



# Submission to Productivity Commission

REVIEW OF INFRASTRUCTURE CONTRIBUTIONS IN NSW –  
ISSUES PAPER

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## Section 1: Background

### Disclaimer

The comments provided in this submission are based on Council's experience of the contributions system. We have not attempted to provide comment on those areas of the system with which we have limited experience.

It should be noted that, due to the short timeframe for submissions this submission has been prepared by Council staff and represents their views on the issues raised. There was not sufficient time to enable the submission to be endorsed by Council prior to the cut-off date.

The short timeframe for submissions has also resulted in brief responses being provided to complex issues. Council would be happy to elaborate on any comments made in more detail.

### Our City Context

Shellharbour City Council is a medium sized regional council located within the Illawarra-Shoalhaven Region. The city has been undergoing sustained greenfield development since the 1960s with development occurring on multiple fronts and the urban area evolving from a collection of small townships to a city.

In order to ensure the quality of life for both existing and future residents Council committed to providing a level of infrastructure commensurate with its growth into a city. This would not have been possible without the development industry contributing both physically and financially to providing the infrastructure to serve the community.

### The role of the contributions system in providing infrastructure

Recent discussions regarding the contributions system in NSW have focussed on the cost to the development industry and their impact on development feasibility (not to be confused with housing affordability). This has distorted the perception of the system, its benefits and its ability to meet the ultimate outcome – the provision of the infrastructure people need.

There are a few key issues that have not been addressed in recent discussions that should be acknowledged in the following discussion:

- The system provides a valuable funding stream for the provision of infrastructure that is required **as a result of new development**.
- Restrictions imposed by the NSW Government on local government income coupled with significant cost shifting have led to an **ever diminishing source of alternate funds** to meet the additional demand.
- Everyone (including the development industry) want the infrastructure to be provided but no one wants to be the one that pays – **it is always someone else's responsibility**
- Developers are not the only ones with a financial input into the provision of infrastructure under a contributions plan. **Councils also have a financial commitment** through the apportionment of costs for the existing community and the need to fund any shortfalls that may occur.
- The flow of funds in the contributions system is not always one way. Contributions received are often used (especially in greenfield developments) to **reimburse developers** for land and works that they have provided that benefit other developments.

The contributions system not only provides a valuable funding stream for the provision of infrastructure but it is also a valuable tool to enable costs to be spread equitably across all developers.

### How we currently use the contributions system

Council operates a single section 7.11 contributions plan which has been regularly reviewed since it was first adopted in 1993 to ensure the assumptions on which it is based remain current. This plan currently contains \$72.6 million of works which are a mixture of recoupments for items that have already been delivered in anticipation of development and future works.

Council's contributions plan contains limited land acquisition and our contributions remain below the relevant thresholds for submission to IPART for review. As such we are able to continue to levy for the full range of required infrastructure without the essential works list being applied.

There are strong links between Council's contributions plan and Council's Long Term Financial Plan and Operational and Delivery Plans and we have a strong track record of implementation of the plan.

In addition to our contributions plan Council has a one major VPA that relates to the Calderwood development in west of the City. This development was approved under the State Significant Development provisions and was not part of Council's strategic planning for urban land release when it was considered.

## Section 2: Issues

The following comments are provided in response to the issues raised in the Issues Paper as they relate to Shellharbour City Council. As outlined above we do not have a s7.12 plan and there is no SIC that applies in our area. We also have a plan that minimises the acquisition of land. Each of these have impacted on our responses to the following. We have only sought to answer those questions we felt appropriate to our situation.

### Issue 1.1: Striking the right balance

The provision of infrastructure is critical to the provision of attractive and liveable communities – this is not just the roads and drainage that enable a lot to be sold but also the parks and community facilities that foster a sense of belonging and community well-being. The central objective of any system of infrastructure funding should be ensuring this infrastructure is required when and where it is needed. The need to strike a balance in who is responsible for funding this infrastructure is acknowledged. Such a balance needs to move beyond the development industry seeking to abrogate responsibility for the communities that their developments create.

Council supports the application of the principles of efficiency, equity, certainty and simplicity when considering reforms to the contributions system but cautions that the purpose of the system not be lost in the attempt to make it suit the demands of all stakeholders.

#### Questions

- *Is a 'one size fits all' approach appropriate or do parts of the State require a bespoke solution?*  
The answer lies somewhere between the two options.

There are components of the system that should be common across the State to ensure that a standard set of principles can be applied to all plans – particularly in how the plan is administered, the content that needs to be included, consistent approaches to key issues such as apportionment and nexus. The system must remain sufficiently flexible, however, to cater for variations between Councils and areas within the LGA.

- *What are the advantages and disadvantages of a site-specific calculation based on demand generated, compared with a broader average rate?*

There are advantages to both approaches as evidenced by them co-existing in the contributions system for 15 years. The site-specific approach such as that used in s7.11 plans is more labour intensive but provides for stronger links between the payee and the infrastructure provided. It also encourages more detailed planning for the delivery of infrastructure. Broader rates are more flexible and reduce the cost to the individual by spreading them further but don't have strong strategic links to infrastructure provision.

