising from the relevant state infrastructure being built or needing to be provided because of the development.

BPN believes it is important that the SIC be guided by principles that have been subject to wide community consultation and which are transparent and subject to the same or preferably improved accountability principles required of councils.

BPN cannot understand why the state government is still procrastinating in some areas about the application of a special infrastructure contribution (SIC) levy whereas if it had been applied five years ago when originally discussed, it would have raised billions of dollars of funding that the state government desperately needs now for the infrastructure needs of that public development, including transport, water and energy services. This long delay has also caused some councils to agree to a lower public value share for development in their formulas as a result of an assumption that this SIC levy would be applied in the near future. There also has to be consideration of the different infrastructure needs in a CBD situation as compared to a more suburban situation.

SIC funds should also be available at the beginning of the process for development applications.

Part E - Proposed amendments to the EP&A Regulation

The BPN supports relevant amendments to the EP&A Regulation needed as a result of BPN's views expressed in Parts A-D of the Review of Infrastructure Contributions, provided these are subject to a good period of public consultation and that relevant community and environmental organisations are informed of these proposed changes. There also needs to be strengthened accountability for and enforcement of regulatory compliance of developments.

All of the changes recommended by the Review and proposed in the Regulation should be well publicised and explained in information sessions provided by the Department of Planning Industry and Environment well before implementation, as well as after.

Table S.1: Issues and discussion questions – and BPN answers

Issue 1.1: Striking the right balance

There can be difficulty in reconciling the competing principles of efficiency, equity, certainty, and simplicity. Failure to strike the right balance can undermine confidence in the planning system.

▪ Is a 'one size fits all' approach appropriate or do parts of the State require a bespoke solution? ▪ What are the advantages and disadvantages of a site-specific calculation based on demand generated, compared with a broader average rate?

*** BPN understands that the development industry would like more uniformity in the public value share or development contribution arrangements for public community infrastructure relating to planning proposals, but BPN accepts that the community infrastructure needs of different developments are varied depending on their location and the provision of state and council public infrastructure already existing or planned. For good development, BPN would consider a 50% public value share (including State SIC levy where relevant) of the actual land value uplift (phased in over time to 75% across NSW), as this should be more equitable and would give consistency. However, BPN would prefer on the other hand, that site-specific and spot rezoning planning proposals be prohibited.

▪ Do other jurisdictions have a better approach to infrastructure funding that we should explore?
*** Yes, the ACT's 75% public "betterment levy" and Montreal Canada has/had a 100% System we understand.

*How can a reformed contributions system deliver on certainty for infrastructure contributions while providing flexibility to respond quickly to changing economic circumstances?

*** Easily by using independent expert land uplift (independent valuers must be appointed by individual Councils from a Panel of valuers and the cost of the valuation invoiced by Council to the developer) and changing the public value share from 50% to 75% as development urgency declines over time. Lack of transparency and certainty in the way contributions are calculated and spent on infrastructure provision needs to be addressed. There are opportunities to make better use of digital tools in project planning and when communicating costs, timing, and delivery to all stakeholders.

Issue 2.1: Enable a broader revenue source for the funding of infrastructure

▪ Are there any potential funding avenues that could be explored in addition to those in the current infrastructure funding mix?

*** BPN suggests that land tax increases on other than the primary residence could be considered, however land tax for home owners, which would be on top of existing council rates, and which would push many pensioners out of their homes quicker, must not be considered. The idea of land tax has even been mooted by some as a way of making people that live on their own sell their homes so that more people can live on that one block of land. It is not fair to push the elderly out of their lifelong family homes especially when value-uplift will make significantly more funds available. Land tax will also be an unnecessary additional impost on young families if there are sudden changes in their circumstances - lost employment, illness, interest rate increases.

BPN notes that Local Government NSW has raised concerns that rate pegging served as a financial disincentive for councils to allow development because their rates revenue did not rise as population increases, and this has led to a shortage of paths, parks, drainage and other local infrastructure. Further exploration of a mechanism for rate increases could be considered based on improved property value, for properties other than the primary residence.

Issue 2.2: Integrating land use and infrastructure planning

The Greater Sydney Region Plan provides the overarching vision and infrastructure needs, which is translated into separate District Plans and Local Strategic Planning Statements. These are used by councils for land use and infrastructure planning.

▪ How can the infrastructure contributions system better support improved integration of land use planning and infrastructure delivery?

*** By providing a higher public (State and Council) value share of land value uplift and development, and allowing the public funds raised to supplement associated land use planning costs.

