



5 August 2020

Mr Peter Achterstraat AM
 Commissioner of the NSW Productivity Commission
 GPO Box 5477
 SYDNEY NSW 2001



Dear Productivity Commissioner *Peter*

RE: INFRASTRUCTURE CONTRIBUTIONS REVIEW

On behalf of the NSW Vice-Chancellors' Committee (the Committee) I refer to our submission of 12 June 2020 in relation to the Infrastructure Contributions Review (the Review). A copy of our submission is **enclosed** for your convenience and this letter is in response to the Issues Paper released in July 2020.

Stakeholder roundtables

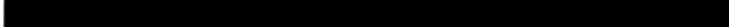
The Committee welcomes the opportunity to provide input into the Review and I understand that your team is in the process of preparing the stakeholder roundtables. On behalf of the Committee, I express our strong interest in participating and I list below our University town planners:

| University | Name | Position title |
|---------------------------------|------|----------------|
| Australian Catholic University | | |
| Charles Sturt University | | |
| Macquarie University | | |
| Southern Cross University | | |
| University of New England | | |
| University of Newcastle | | |
| University of NSW | | |
| University of Notre Dame | | |
| University of Sydney | | |
| University of Technology Sydney | | |
| University of Wollongong | | |
| Western Sydney University | | |

I understand that spaces at the roundtables are limited, however our Universities are diverse and each has experienced a wide array of infrastructure planning issues specific to their circumstances. As a minimum, I urge you to consider inviting a regional university, a metropolitan university and an outer-metropolitan university to ensure you receive sufficient stakeholder views from the education sector. Ideally, we would welcome an education sector roundtable that could include all education providers such as TAFE and schools.

NSWVCC MEMBERS:

Australian Catholic University • Australian National University • Charles Sturt University • Macquarie University • Southern Cross University
 University of Canberra • University of Newcastle • University of New England • University of New South Wales • University of Notre Dame
 • The University of Sydney • University of Technology, Sydney • University of Wollongong • Western Sydney University



Issues Paper

In relation to the Issues Paper, the Committee makes the following comments and we would be pleased to discuss with you in further detail:

- The **Preface** on page 1 addresses principal government agenda items to progress planning reform, two of which are pertinent to the University sector and include:
 1. "Increasing transparency" in the planning system; and
 2. Fixing the uncertainty of developer contributions to boost investment.

The Preface states that during May and June 2020, the Commission heard from peak stakeholder groups to help better understand the current issues with infrastructure contribution systems.

It is my understanding that no university was included in those consultations as one of these peak stakeholder groups.

- The **Terms of Reference** on page 2 highlights key issues that the Commission is reviewing, and which remain pertinent to the University sector, including:
 1. Certainty and transparency for communities and local government and developers.
 2. The extent that contribution rates reflect sufficient costs and the principles that beneficiaries should pay
- The **Summary** on page 4 again highlights the high-level principles the Commission is considering including efficiency, equity, certainty and simplicity. These are the very issues that the Committee's submission addressed and therefore remains relevant in this review.
- **Chapter 4**, subsection **H. Exemptions** on page 54, touches briefly on some of the issues relevant to our submission. The Issues Paper here states that the consequence of an exemption, is that revenue is lost to Councils and that there are no affordable funding sources, thus impairing the Council's ability to deliver local infrastructure.

With respect, this statement has not taken into account the Committee's submission, which we highlighted with examples and summaries of past annual expenditure, that:

1. the University sector significantly funds local infrastructure, roads and traffic upgrades, provision of open space, and provision of public benefits;
2. a University typically acts in the same role as a local Council in providing the necessary infrastructure to and surrounding University lands;
3. local council Development Contribution Plans very rarely identify University lands as sites where development contributions monies received by a Council should be expended; and
4. University campuses, unlike Schools and TAFEs, are accessible to the public and are used and visited by the public for a variety of community educational training and recreational purposes.