- *Do other jurisdictions have a better approach to infrastructure funding we should explore?*  
No comment

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

It is unclear what flexibility is being referenced here. A contributions plan is a long term strategic document with significant financial commitment. It is difficult to deliver certainty if the income stream is not certain.

In times of economic crisis the provision of infrastructure is often relied on to kick-start the economy. Any flexibility in such circumstances would need to consider the availability of alternate funding sources when there is the most pressure applied

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

The consideration of this issue should not just focus on reducing pressure on the development industry through the reduction of contributions payable by shifting funding to another source. Council's funding options are limited by the requirements of the State Government and are subjected to existing, well-documented pressures through cost shifting.

Ultimately if Councils are to shoulder an increasing burden for the provision of infrastructure that is required directly as a result of the development industry carrying out their business, this cost burden is passed on to the existing community. It is unreasonable to expect the existing community to effectively subsidise the commercial operations of a private company.

The reasonableness of the shifting cost burden must be considered.

**Questions**

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

Alternate funding options for local government are limited and are already subject to considerable pressure. Care needs to be taken that pressure is not added to existing funding streams through increasing demand and cost shifting.

There is benefit from some current funding options being improved to ensure they provide funds in a timely way.

### Issue 2.2: Integrating land use and infrastructure planning

Council's contributions plan is considered an integral component of our land use planning with infrastructure implications considered for all new planning proposals and strong links between the dwelling projections that form the basis of the contributions plan and Council's key strategic documents including the housing strategy, open space strategy and Local Strategic Planning Statement. It is also integrated into our long-term financial planning. This has provided Council with a contributions plan that has been actively reviewed and implemented over the last 25+ years.

**Questions**

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

Planning for infrastructure should be an integral component of any strategic planning process and this should be recognised in key strategic documents eg LSPS, LEPs, regional plans. This should not be limited to local infrastructure.

Strategic infrastructure planning should include the identification appropriate funding mechanisms.

Greater consistency in infrastructure funding policy would assist in enabling better integration with land use planning

### Issue 3.1: Principles for planning agreements are non-binding

Both the EP&A Act and EP&A Regulation contain principles for planning agreements – when and how they can be used, what they should contain etc. It is therefore not accurate to say principles are non-binding. What is missing is the requirement for any principles outlined in the practice notes to be considered. If the consideration of practice notes is to become binding, there must be a commitment to ensuring the advice they contain remains current.

### Questions

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

Planning agreements are a valuable tool to provide for flexibility in the delivery of infrastructure. In this regard they are a valuable tool in the infrastructure system.

They are, however, often used by developers to accelerate the approval process and if not well managed this can transfer problems to later in the process where they are harder to address. When this happens it can potentially undermine confidence in the system.

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

Only where there is an established set of principles that can be followed to manage expectations and ensure all parties benefit appropriately.

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

Planning agreements should not be used to circumvent strategic planning processes and should have a clear planning purpose. Although requiring nexus with development may restrict flexibility and innovation it would address significant probity issues.

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

There needs to be a consistent set for guidelines applied to both State and Local Planning Agreements to ensure transparency in the system and apply consistent expectations across the stakeholders.

### Issue 3.2: Transparency and accountability for planning agreements are low

Although the negotiation of planning agreements might not be undertaken in the public realm, the process and content at a local level remains relatively transparent due to the following:

- Planning agreements are publicly notified and all stakeholders are provided with the opportunity to review the agreement and provide comment
- The power to enter into an agreement is not a function that is delegated to Council staff. The decision whether to enter into an agreement is undertaken by elected representatives in the public realm of a council meeting and is the subject of public record.
- Copies of the executed documents are available on Council's website as required by the EP&A Regulation.
- Income received, expenditure and cash balance are reported as part of Council's annual financial statements. Any land received through dedication is also reported.

Accountability in the negotiation of the agreement is adequately addressed through the public notification and Council decision-making processes outlined above. With regard to accountability following execution of the agreement, planning agreements contain clauses that make the parties accountable for the implementation of the agreement. Failure to comply with these requirements would be considered a breach of the agreement and there are provisions with such agreements that provide a mechanism for dealing with such breaches. It is not clear what accountability is being referred to here.

It is assumed that further transparency and accountability equates to greater reporting requirements and it is unclear what this would achieve at a local government level.

**Questions**

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

Greater consideration needs to be put into the who and why of reporting to ensure any additional requirements address legitimate concerns. If additional reporting is required this should be wherever possible linked to existing reporting arrangements to ease the administrative burden on councils.

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

The development of a consistent approach to planning registers – where they are found, the information they need to include etc would make the information easier to locate.

The use of a centralised system for planning agreement registers would enable all relevant information to be stored in the one place. Such a system would need to replace the requirements on councils rather than replicated them and it must be established in such a way as it can be easily maintained by relevant parties.

### Issue 3.3: Planning agreements are resource intensive

Planning agreements are resource intensive and Council has learned from experience that not all implementation programs proposed are equal. For Councils such as ours that do not use planning agreements on a regular basis greater guidance on this issue would be beneficial as would options available to recoup these costs.

**Questions**

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

Guidance on when each of the contributions system mechanisms are best used should be given – not just for planning agreements. This would enable councils to make informed decisions.

Not all councils have the same level of experience in preparation and management of planning agreements. The practice note needs to provide sufficient guidance to ensure that those councils that rarely enter into such agreement know what must be considered regarding implementation mechanisms.