Issue 3.1: Principles for planning agreements are non-binding

The Planning Agreements Practice Note is currently non-binding on councils, although the Ministerial Direction exhibited by the Department aims to change this. There are no equivalent guidelines for use when negotiating planning agreements with the State. Additionally, there is little agreement between

stakeholders on what the principles should be for either local or State planning agreements and there is no consensus on the appropriateness of value capture through planning agreements.

- What is the role of planning agreements? Do they add value, or do they undermine confidence in the planning system?

*** Where Planning agreements are used as a trade-off against existing planning controls, they can undermine confidence in the planning system and are often viewed by the public as a form of legal bribery. The public trade-off for those planning agreements must not be at a net loss to the community e.g. from loss of bushland; loss of deep soil planting zones; loss of privacy and overshadowing of neighbours by increases in height; significant increases in density often not foreseen in planning controls from changes to Floor Space Ratios.

Planning agreements for developments within current zonings are, in many LGAs, negotiated at a Council officer's discretion for developments under \$30 million. This is understandably viewed with distrust by the community, particularly neighbours that bear the brunt of the loss of amenity. It has the potential to be a pathway for corruption.

- Is 'value capture' an appropriate use of planning agreements?

*** Value capture should be mandatory for rezoning (for planning proposals) and incorporated as a percentage of uplift into the EP&A Act, rather than applied under pressure by a developer.

- Should planning agreements require a nexus with the development, as for other types of contributions?

*** Usually, but not restricted to the immediate area around the development, as there could be more remote needs arising from development such as community facilities, parks and traffic facilitation. However, it is BPN's view that an inadequate planning agreement should not be used as a trade off against a council's current planning controls.

- Should State planning agreement be subject to guidelines for their use?

*** Yes, with provision for community input and transparency. Currently State planning agreements are frequently not publicly disclosed before they are agreed to. It is far too easy for these agreements to be of more benefit to the developer than to the public interest.

Issue 3.2: Transparency and accountability for planning agreements are low
Reporting and accounting requirements for planning agreements are low, although proposed changes to the Regulation may improve this. Differing practices between councils and the State in maintaining separate planning agreement registers and public notice systems is confusing and reduces transparency and accountability.

- What could be done to improve the transparency and accountability of planning agreements, without placing an undue burden on councils or the State?

*** They need to be widely publicised to affected residents with sufficient time and access to relevant detailed information to allow quality input, which must be genuinely respected and considered. See our Part A. The publication of a plain English version of any planning agreement must be mandatory. Both agreement applications and a register of any planning agreements must be published in the same way that development applications and planning proposals are published. It would not be an undue burden to simply set up and maintain further pages on council and DPIE websites with these listings.

- Should councils and State government be required to maintain online planning agreement registers in a centralised system? What barriers might there be to this?

*** Absolutely Yes! The main barrier in relation to this is an inadequate period of availability before consideration by Council. They should be posted online along with planning proposals, DCPs and Development applications at least a month before consideration by Council.

Review of Infrastructure Contributions in New South Wales

Issue 3.3: Planning agreements are resource intensive

Planning agreements are a resource intensive mechanism but have potential to deliver unique and innovative outcomes.

- Should the practice note make clear when planning agreements are (and are not) an appropriate mechanism?

***Yes, BPN agrees.

Issue 3.4: Contributions plans are complex and costly to administer

Contributions plans can be opaque, making it hard for developers to calculate a potential contribution liability and the community to know what infrastructure it can expect and when.

Many plans are not updated in a timely manner, leading to issues with cost escalation, outdated assumptions, and difficulty meeting community infrastructure needs. Some councils have significant contributions balances, indicating there may be barriers to timely expenditure.

- How could the complexity of s7.11 contributions planning be reduced?

- What are the trade-offs for, and potential consequences of, reducing complexity?

- How can certainty be increased for the development industry and for the community?

*** BPN advises that Councils often need to accumulate contributions to fund a related worthwhile project with economy of scale e.g. An aquatic centre, library, affordable housing development, major road or active transport works.

'Nexus' requirements in s7.11 contribution plans do add some complexity and impose an administrative burden on councils in administering local contributions plans. There is a clear need to find a balance between the principles of equity, efficiency and certainty, as long as the system is more easily understood.

Issue 3.5: Timing of payment of contributions and delivery of infrastructure does not align

Developers want to delay the payment of contributions to the occupation certificate stage to support project financing arrangements. This would delay receipt of funds to councils and, in the absence of borrowing funds, may delay infrastructure delivery.