Table 4.3 lists current **Exemptions** and associated documents, and further highlights that Schools and TAFEs are fully exempt from Special Infrastructure Contributions, whereas Universities are not addressed by this exemption.

The summary at page 55 under *Issue 4.10: Current Issues with Exemptions* begs the question "Given development require infrastructure, should there be any exemptions to infrastructure contributions?"

The Committee's submission on this question is clearly **yes**, because in most cases Universities are already providing the infrastructure and public benefits required on university lands, albeit at the lack of any contributions funding received from local government. This again illustrates that the University sector has not been consulted in the preparation of this Issues Paper.

These are just some of the issues that we wish to reiterate and we urge the Commission to consult the University sector on these non-trivial matters. The Universities have dedicated significant time and effort in the past to bring these matters to the attention of the Minister for Planning and Public Spaces and so we would appreciate an opportunity to be heard.

For your information, I have copied this letter to the Minister for Planning and Public Spaces and the Minister for Skills and Tertiary Education.

If you have any questions about our submission, please do not hesitate to contact me on [REDACTED] or via the Executive Officer for the Committee [REDACTED].

Yours sincerely

[REDACTED]

Enclosure: Letter of 12 June 2020



12 June 2020

Mr Peter Achterstraat AM
Commissioner of the NSW Productivity Commission
GPO Box 5477
SYDNEY NSW 2001



Dear Productivity Commissioner *Peter*

RE: INFRASTRUCTURE CONTRIBUTIONS REVIEW

I write this letter on behalf of the NSW Vice-Chancellors' Committee (the Committee) with particular reference to the *Infrastructure Contributions Review* (the Review), which I understand to be underway by the NSW Productivity Commission.

The Hon. Rob Stokes MP, Minister for Planning and Public Spaces, brought the Review to our attention and encouraged the Committee to provide a submission that I now duly **enclose** for your consideration.

By way of background, in August 2018 the Committee contributed to the NSW Government's review of *Circular No. D6 - Crown Development Applications and Conditions of Consent* (Circular D6) given that universities were reporting inconsistencies in the levying of development / infrastructure contributions on NSW universities. The review of Circular D6 is ongoing and in a recent teleconference with Minister Stokes on 8 April 2020 he asked the Committee to forward to the Productivity Commission our submission regarding Circular D6.

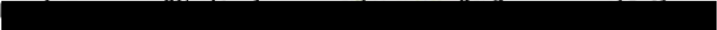
We have updated our submission to address the Terms of Reference of the Review, as well as address certain questions put to us by Minister Stokes on 8 April 2020. In having regard to those Terms of Reference, the Committee acknowledges that universities do not fall neatly into the criteria of being a 'community, a local government or developer'. However, universities are recognised as public institutions with the education sector; Crown development applicants; not-for-profit public authorities and as charities by the Australian Taxation Office.

In summary, our submission highlights two areas of concern:

1. That there is a lack of justification, certainty, transparency and consistency in the manner that development / infrastructure contributions are levied upon university developments both within same local government jurisdictions as well as across the numerous local government jurisdictions and State Government consent authority roles. This inconsistency significantly affects many universities across NSW through unnecessary delays and financial burden.
2. That there is a duplication in costs, and perception of an unnecessary tax, upon universities by the levying of development / infrastructure contributions. Universities already provide traffic upgrades, infrastructure services, open space and community benefits within university campuses. These types of services and facilities are usually provided by local Councils by utilising development contribution monies received. Additionally, university campuses are open to the public and local communities and provide a significant array of facilities and services unlike other public facilities such as schools and hospitals.

NSWVCC MEMBERS:

Australian Catholic University • Australian National University • Charles Sturt University • Macquarie University • Southern Cross University
University of Canberra • University of Newcastle • University of New England • University of New South Wales • The University of Sydney
• University of Technology, Sydney • University of Wollongong • Western Sydney University



The Committee's central recommendation to the Review is that universities be exempt from the payment of development / infrastructure contributions for the reasons outlined in our submission. The impetus for this recommendation has increased in urgency within the context of COVID-19 and the intense financial pressure on university budgets.