### Issue 3.4: Contributions plans are complex and costly to administer

Council acknowledges the importance of its contributions plan in the provision of the infrastructure to serve its growing population and has a highly experienced and dedicated team that is responsible for the review, management and implementation of the contributions plan. We have a single plan that has been well managed and still find the system complex and costly to administer. The cost of administration is partly due to the volume of work required and partly due to the specialised skill set required to undertake the work.

There is an expectation that the plans will be an 'exact science' which is unreasonable as they are a strategic document with a long life. Each time there is a call for greater transparency an extra layer of detail gets added to the plan. When this is added to repeated ad hoc policy changes over many years with no holistic review successfully implemented, we now have a system that is so complex it is virtually unworkable.



### **Questions**

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

Much of the complexity in the contributions system is due to ad-hoc policy changes and additional restrictions being imposed without any evaluation of their impact. The complexity of the system is compounded by the absence of clear and comprehensive policy guidance.

Too much emphasis is currently placed on the provision of fine detail justifying every small decision within the plan and the broader purpose is lost. This constant questioning of the small decisions has made councils fearful of making the big decisions that would enable better implementation of the plan.

A holistic review of the system and the expectations of the level of detail required should be undertaken and up-to-date practical policy guidance provided.

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

It is critical if the system is to continue to function that complexity be reduced. The content of plans should be simplified. This may result in reduced availability of the fine detail within the plan but would make plans easier to read and information easier to find. However, it should be recognised that complexity in the plans is actually reducing their transparency.

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

Reducing the complexity of plans would make them easier to read and increase understanding of the purpose and commitments made.

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

This claim is overly simplistic and is being used as a means of justifying the delaying of payment to later in the development cycle or transferring costs and risks associated with provision of infrastructure away from the development industry. Council manages the implementation of its contributions plan via a detailed works schedule that spreads the cost across the life of the plan. Some infrastructure is provided ahead of demand whilst some provided once the demand exists. This is a delicate balancing act that is dependent on money being available when needed.

### Questions

*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?*

Councils have deliberately chosen the timing for payments to align with significant gateway stages in the development process to minimise financial risk. There are significant risks of non-payment associated with the delay of payment until occupation certificated stage as councils often do not find out an occupation certificate has been released until after the fact. If this occurs there is currently no mechanism for councils to ensure compliance and councils may have to deal with multiple owners in an attempt to recover the payment. This would be an unreasonable drain on council resources.

There is significant lead time for infrastructure projects and the timing for payment has been set to help enable councils to have funds available to provide the infrastructure when it is needed. The delaying of payment until later in the development cycle, whilst benefiting the development industry would place significant financial pressure on councils to utilise other funding sources to provide the infrastructure that is required to service that development.

Deferring payment for subdivision does not recognise that the majority of contributions payable in greenfield development related to infrastructure such as open space, drainage and traffic management which are required for the lots to be available for market and for which developers expect reimbursement for works they have completed. To delay payment is considered unreasonable.

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

Recording the contributions requirement on the property title would add significantly to the administrative burden on councils as the process of ensuring such restrictions are imposed and then removing the restrictions when they are paid will require council resources that, under the current system, are not reimbursed by the developer.

*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?*

Councils need to be fiscally responsible and if they borrow to provide infrastructure, they must be certain that they will have the resources to service the loan. The delay of payment and the use of borrowings to provide the infrastructure that the development industry require to be able to sell their product places significant additional financial risk on councils with significant financial benefit to the developer. This transfer of risk does not appear reasonable. It should also be noted that this issues paper has been writing in a time of historically low interest rates where the costs of borrowing are of less concern. It does not address the implications of an increase in interest rates over the life of the loan.

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

By ensuring that infrastructure planning is linked to existing planning items such as the Long Term Financial Plan, Operational and Delivery Plans etc as well as simplifying the restrictions placed on contributions expenditure that is created through the expected level of detail within the plan (eg exact location, area and works for which a contribution is sought that must be specified in the plan) would encourage more efficient expenditure.

### Issue 3.6: Infrastructure costs and contributions rates are rising

As one of the key inputs for calculating contribution rates is the cost of infrastructure, it is logical that an increase in the cost of providing infrastructure will result in an increase in contribution rates. The development industry has benefited from the capping of contributions at a consistent level for nearly 10 years whilst their income from sales has increased. This financial advantage has come at the expense of local communities who have had to cross subsidise new development.

It should be noted that Council's contributions rates are currently below the IPART thresholds and not subject to the essential works list.

#### **Questions**

*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?*

The ultimate purpose of a contributions plan is to ensure that the infrastructure required as a result of new development can be provided when and where it is needed. The use of 'efficient costs' is heavily focused on reducing the cost to the payee with little reference to the practicalities of providing local infrastructure. This is a purely economic approach and does not consider the physical, environmental or social practicalities of providing infrastructure.

There is an expectation from the development industry that they will be reimbursed for the infrastructure they provide under the plan at the cost of providing the actual works, not an artificial assessment of what represents an 'efficient cost' to provide those works. Once again the inputs into the system are expected to be reduced without a corresponding reduction in the expectations of the outputs of the system. This would create a funding shortfall.