- What are the risks or benefits of deferring payment of infrastructure contributions until prior to the issuing of the occupation certificate, compared the issuing of a construction certificate? Are there options for deferring payment for subdivision?

- Would alternatives to financial securities, such as recording the contributions requirement on property title, make deferred payment more viable?

- Would support to access borrowing assist councils with delivering infrastructure? What could be done to facilitate this? Are there barriers to councils to accessing the Low Cost Loans Initiative?

- What else could be done to ensure infrastructure is delivered in a timely manner and contributions balances are spent?

*** BPN supports earlier payment of contributions to Councils to fund planning costs and earlier provision of related community infrastructure. Most developers want deferment simply to increase their high profits and liquidity. Misalignment between contributions payments and delivery of infrastructure, particularly as councils may wait for the full cost to be collected through the contributions plan instead of borrowing to fund timely delivery. Earlier delivery of infrastructure—particularly earlier property acquisition—is an opportunity to reduce costs and risk. There is also a significant risk of developers going 'bankrupt' before completion of a project, which could mean no contributions are paid. There are a number of large developers that are in the habit of setting up individual companies for each project and then so-called 'phoenixing' the company before paying all debts accrued. By law in such cases, any residual contribution debt needs to be transferred to the owner of the relevant land.

Issue 3.6: Infrastructure costs and contributions rates are rising

Infrastructure costs are rising—particularly for land acquisition—as are contribution rates. Caps and thresholds introduced to encourage sector activity have, however undermined important market signals for development efficiency and are now likely to be reflected in higher land values.

The application of the essential works list can put councils' finances under pressure given their current inability to expand their rate base in line with population growth.

- Currently IPART reviews contributions plans based on 'reasonable costs', while some assert the review should be based on 'efficient costs'. What are the risks or benefits of reframing the review in this way?
- Should the essential works list be maintained? If it were to be expanded to include more items, what might be done to ensure that infrastructure contributions do not increase unreasonably?
- What role is there for an independent review of infrastructure plans at an earlier point in the process to consider options for infrastructure design and selection?

*** BPN supports "reasonable costs" as this implies fairness, relevance and efficiency and supports expansion of works items, as the "reasonable costs" tests would not allow contributions to "increase unreasonably". If there is dispute as to the nature of "reasonable costs", then the list of items that can be included could be expanded by IPART. Options to address costly property acquisition for public infrastructure purposes will be a key focus area.

Issue 3.7: The maximum s7.12 rate is low but balanced with low need for nexus

Section 7.12 local infrastructure levies are low and do not reflect the cost of infrastructure.

- Given that the rationale for these low rates reflects the lower nexus to infrastructure requirements, what issues might arise if the maximum percentages were to be increased?
- What would be a reasonable rate for s7.12 development consent levies?

*** See our Part C.

Issue 3.8: Limited effectiveness of special infrastructure contributions

Special infrastructure contributions were introduced to strengthen delivery of state infrastructure. They can be an efficient and equitable mechanism for modest infrastructure cost recovery, while helping to ensure that development is serviced in a timely way. Over time, incremental changes and ad hoc decisions have, however, led to inconsistencies in their application, which may have limited their effectiveness.

- Is it appropriate that special infrastructure contributions are used to permit out-of-sequence rezoning?
- Should special infrastructure contributions be applied more broadly to fund infrastructure?

*** Yes. See our Part D. Also, opportunities exist to improve funding allocation to infrastructure projects and to make more effective use of works-in-kind to facilitate timely provision.

- Should they be aligned to District Plans or other land use planning strategies?

*** Yes.

- Should the administration of special infrastructure contributions be coordinated by a central Government agency i.e. NSW Treasury?

*** Yes, but better with DPIE. Treasury's focus is not primarily on planning issues.

Issue 3.9: Difficulty funding biodiversity through special infrastructure contributions

Biodiversity offsetting is a key part of the plan for developing Greater Sydney and requires a secure source of funding. The application of special infrastructure contributions to support this has been inconsistent.

- Should implementation of special infrastructure contributions for biodiversity offsets be subject to a higher level of independent oversight?

- Are special infrastructure contributions the appropriate mechanism to collect funds for biodiversity offsetting, or should biodiversity offsets be managed under a separate framework?

*** BPN believes biodiversity offsets are an inadequate mechanism to compensate for ecological and environmental damage or to provide for ecologically sustainable development. Funding to protect nature and ecological services is almost always totally inadequate. See BPN's General Comment 1.