Accordingly, the universities seek an immediate moratorium on the payment of contributions by universities for the next 2 years for consents either already granted or to be issued within this period. We understand that consideration of this request primarily sits with the Hon. Robert Stokes MP, Minister for Planning and Public Spaces and raise it here with you to give you further context regarding our submission.

The Committee welcomes the opportunity of meeting with the NSW Productivity Commission in clarifying any aspects of our submission.

For your information, I have copied this letter to the Minister for Planning and Public Spaces and the Minister for Skills and Tertiary Education.

If you have any questions about our submission, please do not hesitate to contact me on [REDACTED] or via the Executive Officer for the Committee [REDACTED]

Yours sincerely

[REDACTED]

Encl. Submission from the NSW Vice-Chancellors' Committee

[REDACTED]

**Submission to the NSW Productivity Commission regarding the
Infrastructure Contributions Review – June 2020
Case for Exemption from Development / Infrastructure Contributions**

Introduction

This review by the NSW Productivity Commission is most welcome, timely, and coincides with current discussions the NSW Vice-Chancellors' Committee (the Committee) have been holding with the Department of Planning Industry & Environment (DPIE) in this matter. The Committee gratefully accepts the invitation of the Minister for Planning & Public Spaces to contribute to this review.

In August 2018, the Committee provided an earlier submission on the impacts of development contributions to DPIE as part of its review of *Circular No. D6 - Crown Development Applications and Conditions of Consent* (Circular D6). Circular D6 addresses the terms and guidelines by which Crown applicants may be exempted or qualify for development / infrastructure contributions.

In preparation for that review the Committee outlined the significant inconsistencies and lack of certainty experienced by universities around the levying of development / infrastructure contributions by consent authorities, as well as clarifying the reasons why universities should be exempt from development / infrastructure contributions.

The Committee seeks to continue its good relationship with the Department and local Councils in the matter of development / infrastructure contributions and this review, but highlights at the same time the significant role that universities currently play in providing a comprehensive range of public services, amenities and other community benefits.

Background

New South Wales' ten universities, together with the Australian Catholic University, the Australian National University and the University of Canberra comprise the membership of the Committee.

University education services are a significant contributor to the NSW economy, collectively producing 90,000 graduates in 2018¹, educating more than a third of Australia's next generation of professionals², and having a combined total expenditure of more than \$9.9B in 2019 (62% on employee-related expenses and 31% on Other expenses)³. Exports of education alone was worth \$12B in 2018 to the NSW economy.⁴

In addition to education, research, and employment opportunities, NSW universities provide a range of public services and amenities to their campus communities as well as to the wider local community.

Universities are prescribed to be Crown for development applicants under Division 4.6 of the *Environmental Planning & Assessment Act 1979* (the Act) to ensure developments are not unreasonably refused or conditionally approved. This also extends to the levying of development / infrastructure contributions as draft consent conditions. As a Crown applicant, the agreement of the relevant university or the Minister is required before any development consent condition may be imposed by a consent authority, including conditions requiring development / infrastructure contributions.

¹ Commonwealth Department of Education, Skills and Employment, '2018 Section 14 Award course completions', viewed 9 June 2020, <https://docs.education.gov.au/node/53028>.

² Australian Bureau of Statistics, May 2019, '6227.0 - Education and Work, Australia', viewed 9 June 2020, <https://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/6227.0Main%20Features40May%202019?opendocument&tabname=Summary&prodno=6227.0&issue=May%202019&num=&view=>.

³ NSW Auditor-General, 'NSW Auditor-General's Report to Parliament regarding Universities in 2019', viewed 9 June 2020, <https://www.audit.nsw.gov.au/sites/default/files/documents/Final%20report%20%20-%20Universities%202019%20audits%20tabled%204%20June%202020.PDF>.