*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?*

The initial essential works list was to only include that infrastructure required to bring a lot to market ie roads and drainage. The scope of works was increased to include items that the development industry were prepared to provide.

As the essential works list only applies to those plans that exceed the threshold it creates a lack of equity across the system based on an arbitrary dollar figure. If a council's contribution rates are below the threshold they can fund a full range of infrastructure land and works under the plan but if they cross that threshold they can no longer levy for certain items. The demand for the items is the same regardless. This policy was imposed with no consideration for the broader funding implications and creates a funding issue. It also fails to consider the financial implications of items that have been provided in anticipation of development on the assumption that the cost can be recouped through future contributions being removed from the plan on the basis of an arbitrary list.

*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?*

It would be more efficient to utilise the skills of IPART, not so much in the detailed review of plans but instead in the provision of quality advice in relation to specific issues that affect pricing eg indexation, allowances for preliminaries, contingencies etc.

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

Council does not utilise s7.12 levies as most of our infrastructure demand results from greenfield development. The use of s7.12 is not an appropriate means of funding in these circumstances as:

- The maximum levy that can be applied is not sufficient to fund the scope of infrastructure required
- It does not allow for land dedication or the provision of works-in-kind
- With the majority of new infrastructure to be provided in greenfield areas it is not considered reasonable to spread those costs across those areas of the city that do not have the same infrastructure demand.

#### **Issue 3.8: Limited effectiveness of special infrastructure contributions**

There are no special infrastructure contributions that currently apply to development in our city. State and regional infrastructure is currently funded through the use of Planning Agreements under a satisfactory arrangements clause within the relevant SEPP in relation to the Calderwood development. These arrangements have no basis in strong strategic planning and are not subject to the same rigour as local contributions.

#### **Questions**

*Is it appropriate that special infrastructure contributions are used to permit out-of-sequence rezoning?*

Out-of-sequence rezoning should generally be discouraged as it places a burden on councils and communities for which they are not able to adequately prepare. However, if permitted there must be a commitment to fund local infrastructure at no cost to local councils as well as the commitment to state and regional infrastructure.

*Should special infrastructure contributions be applied more broadly to fund infrastructure?*

Only if they do not result in a corresponding reduction of local contributions.

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

It is not clear how SIC can be justified or considered fit-for-purpose without such links. If a contribution is payable it is reasonable to expect that the infrastructure that will be funded is documented and the links to local infrastructure considered.

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

Administration of SIC should be the responsibility of a central agency with monitoring and reporting requirements that are commensurate with those that apply to the local system to ensure that it is transparent and accountable. Relevant agencies should have to report through a central agency with regard to SIC related expenditure to ensure that they remain accountable

### **Issue 3.9: Difficulty funding biodiversity through special contributions**

Many of the issues raised in relation to the contributions system are that current contributions are considered too high by the development industry. Although the need to address biodiversity is acknowledged, utilising the SIC system for this purpose adds extra cost into a system that is already struggling.

#### **Questions**

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

If used, they should be subject to the same level of oversight as all other aspects of the contributions system including that applied to local infrastructure.

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

Biodiversity offsets are an environmental outcome and not an item of infrastructure. As biodiversity costs increase, pressure is added to reduce contributions elsewhere. Council is concerned that this could result in further restrictions on local contributions as a means to offset the additional cost. Biodiversity offsets should be funded through a 'purpose built' system that is separate to the infrastructure contributions system. This would require legislative change.

### **Issue 3.10: Affordable housing**

Many of the issues raised in relation to the contributions system are that current contributions are considered too high by the development industry. Although the need for affordable housing to be provided is acknowledged, using the contributions system for this purpose adds extra cost into a system that is already struggling.

The provision of affordable housing is not the responsibility of local government under the Local Government Act. It is the responsibility of the State Government and should be funded through their general budget process rather than further loading an already overloaded local contributions system.

Council does not require contributions towards affordable housing and currently do not intend to impose them in the future.

#### Issue 4.1: Sharing land value uplift

If the value of land increases through planning actions such as rezoning or the provision of major infrastructure, the capture of this value uplift is seen as a means of funding infrastructure. No details have been provided as to how such a system would work and the benefit it may deliver to local government.

##### Questions

*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?*

A value capture mechanism should not be introduced if will in any way constrain the ability of local councils to levy contributions for local infrastructure.

#### Issue 4.2: Land values that consider a future infrastructure charge

Council, due to the nature of development, land ownership patterns and strategic planning have relatively low levels of land acquisition. This minimises their exposure to increasing land costs due to rezoning. It is acknowledged that this approach is not possible in all areas.

Land that is to be acquired is identified at rezoning and from that point onwards is subject to the *Land Acquisition (Just Terms Compensation) Act*, including the hardship provisions. It is not clear from the information provided how adding the extra layer of administration by adding a future infrastructure charge to the title will address the issue of rising land costs.

It is also unclear from the information provided what form such a charge would take and how it would be incorporated into the infrastructure funding system. More information would be required to provide a response to this issue.