Issue 3.10: Affordable housing

Affordable housing contributions are made on top of other infrastructure contributions. The percentages are determined individually, and each scheme must demonstrate the rate does not impact development viability.

- Is provision of affordable housing through the contributions system an effective part of the solution to the housing affordability issue? Is the recommended target of 5-10 per cent of new residential floor space appropriate?

*** It could be an effective part of the solution if significantly more. This would only be possible if contributions and public value share increased significantly too. Most experts on affordable and social housing agree that the 5-10% target is far too low. A target of at least 20% would be much more appropriate and urgent.

Please see BP's Practice Notes Comments for page 5.

Affordable housing must not be able to be changed to standard housing once it is agreed to be built on an affordable basis. However this is almost impossible to enforce. In Double Bay additional storeys were approved for a development on the basis that affordable housing would be supplied. Once the other units were sold the developer lodged a S4.55 application saying that they could not sell the affordable housing units. Approval was then given to turn the one bedroom units into three bedroom units. The developer thus got additional storeys and the provision of affordable housing was not enforced. It is arguable whether there can be any such thing as 'affordable housing' in high value suburbs. Additionally, if a unit or house is required to be sold initially for a lower cost, there is no mechanism for that lower selling price be imposed upon future sellers of that unit, therefore the affordable housing is effectively lost. The only effective way to have affordable housing in effect is on a rental basis with public ownership in perpetuity.

▪ Do affordable housing contributions impact the ability of the planning system to increase housing supply in general?

*** Negligibly, as there are so many other factors that influence housing costs and supply.

As part of a peer review of the City of Parramatta's draft planning agreements policy, the public business paper for Council of 25 June 2018 reported on Council's consultant's response to a number of submissions raising concern that the value sharing component of the policy will impact upon development feasibility and will reduce housing affordability as the developers 'pass on' these costs to end purchasers. The business paper states that Council's consultant "SGS Planning and Economics have reviewed this matter and provide the following response: 'Following adoption by Council the Planning Agreement policy should not have a negative impact on the feasibility of future development or housing affordability.'

Clear reasons were given for this statement.

One of the main restrictions to the increase of housing supply is developers land-banking but not developing until they consider it to be most profitable. This is particularly prevalent in areas and corridors that developers believe will be rezoned for higher density in the future. For instance around the Aerotropolis, along planned major arterial roads and corridors being considered for public transport.

Issue 4.1: Sharing land value uplift

If investment in public infrastructure increases land values, then the benefits are largely captured by private property owners. 'Value capture' mechanisms can return a share of the value created by public investment to the taxpayer.

There are several ways a 'value capture' mechanism could be applied, including land tax, council rates, betterment levy, or an infrastructure contribution.

▪ Where land values are lifted as a result of public investment, should taxpayers share in the benefits by broadening value capture mechanisms? What would be the best way to do this?

*** Yes. Land owners, investors and developers have enjoyed excessively high wealth increases and/or profits for far too long, while the public suffers increased congestion, and insufficient public services and community infrastructure. The BPN recommendations in Parts A, B, C and D all recommend ways to do this.

Review of Infrastructure Contributions in New South Wales

Issue 4.2: Land values that consider a future infrastructure charge

When land is rezoned, there is often an increase in land values as a result of the change in development potential.

▪ Should an "infrastructure development charge" be attached to the land title?

*** No, that would put an ongoing additional impost onto an unspecified number of properties, potentially ad infinitum, which would not help make housing more affordable. The increase in value should be levied on a once only basis, when a development is approved for higher density in that area. Furthermore existing homeowners who live along newly designated transport corridors face additional costs due to changes in amenity such as loss of parking, increased noise, loss of local public space. These existing homeowners should not have an additional financial impost put upon them if they wish to move.

Issue 4.3: Land acquisition for public infrastructure purposes

Requiring the direct dedication of the land that is needed for infrastructure purposes is an option that aims to address the problem of rapidly increasing land values.

- If supported, how could direct dedication be implemented? How could this be done for development areas with fragmented land ownership?

*** By providing sliding scale FSR incentives in planning constraints for consolidating small blocks and then dedication through planning agreements.

- Could earlier land acquisition be funded by pooling of contributions, or borrowings?

*** Yes, but the government is critical of Councils pooling contributions to do just this!

- Are there other options that would address this challenge such as higher indexation of the land component?

*** Misalignment between later contributions payments and the earlier need for delivery of infrastructure, particularly if councils wait for the full cost to be collected through the contributions plan instead of borrowing to fund timely delivery. Earlier delivery of infrastructure—particularly earlier property acquisition—is an opportunity to reduce costs and risk.