⁴ NSW Treasury, 'NSW 2040 Economic Blueprint', viewed 9 June 2020, https://www.treasury.nsw.gov.au/sites/default/files/2019-11/0909-02_EconomicBlueprint_Web.pdf.

New South Wales Vice-Chancellors' Committee

Universities are also prescribed to be Public Authorities under clause 277(4) of the *Environmental Planning and Assessment Regulation 2000* (the Regulation) as determining authorities within the meaning of Part 5 of the Act for development that is permitted without consent under the *State Environmental Planning Policy (Infrastructure) 2007* and the *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*.

The Department's **Circular D6** (revised Issue 21 September 1995) sets out guidelines for appropriate contributions by Crown developments (including *Educational Services*) that provide an essential community service. Under these guidelines, universities (as an educational service) should be exempt from contributions except for drainage and local roads.

However, universities are currently being levied inconsistently and unfairly by consent authorities for public services and amenities in contravention of Circular D6, and for works which the universities are already providing at their own cost. The NSWVCC working committee has revealed inconsistencies between the full, partial or no exemption of Development / Infrastructure Contributions for educational establishment projects between our respective University members.

Furthermore, certain universities have entered into Voluntary Planning Agreements with consent authorities as an alternative mechanism to paying monetary contributions and thereby enabling infrastructure works to focus within University campuses.

The Reasons for Exemption

Universities have a shared interest with Government to provide and improve public amenities, infrastructure and facilities for use by their students and staff as well as for visitors and local communities. Notwithstanding, the Committee maintains that universities in NSW should be exempt from development / infrastructure contributions. The reasons are summarised as follows:

1. Universities are deemed to be the Crown for the purposes of the Act and the Regulation and provide an essential community service via learning, research and community engagement. Circular D6 does not determine that universities have a lesser status as a Crown authority than other *Educational Services*. However, the current plethora of Development Contributions Plans do exactly that.
2. Council Development Contributions Plans do not acknowledge that universities fund and manage the extensive open space and community facilities that are available to the public. Universities augment the provision of public services and amenities provided by the local Council in the public realm. The Development Contributions Plans do not provide offsets in recognition of the cost and provision of these university facilities, nor do they recognise the provision of these public amenities and services as a 'material public benefit' as supported by the Department's *Development Contributions Practice Note 2005*.
3. Circular D6 confirms that *Educational Services* (a Crown activity) should be exempt from contributions except for drainage and the upgrade of local roads and traffic management. However, there is no obligation for local Councils to include these exemptions in their Development Contributions Plans, nor to justify why levies are imposed on Crown developments. There is no consistency in the application of exemptions by local Councils in the preparation of their Development Contributions Plans.
4. Typically, university development incurs negligible impact upon drainage catchments or local traffic management. **Appendix A** to this paper shows that for eight universities in NSW:
 - a) Expenditure between 2012 and 2017 exceeded \$19.9 million and future budgeted expenditure will exceed \$33 million towards stormwater upgrades; and
 - b) Expenditure between 2012 and 2017 exceeded \$57 million and future budgeted expenditure will exceed \$126 million towards local traffic management.
(In 2020, much of this operational expenditure has been paused due to the pressure on university budgets from the COVID-19 pandemic).

This university expenditure reinforces the exemption guidelines for educational services outlined in Circular D6.

New South Wales Vice-Chancellors' Committee

5. Universities supply and fund a wide range of public services/amenities available to the public including open space, libraries, museums, community meeting rooms, childcare facilities, sports facilities, medical health facilities, public events/talks, and the like. **Appendix A** to this paper shows that for eight universities in NSW:
 - a) Expenditure between 2012 and 2017 exceeded \$234 million towards these public services/amenities, and exceeded \$62 million for open space facilities; and
 - b) Future budgeted expenditure will exceed \$323 million towards these public service/amenities and will exceed \$118 million for open space facilities.

(In 2020, much of this capital expenditure has been paused due to the pressure on university budgets from the COVID-19 pandemic).