##### Questions

*Should an “infrastructure development charge” be attached to the land title?*

Recording the contributions requirement on the property title would add significantly to the administrative burden on councils as the process of ensuring such restrictions are imposed and then removing the restrictions when they are paid will require council resources

#### Issue 4.3: Land acquisition for public infrastructure purposes

Council, due to the nature of development, land ownership patterns and strategic planning is able to utilise direct dedication of land under our contributions plan. This means we have relatively low levels of land acquisition and helps to keep contribution rates lower. It is acknowledged that this approach is not possible in all areas.

### **Questions**

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

Council current uses a similar approach to direct dedication for land for passive open space within their greenfield development areas. This reduces the impact of land acquisition on our contributions plan but it is acknowledged that without foregoing the apportionment principles for s7.11 plans this approach would be difficult to implement where there is fragmented land ownership.

It is also worth noting that Council have chosen not to levy for the acquisition of land for open space in their infill areas and instead will focus on improving the standard of embellishment to cater for new development. This further reduces issues relating to land acquisition and the contributions system.

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

The use of pooled contributions or borrowings for the acquisition of land should always be considered in the context of the other infrastructure to be provided under the plan (as required under Clause 27(3) of the EP&A Regulation). The desire for early acquisition of land should not be emphasized to the extent that it undermines the provision of other items in the contributions plan.

It also needs to be recognized that, once land is acquired, Council is responsible for its management. This is an additional burden to Council that cannot be recouped through Contributions.

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

Due to the relatively small land acquisition components of Council's contributions plan this is not a matter we have had to consider. It is noted that other councils will be better placed to provide this input.

### **Issue 4.4: Keeping up with property escalation**

Council has limited land acquisition within our contributions plan and this has assisted not only in keeping the contributions lower but also in protecting council from the impact of property fluctuations. This is due to ownership patterns within our development areas where there is usually one or two landowners and the land can be dedicated to council without the need to apportion that arises from fragmented ownership pattern.

**Questions**

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

The provision of guidelines that assist in establishing a reasonable base level of acquisition costs would be a good starting point.

- These guidelines should include information on the following:
- The method of valuation
- Dealing with constrained land
- The impact of other legislation on property acquisition eg Just Terms Compensation, Contaminated Lands.

This would also assist in managing expectations of landowners as to the return they can expect from the land.

Simplifying the review process for contributions plans, especially as they relate to land acquisition, would also encourage councils to regularly review their plans and keep the costs of acquisition current.

#### Issue 4.5: Corridor protection

Council has a strong history of corridor identification and protection but acknowledge that this comes with risks. These corridors are supported by extensive strategic planning and are regularly reviewed to ensure they are still warranted. This approach has enabled strategic acquisition of property as it comes to market. Council, however, has also been subject to land acquisition within these corridors that are ahead of the timetable for provision of the associated infrastructure item through the hardship provisions of the Just Terms Compensation legislation. As stated earlier Council has limited land acquisition under the contributions plan and this reduces the risk associated with this approach.

**Questions**

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

Corridors must be identified in a strategic plan. Sufficient detail will need to be provided in these strategic documents to enable the identification of the corridor required – this will represent a change to the current approach. It will also require a commitment to regularly review the need for the corridor to ensure that it remains relevant and does not place undue restrictions on land.

Corridor protection creates an expectation that the land will be acquired ahead of time, particularly if the corridor is identified for acquisition in an LEP. This creates the risk that acquisition could be forced upon the acquisition authority ahead of time and without adequate funding.

If a corridor is protected for an extended period, especially as a natural reserve, the community may expect the land to be retained as open space and/or biodiversity/habitat protection.

#### Issue 4.6: Open space

Council regularly reviews both the strategic open space planning and the standards of provision. This strategic planning and the associated standards of provision are integrated into Council's contributions plan, making sure that the contents of the plan reflect the needs that are specific to our community. This approach has enabled us to ensure the efficiency and effectiveness of what we have provided and intend to provide in the future.

#### Questions

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

Council's already utilises this approach and is currently providing significant new and upgraded open space across the city. We are happy to discuss what council is achieving and how we are doing it, all whilst keeping contribution rates reasonable.

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

Councils should be encouraged to develop their own standards with guidance from the state government as to how to go about setting those standards. Mandated standards would reduce the opportunity for flexible delivery and creativity in provision and would encourage inefficient provision with a focus on mandated standards rather than what best suits the specific site and community.

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

Open space is critical to the health and well-being of communities. Additional development puts pressure on existing open space and should contribute towards its provision.

#### Issue 4.7: Metropolitan water charges

It is accepted that water and sewer infrastructure is integral to the land development process and that consideration of their charges should form part of this review. It is noted that much of the concern regarding the current contributions system, as expressed by the development industry, is the impact of these costs on development returns/feasibility and Council's concern is that changes to the current approach would place further pressure on the local infrastructure contributions system.

#### Issue 4.8: Improving transparency and accountability

The local contributions system is already subject to extensive reporting. Reporting on income, expenditure and balances held for contributions plans and planning agreements are included in council's annual financial reports. Sufficient information is provided in these reports to enable the monitoring of the implementation of contributions plans. Financial reports for at least 5 years are also available on council websites enabling review of implementation overtime.