Issue 4.4: Keeping up with property escalation

Land values (particularly within the Sydney metropolitan area) can increase rapidly and often increase on early signs of land being considered for future development; well ahead of the rezoning process.

- What approaches would most effectively account for property acquisition costs?

*** Value share could be based on uplift in land value from the date of any publicity around future development, but the need for commercial confidentiality and stronger declarations of conflicts of interest are also critical. The application of the value capture contribution should be from the point in time that a land investor or developer purchased land in these areas. This would also assist with inhibiting long delays in developers developing land that they have land-banked.

Issue 4.5: Corridor protection

Early identification of corridors has the potential to result in better land use and investment decisions. Without funds available to facilitate their early acquisition, it is likely that being 'identified' would encourage speculation and drive up land values, making the corridor more expensive to provide later.

- What options would assist to strike a balance in strategic corridor planning and infrastructure delivery?

*** See answer to 4.4 and we also suggest that ICAC should be more strongly empowered.

Issue 4.6: Open space

While the seven-acre open space standard is not based on evidence, it nevertheless continues to be relied upon. Open space provision is moving towards a performance-based approach.

- How can performance criteria assist to contain the costs of open space?

- Should the government mandate open space requirements, or should councils be allowed to decide how much open space will be included, based on demand?

- Are infrastructure contributions an appropriate way to fund open public space?

*** BPN supports the provision of more open space for population density increases and Council deciding on this provision based on community demand, and with infrastructure contributions and State government funding support.

Issue 4.7: Metropolitan water charges

Currently, costs of new and upgraded connections for Sydney Water and Hunter Water are borne by the broader customer base rather than new development.

- How important is it to examine this approach?

*** In areas where large area greenfield rezoning is being done that approach is probably reasonable. However this should be examined if it is being applied to spot rezoning or infill development. In that case the cost should be borne by the development.

- What is the best way to provide for the funding of potable and recycled water provision?

*** Either developer provided or State government funding.

Issue 4.8: Improving transparency and accountability

There are limited infrastructure contributions reporting requirements.

- What would an improved reporting framework look like? Should each council report to a central electronic repository?

- What elements should be included? How much has been collected by contributions plan and other mechanisms? How much council has spent, and on what infrastructure items?

- Should an improved reporting framework consider the scale of infrastructure contributions collected?

*** Absolutely yes for all of 4.8! The main barrier in relation to this is an inadequate period of availability before consideration by Council. They should be posted online along with planning proposal contributions, DCPs and Development applications at least a month before consideration by Council. In addition, on all individual development consents, the \$ dollar value of the developer contribution including for in-kind-works must be included.

Issue 4.9: Shortage of expertise and insufficient scale

The ability of the local government sector to efficiently deliver contributions plans are impaired by shortages of skilled professionals and lack of scale for smaller councils.

- What can be done to address this issue?

- Should the contributions system be simplified to reduce the resourcing requirement? If so, how would that system be designed?

*** Councils should be members of their Regional Organisation of Councils to assist in this and should be sympathetically treated for infrastructure contribution.

Issue 4.10: Current issues with exemptions

Exemptions from contributions are complex as they are set out across a range of planning documents and are inconsistent across contribution mechanisms.

- Given that all developments require infrastructure, should there be any exemptions to infrastructure contributions?

- Is it reasonable to share the cost of 'exemptions' across all of the new development rather than requiring a taxpayer subsidy?

- Are there any comparative neutrality issues in the providing exemptions for one type of development, or owner type, over another?

*** BPN has no comment on this issue.

Issue 4.11: Works-in-kind agreements and special infrastructure contributions

Works-in-kind agreements can realise savings and efficiencies, but they can result in infrastructure being provided out of the planned sequence and prioritise delivery of some infrastructure (such as roads) at the expense of other infrastructure (such as open space and biodiversity offsetting).

- Should developers be able to provide works-in-kind, or land, in lieu of infrastructure contributions?
- Developers may accrue works-in-kind credits that exceed their monetary contribution. Should works-in-kind credits be tradeable? What would be pros and cons of credits trading scheme?
- What are implications of credits being traded to, and from, other contributions areas?

*** BPN believes that works-in-kind (such as affordable housing and open space provision) should be allowed provided there is transparency about the details and reasons for them consistent with ESD principles, the Community Strategic Plan, Council Strategies and Local Strategic Planning Statement.

Yours sincerely,

[Redacted signature block]