This university expenditure reinforces the exemption guidelines for educational services outlined in Circular D6.
6. Some local Councils' Development Contributions Plans exempt schools from contribution levies, but not universities. It is noted that the Standard Instrument includes both schools and universities in its definition of an *educational establishment*, and Circular D6 draws no distinction between either type of public service/amenity in its guidelines for *educational services* as a Crown activity. The same exemptions as for schools should apply to universities.
7. Some local Councils' Development Contributions Plans also exempt not-for-profit charities from contribution levies, but not universities. However, universities are not-for-profit public authorities; they are not commercially-driven private developers. Furthermore, universities are endorsed as charitable institutions by the Australian Tax Office. The same exemptions as for other not-for-profit charities should apply to universities.
8. There is no consistency applied by the Department in the imposition of development contribution conditions for State Significant Development or the calculated value of those contributions. The same inconsistency in the imposition of development contribution conditions is true for the Planning Panels. Universities therefore operate within an area of unnecessary uncertainty when budgeting for new development projects.
9. Many Universities provide student accommodation and associated facilities on campus. These are provided at "affordable" rates below those in the surrounding rental market. The provision of student accommodation is vitally important to a university to support its core functions of learning, research and community engagement. The levying of development / infrastructure contributions on university funded accommodation therefore ignores this important function and negates the "affordability" benefit to low income students.
10. Fixed development consent levies imposed under section 7.12 of the Act require no nexus to be demonstrated between the payment of a contribution and the demand for public amenities or services generated by that development. Some universities are subject to this flat levy. Universities act in a similar role to local Councils and Government agencies in funding and implementing public services and amenities on their campuses and other lands. Consequently, the levying of flat rate development / infrastructure contributions upon new university development is in effect, an unfair additional "infrastructure tax" in contravention of the guidelines set out in Circular D6.

Appendix B – University Case Studies provides examples experienced by The University of Sydney, University of NSW, University of Newcastle and the University of Wollongong. These case studies demonstrate the inconsistencies experienced in the levying (or not) of development / infrastructure contributions over the last few years both within and across local Council jurisdictions, as well as over time.

New South Wales Vice-Chancellors' Committee

Recommendation

Based on the reasons for exemption outlined above, the Committee recommends that NSW universities be exempt from development / infrastructure contributions including, but not limited to:

- a) Local infrastructure contributions (sections 7.11, 7.12 and 7.17 of the Act), that is:
 - I. Contribution towards the provision or improvement of amenities or services;
 - II. Fixed development consent levies; and
 - III. Directions by the Minister;
- b) Special infrastructure contributions (Subdivision 4 of Division 7.1 of the Act); and
- c) Affordable housing contributions (Division 7.2 of the Act)

Suggested pathways by which exemption from the above development / infrastructure contributions can be implemented are:

- a) The Minister for Planning issuing a direction under section 7.17 of the Act; and/or
- b) The Department revising Circular D6.