Reporting is resource intensive and reporting for reporting's sake distracts from the central purpose of contributions plans – providing infrastructure when and when it is needed. If additional reporting for local government is considered the following should be addressed:

- Who is the intended audience for the reporting and is the level of information sought reasonable?
- What will the impact be on council resources? Does the outcome justify the input?
- Are there current local government reporting requirements that can be adjusted to provide the information – is it already being reported elsewhere? Is there an existing system that can be leveraged off rather than duplicating systems?

Transparency and accountability may be better achieved through establishing a system that is easier to manage and implement – allowing councils to get on with the business of getting infrastructure built rather than more administration.

It should also be noted that no equivalent transparent system of reporting exists for State contributions or planning agreements. If accountability and transparency in the system needs to be improved the starting point should be a consistent system of reporting across all levels of the contributions system rather than increasing the current imbalance.



#### **Questions**

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

An improved reporting system would have a defined purpose, be reasonable and integrate with existing reporting systems. Greater integration with the existing Integrated Planning and Reporting Framework would encourage greater integration of the contributions plan with the other strategic and operational documents that guide the broader business of council.

The system needs to avoid duplication of effort and consideration must be given to how resource intensive the processes are.

*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?*

With the exception of the specific items on which funds are spent, all of the above elements are currently reported for local contributions. Reporting on specific items that have been funded could be easily incorporated into existing reporting mechanisms.

It is noted that the above questions are aimed at local government when the state government does not have an equivalent, transparent reporting mechanism.

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

Consideration should always be given to the efficient use of available resources. Detailed and overly cumbersome reporting is not appropriate.

#### **Issue 4.9: Shortage of expertise and insufficient scale**

Contributions planning requires a specific set of skills. There is currently no training available to assist in the development of these skills. This is further exacerbated by a lack of up-to-date supporting documentation and a lack of technical support from the State government.

Council has a strong commitment to the appropriate resourcing of the contributions plan, and has sufficient scale to justify a team dedicated to the management, review and implementation of the plan. Like most councils, however, the need to recruit specialist contributions staff is approached with trepidation with the positions taking numerous recruitment attempts to fill. This sometimes leads to an over-reliance on contractors which are not always financially sustainable.

#### **Questions**

*What can be done to address this issue?*

- sharing of resources between councils
- development of appropriate training courses
- simplifying the contributions system so that it is not met with fear as is currently the case
- financial and practical support for councils to help with streamlining processes and updating plans
- publishing of clear and comprehensive policy guidance
- provision of technical advice and support

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

The system is suffering from the effects of years of ad hoc policy change and making it difficult to navigate. Initial simplification could be achieved through:

- Process mapping of existing systems to identify where systems can be simplified
- Review of case law
- Review of IPART decisions
- Greater clarity regarding the required content and level of detail that is expected in plans.

#### Issue 4.10: Current issues with exemptions

One of the basic principles of a fair and equitable contributions system is that generally all development should make a fair contribution to the provision of infrastructure where demand is generated.

There are currently a range of exemptions that apply to contributions that have been imposed in an ad hoc manner over many years, through a range of documents. The result is a system that is overly cumbersome, lacks transparency and does not have a consistent and equitable policy base.

##### Questions

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

Exemptions should only be granted in limited circumstances. Decisions regarding exemptions should be made on the basis of a consistent set of principles that address matters such as:

- Social benefit
- Capacity to pay
- Demand generated
- Implications for funding

They should not be granted as a lever to encourage uptake of a particular policy eg Affordable Housing SEPP.

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

Unless the exemption being granted is for a development that offers a benefit to the broader community eg a hospital, school, emergency services, this form of cost-shifting undermines the principles of equity and transparency that underpin the contributions system. It assumes that the development to which the additional contribution is shifted has a greater capacity to pay than that which received the exemption and this may not be the case.

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

A development that is carried out for profit or personal gain should not be granted an exemption under any circumstances as it is not reasonable for the rest of the community to be expected to provide a subsidy in these circumstances.

The issue of levying for Crown developments needs to be addressed as the current advice is provided through a Planning Circular that is dated September 1995.

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

Council has an adopted Works-in-Kind Policy that guides its decisions on requests to undertake works in kind. This has assisted in our consideration of requests. We still, however, encounter the issues associated with the value of works being undertaken exceeding what is being levied in the plan and/or the contribution liability of the developer undertaking the works. The issues related to the value of works often arise from technical/design requirements of state agencies that were not considered when undertaking cost estimation for the contributions plan.

### Questions

*Should developers be able to provide works-in-kind, or land, in lieu of infrastructure contributions?*

Works-in-Kind (WIK) provide valuable opportunities for developers to provide infrastructure that would otherwise have to be provided by Council under the contributions plan. This has benefits for both Council and the developer including the opportunity to deliver infrastructure for the community much earlier than Council would often be able to achieve utilising resources that are already on-site.

*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?*

Council does not support the trading of WIK credits as this creates an additional layer of complexity that may undermine the delivery of the remaining infrastructure under the contributions plan.

*What are implications of credits being traded to, and from, other contributions areas?*

The benefit in one area could result in delays in the provision of infrastructure in other areas and may place greater financial pressure on councils to fund works they were not anticipating.