New South Wales Vice-Chancellors' Committee

APPENDIX A

NSWCC PAST AND FUTURE EXPENDITURE FOR LOCAL INFRASTRUCTURE, OPEN SPACE AND COMMUNITY FACILITIES

| UNIVERSITY | <i>University of Sydney</i> | <i>Macquarie University</i> | <i>UNSW</i> | <i>University of Wollongong</i> | <i>University of Western Sydney</i> | <i>Newcastle University</i> | <i>University Technology Sydney</i> | <i>Charles Sturt University</i> | TOTAL |
|---|-----------------------------|-----------------------------|-------------------|---------------------------------|-------------------------------------|-----------------------------|-------------------------------------|---------------------------------|--------------------|
| PAST Committed Infrastructure and Public Works 2012-2017 | | | | | | | | | |
| WORKS | \$ | \$ | \$ | \$ | \$ | \$ | \$ | \$ | \$ |
| Stormwater Drainage | 5,500,000 | 1,200,000 | 700,377 | 5,500,000 | 2,100,000 | 2,700,000 | TBD | 2,220,000.00 | 19,920,377 |
| Traffic & Transport | 4,453,605 | 10,500,000 | 2,440,192 | 10,800,000 | 6,600,000 | 10,100,000 | TBD | 12,525,000.00 | 57,418,797 |
| Open Space | 19,000,000 | 600,000 | 1,195,571 | 6,000,000 | 13,000,000 | 8,500,000 | 10,350,000 | 3,958,000.00 | 62,603,571 |
| Community Facilities | 40,850,000 | 26,000,000 | 38,562,055 | 30,000,000 | 39,700,000 | 9,000,000 | 5,500,000 | 45,000,000.00 | 234,612,055 |
| TOTAL | 69,803,605 | 38,300,000 | 42,898,195 | 52,300,000 | 61,400,000 | 30,300,000 | 15,850,000 | 63,703,000 | 374,554,800 |

| UNIVERSITY | <i>University of Sydney</i> | <i>Macquarie University</i> | <i>UNSW</i> | <i>University of Wollongong</i> | <i>University of Western Sydney</i> | <i>Newcastle University</i> | <i>University Technology Sydney</i> | <i>Charles Sturt University</i> | TOTAL |
|---|-----------------------------|-----------------------------|--------------------|---------------------------------|-------------------------------------|-----------------------------|-------------------------------------|---------------------------------|--------------------|
| FUTURE Committed Infrastructure and Public Works 2018-2023 | | | | | | | | | |
| WORKS | \$ | \$ | \$ | \$ | | | | | \$ |
| Stormwater Drainage | 8,000,000 | 4,300,000 | 2,400,000 | 8,000,000 | 150,000 | 3,500,000 | Masterplanning phase | 6,850,000.00 | 33,200,000 |
| Traffic & Transport | 3,206,000 | 24,125,000 | 50,000,000 | 29,300,000 | 350,000 | 8,000,000 | Masterplanning phase | 11,500,000.00 | 126,481,000 |
| Open Space | 20,000,000 | 26,500,000 | 25,000,000 | 9,500,000 | 2,250,000 | 18,000,000 | 10,000,000 | 6,850,000.00 | 118,100,000 |
| Community Facilities | 74,400,000 | 14,500,000 | 80,000,000 | 18,000,000 | 15,600,000 | 20,000,000 | Masterplanning phase | 11,500,000.00 | 234,000,000 |
| TOTAL | 105,606,000 | 69,425,000 | 157,400,000 | 64,800,000 | 18,350,000 | 49,500,000 | 10,000,000 | 18,350,000 | 511,781,000 |

Appendix B

Inconsistencies Experienced by Universities in the Levying of Development Contributions

The various Universities belonging to the NSWVCC have demonstrated inconsistencies on how and when Development Contributions are applied (or not) to University development decision-making, both within and across local Council jurisdictions, as well as over time.

Below and attached are examples of such inconsistencies as reported by The University of Sydney, University of NSW, University of Newcastle and the University of Wollongong.

1. The University of Sydney (USYD)

- The attached University of Sydney summary table demonstrates inconsistencies in the levying of Development Contributions over time by local Councils and by DPIE.
- Prior to 2015, the university was regarded as exempt by the City of Sydney from development contributions
- Since 2015, the City of Sydney amended its Contribution Plan to remove the exemption for educational establishment developments. However, exemptions remain for Government schools. USYD notes that the University (unlike schools) remains open to public access and use of public benefits (open space, libraries, museums, sporting facilities and the like), unlike schools.
- Most regional Councils do not apply Development Contributions to university developments and recognise the principles established by Circular D6.
- Recent USYD experience is that the negotiation on Development Contributions with the consent authority is often left to the last minute by an SSD or DA determination and results in lengthy delays. Universities rely on early contractor engagement to ensure that development programs are finalised and ready for occupation prior to a University year or semester commencing. Delays imposed through late Development Contributions negotiations can result in contractor penalties being imposed upon Universities. Since 2019, USYD has had to forgo Development Contribution negotiations with DPIE on SSD applications due to such delays and greater contractor financial penalties resulting from these delays.