## Section 3: The way forward

### Introduction

In moving forward there are some key principles that should be the focus of future discussions:

- There is a significant disparity in the transparency and accountability of the state and local systems that must be addressed:
  - The level of detail provided when setting a SIC should be commensurate with that expected of local contributions plans
  - The availability of information and the level of reporting required should be the same for state and local level contributions and planning agreements
- Increasing use of the SIC should not place pressure on local contributions as councils are already under financial pressure and have fewer viable options to fill funding gaps
- The cost-shifting that occurs through NSW Government policy decisions must be addressed prior to the implementation of the policy with funding sources identified
- The range of documents in which information on the contributions system needs to be consolidated to remove contradiction and ensure that all relevant information is easy to find
- Technical support needs to be provided including up-to-date practice notes and planning circulars to provide support for councils
- The development industry must acknowledge that their activities are creating the demand
- A process mapping exercise should be undertaken for the components of the system to identify areas that can be improved and streamlined

The following comments are provided in response to the issues identified in Chapter 5 of the Issues Paper and reinforce the comments provided above.

### Local government rate pegging

The NSW Government has released its response to IPART's review of the Local Government Rating System.

One of the recommendations from the government's response is to focus on ensuring Councils can align their income with population growth.

Council strongly supports such a recommendation.

With rates being the main source of income for Local Government Councils in NSW including Shellharbour City Council, the introduction of rate pegging legislation in 1977 has placed significant limitations on NSW Councils abilities to generate income. At the same time, population growth and the

associated demand for services and infrastructure has continued to grow along with the level of services expected by the community.

While Councils do receive some growth in rates revenue due to new development outside of the rate pegging limits, the increase in revenue that can be generated does not match the increase in cost of servicing these new residents and businesses.

New subdivisions of existing land will see an overall increase in total land value, however the increase in land value is determined by the difference between the former value of land (parent lot) and the total of the land value on the new subdivided lots (child lots). This increase does not match the expected demand for services from the new population associated with the subdivision.

A more extreme example is increases in density on existing land. Minimal land value changes may be expected but the number of people which may reside on the land with the higher density will increase along with the service demand. Increases in revenue from this example will relate to charges associated with base rates if the Council rate structure includes a base rate component.

The Shellharbour City local government area has seen a rapid increase in population growth in recent years. This growth will continue for some time yet with demand for services and infrastructure growing at the same time. The local government area's growth has been in both new subdivisions and also increases in density of existing developments. The latter in particular places significant financial pressure on Council with little additional revenue received despite the increase in population this type of growth accommodates.

If reforms are brought in by the NSW Government to better align rate income growth with population growth, this should be back dated to address significant population growth that has already occurred in recent years in areas like Shellharbour City.

Although Council support the removal of rate pegging in recognition of the financial pressures faced through a growing population and cost-shifting, it should not be considered the panacea for the problems that currently existing in infrastructure funding.

### Rising infrastructure costs

As one of the key inputs for calculating contribution rates is the cost of infrastructure, it is logical that an increase in the cost of providing infrastructure will result in an increase in contribution rates. These increases can come from a variety sources including:

- Changes to the dollar value over time
- Increased costs of materials
- Increased land costs due to market forces
- Increased labour costs
- Changes to the design standards imposed by Stage agencies

These increases are often beyond the control of councils and are a legitimate cost of providing the infrastructure. It should be acknowledged that increases in infrastructure costs affect councils as well as developers both through the apportionment principles that underpin s7.11 plans. Any increase that is passed on to developers through increased contributions is proportional to the demand that they create. It is also important to note that where there is a funding shortfall under the plan due to unexpected cost increases councils often fund that shortfall.

Although rising infrastructure costs have been raised by the development industry as an unreasonable burden that needs to be addressed, these increases in costs actually place a disproportionate burden on local government as the full extent of the cost increases are not passed on.

In addition to the above, the development industry has benefited from the capping of contributions at a consistent level for nearly 10 years whilst their income from sales has increased. This financial advantage has come at the expense of local communities who have had to cross subsidise new development.

Although infrastructure contributions focus on the provision of new infrastructure it is important to remember that each new item of infrastructure provided becomes a council asset that must be managed and maintained over its lifetime and replaced at the end of its life. These are costs to council that must be funded through rates income.

### Inconsistency in the application of s7.24 special infrastructure contributions

There is inconsistency not only between the way in which s7.24 is applied and the way in which the local contributions system applied but also inconsistency in the way s7.24 is applied between areas. This creates confusing and reduces the transparency of the s7.24 system.

The following needs to be addressed in relation to the inconsistencies with the application of s7.24 contributions (SIC):

- A single consistent set of requirements should be applied to both systems regarding:
  - Level of information to be provided in justification of the contribution rates
  - The application of any caps or essential works list provisions
  - Reporting requirements
- ‘Satisfactory arrangements’ clauses should be removed from LEPs as they reduce transparency through encouraging contributions to be sought via planning agreements
- Increased use of SIC should not result in added pressure for reduction of local infrastructure contributions as the State government has more funding options available (eg land tax, stamp duty)

### ‘Nexus’ requirements in s7.11 contributions plans

It is acknowledged that as a result of cumulative case law over almost 30 years since the nexus based infrastructure contributions system was introduced repeated calls from the development industry for ‘greater transparency’, the information required regarding nexus in contributions plans has become increasingly fine-grained. This has contributed to increasingly detailed plans and more constrained catchments for contributions. As a result plans have become more difficult to prepare/review and contribution rates increased as a smaller number of developments are contributing to the required works. This is a trend that must be reversed if plans are to be simplified, more transparent and efficient at funding the infrastructure to which they apply.