2. University of Newcastle (UON)

- The attached UON summary table demonstrates inconsistencies in the levying of Development Contributions over time.
- Prior to 2014, UON was regarded as exempt from development contributions
- Jan 2014, Newcastle Council amended its Contribution Plan to remove the exemption for educational establishment developments
- Central Coast Council (Ourimbah Development Contribution Plan) exempts Crown applicants including Schools and Hospitals
- Gosford City centre applies a 1% Contribution levy, and also a 2% Special Levy for developments over \$2 Million

3. University of NSW (UNSW)

- The attached UNSW summary table demonstrates inconsistencies in the levying of Development Contributions over time.
- Randwick City Council's Development Contributions Plan is prepared under the provisions of s7.12 (previously s.94A) of the EP&A Act. Council is given discretion under the Plan as to whether it levies contributions on a Development Application. The discretion has been inconsistently applied to UNSW.

4. University of Technology Sydney (UTS)

- The attached UTS summary table demonstrates inconsistencies in the levying of Development Contributions over time by local Councils and by DPIE.
- Prior to 2015, the university was regarded as exempt by the City of Sydney from development contributions. Since 2015, the City of Sydney amended its Contribution Plan to remove the exemption for educational establishment developments.
- UTS is currently challenging the applicability of development contributions to a current Major Project.

5. University of Wollongong (UOW)

- Prior to 2016, UOW was regarded by Wollongong City Council as exempt from development contributions
- Since September 2016, Wollongong City Council has moved to a tiered (exemption, partial levy, full levy) approach based on three groupings of development typology. The University's recent Innovation campus has been subject to full application of s94A levies for all developments
- Council's Development Contributions plan does provide for exemptions to primary and secondary education facilities.
- Due to this change, UOW and Wollongong City Council entered into a 10-year Voluntary Planning Agreement in 2018, to address its Masterplan 2016-2036. That will address all section 94 payments moving forward for the Wollongong Campus.

USYD CASE STUDY: INCONSISTENCIES IN DEVELOPMENT CONTRIBUTIONS LEVIED

Issue: The Minister for Planning, by teleconference with NSWVCC representatives on Thursday 9 April 2020, has requested examples of inconsistencies in the levying of Development Contributions upon University projects by both local and State Government consent authorities.

Response: The University of Sydney can summarise that in the past 10 years and for the Camperdown-Darlington campus, there have been:

- 13 instances where **no** Development Contributions was sought or applied by the City of Sydney Council (7 State Significant Development / Major Projects and 6 Development Applications)
- 1 instance (SSD) where the City of Sydney Council has requested a Development Contribution be imposed on a SSD application; however the DPIE/Minister did not agree with Council's reason for S94 levy, did not impose a consent condition for development contribution, and sighted the applicability of Circular D6; and
- 2 instances (both SSD) where the City of Sydney Council sought Development Contributions and the DPIE/Minister agreed to and imposed Development Contributions by SSD consent conditions. In both these cases, the University provided evidence that the project did not result in an increase of stormwater infrastructure or local traffic conditions and proposed to provide works-in-kind to local traffic conditions.

A. No Development Contributions sought by Council or DPIE/Minister for Planning

The University of Sydney highlights the following recent projects proposed by the University on the Camperdown campus, for which Development Contributions were not sought by the City of Sydney Council or the Minister for Planning/DPIE:

1. New consolidated Museum building (SSD 7894) on Camperdown campus: Construction of a 5-storey museum (7,700 m²). SSD approved by the Minister for Planning on 23 February 2018.
2. F23 Administrative building (SSDD 7055) on Camperdown campus: Construction of a 5-storey staff and administrative building and public domain works (9,800 m²). SSD approved by the Minister for Planning on 22 December 2016.
3. LEES1 Science building (SSD 7054) on Camperdown campus: Construction of an 8 storey Science research and teaching facility (9,800 m²). SSD approved by the Minister for Planning on 22 December 2016.