A potential starting point for addressing this issue would be to provide greater clarity regarding nexus requirements through revised practice notes.

### Lack of principles in s7.4 Planning Agreements

Both the EP&A Act and EP&A Regulation contain principles for planning agreements – when and how they can be used, what they should contain etc. It is therefore not accurate to say principles are non-binding. What is missing is the requirement for any principles outlined in the practice notes to be considered. If the consideration of practice notes is to become binding on councils, there must be a commitment to ensure the advice they contain remains current.

Although the negotiation of planning agreements might not be undertaken in the public realm, the process and content at a local level remains relatively transparent due to the following:

- Planning agreements are publicly notified and all stakeholders are provided with the opportunity to review the agreement and provide comment
- The power to enter into an agreement is not function that is delegated to Council staff. The decision whether to enter into an agreement is undertaken by elected representatives in the public realm of a council meeting and is the subject of public record.
- Copies of the executed documents are available on Council’s website as required by the EP&A Regulation.
- Income received, expenditure and cash balance are reported as part of Council’s annual financial statements. Any land received through dedication is also reported.

Accountability in the negotiation of the agreement is adequately addressed through the public notification and Council decision-making processes outlined above. With regard to accountability following execution of the agreement, planning agreements contain clauses that make the parties accountable for the implementation of the agreement. Failure to comply with these requirements would be considered a breach of the agreement and there are provisions with such agreements that provide a mechanism for dealing with such breaches. It is not clear what accountability is being referred to here.

## Lack of transparency and certainty

There appears to be a focus in the issues paper on placing further restrictions and requirements on councils to improve transparency and certainty in the system. The issues paper does not identify where transparency is lacking or why additional oversight might be needed and who should have this oversight.

Without specific details to provide comment on, Council considers the following to be worth noting for future consideration:

- The more information that is required to be included in a contributions plan for the purposes of 'transparency' the more complex and difficult to read the plan becomes, making it less transparent.
- Greater transparency could be achieved by simplifying the system, reducing the level of detail required and managing stakeholder expectations.
- There is considerably less transparency surrounding SIC than local contributions – if greater transparency is to be achieved in the system this should be the starting point.
- If additional reporting is to be required of councils, this must have a clear purpose, utilise existing reporting systems rather than adding to the administrative burden on councils and equivalent requirements should be applied to SICs and State planning agreements.
- Certainty in the contributions system is difficult to achieve unless it is artificially imposed eg through the imposition of caps, due to the following:
  - Land values and construction costs which are two of the key inputs into the setting of contributions rates – as these are variable so too will be contribution rates.
  - The scope of works required will vary from council to council because every community is different
  - Contributions plans are strategic documents with 10 to 15 year delivery times – things will change during this time and may even change due to changes to development patterns.

## Misalignment between contributions payments and delivery of infrastructure

This claim is overly simplistic and is being used as a means of justifying the delaying of payment to later in the development cycle or transferring costs and risks associated with provision of infrastructure away from the development industry.

Council manages the implementation of its contributions plan via a detailed works schedule that spreads the cost across the life of the plan. Some infrastructure is provided ahead of demand whilst some provided once the demand exists. This is a delicate balancing act that is dependent on money being available when needed. To delay payment to a later stage in the process would impact on the stream of funding.

The following needs to be considered when examining this issue:

- The payment of contributions is linked to significant gateway stages in the development process to reduce the risk of non-payment – the financial risk to councils will need to be addressed
- The provision of infrastructure has significant lead times and funding will need to be available before demand exists to enable its timely provision – there is no substantial misalignment
- The delay of payment will reduce the pool of funds available to provide infrastructure in a timely manner – this transfers the financial risk to council as the expectation that the infrastructure will be available when needed remains and councils will be forced into borrowing to support development in their area.
- Placing a restriction on the title requiring payment to allow payment to be deferred creates significant administrative and resourcing issues for councils.

## Operation of the essential works list

The essential works list is focussed on those items of infrastructure that are required to bring a lot to market. No consideration was given to the funding of the infrastructure that is critical to the development of a sense of place, well-being and community that underlie active and engaged communities. It was still expected that these would be provided but no alternate funding source was identified to offset the impact of this policy. This remains an issue.

The operation of the list also creates a lack of equity in the system based on the application of an arbitrary threshold. The demand for this infrastructure does not change when the threshold is reached. Why then should the ability to seek a contribution towards its provision change?

As Council does not impose contribution rates above the established thresholds the essential works list does not apply to its contributions plan and they are able to collect contributions for a full range of infrastructure. Much of this infrastructure has been provided in anticipation of future development with expenditure being recouped through the plan. If the essential works list were to be applied to Council's contributions plan, there would be significant financial obligations that would no longer have a funding source. This is of concern to Council and is a consideration when reviewing the contributions plan.

If there is concern regarding contribution rates being imposed this would be more appropriately addressed through the provision of detailed and up-to-date guidelines regarding the preparation and implementation of a contributions plan rather than an arbitrary list of items based on one particular view of what is important.



6 August 2020