4. Faculty of Arts & Social Sciences (SSD 7081) on Camperdown campus: Construction of a 6-storey Arts & Social Science building and public domain works (7,200 m²).
SSD approved by the Minister for Planning on 16 December 2016.
5. Australian Institute of Nanoscience (SSD 5087_2011) on Camperdown campus: Construction of a new 4 level Nanoscience building (10,540m²).
SSD approved by the Minister for Planning on 15 October 2013.
6. Abercrombie Business Precinct & Student Accommodation (MP 07_0158) on Darlington campus: New 6 level Business School building (28,200m²), 2 basement parking levels for 82 spaces, and new 3 level student accommodation building (5,900m²) (noting that the University itself undertook road and public works under a voluntary planning agreement with the City of Sydney Council);
MP approved by the Planning Commission on 16 November 2012.
7. Charles Perkins Centre (MP 09_0051) on Camperdown campus: Construction of a new 8-storey Centre for Obesity, Diabetes and Cardiovascular Disease building (45,000m²).
MP approved by the Minister for Planning on 26 October 2010.
8. Extension to the Sydney University Sports & Aquatic Centre Extension on Darlington Campus (D/2010/2183). DA approved by Council on 22 August 2011.
9. Sydney University Sports & Aquatic Centre Extension on Darlington Campus (D/1995/329). DA approved by Council on 19 April 1996.

Furthermore, the City of Sydney Council did not seek or impose development contributions for the following approved projects by University of Sydney's affiliated Colleges:

1. St Andrews College (D/2015/868): construction of new multipurpose sports courts.
DA approved by Council on 10 November 2015.
2. Wesley College Alterations and Additions to E wing (D/2014/1632): 3 storeys building for student accommodation;
DA approved by Council on 19 January 2015.
3. Sancta Sophia College (D/2011/445): 5 storeys building for student accommodation.
DA approved by Council on 25 July 2011.
4. St John's College (D/2010/1506): 5 storeys building for student accommodation.
DA approved by Council on 31 March 2011.

These determinations were supported by the fact that University populations place lesser demand on Council community facilities as the University provides its own facilities and infrastructure specifically for the University and visiting populations.

B. Development Contributions sought by the City of Sydney Council but not agreed to by DPIE/Minister for Planning:

- Health Precinct Stage 1 Development, Camperdown campus (SSD 7974): Construction of a 5-storey building to accommodate the University's relocated Faculty of Health Sciences, the Faculty of Nursing and Midwifery and the Central Clinical School (21,198 m²).
SSD approved by the Minister on 11 September 2018.

C. Development Contributions sought by the City of Sydney Council and agreed to by DPIE/Minister for Planning:

- Regiment development (SSD 7417) on Darlington campus: Construction of a 7-storey building to accommodate mixed use educational establishment & affordable student accommodation (15,092m²).
S94 Levy: \$1,586,446.24 (SSD condition D1).
SSD approved by the Minister on 2 November 2017.
- Engineering & Technology Precinct Development (SSD 8636) on Darlington campus: Redevelopment of the Engineering Building and Engineering Link Building for various engineering and technology uses ((13,567m²).
S94 Levy: 2,579,357.00 (SSD condition B50)
S94 Affordable Housing Levy: \$527,535.00 (SSD Condition B51)
Total S94 Levies: \$3,106,892.00
SSD approved by the Minister on 14 February 2019.

D. Regional and Rural DA Determinations:

The University also notes that since 2016, for recent University Development Applications in regional and rural centres, the councils of Upper Lachlan, Lismore, Liverpool Plains, Bourke, Broken Hill, Richmond Valley, and Camden and Cumberland have **not** levied Development Contributions upon University of Sydney projects in recognition of Circular D6.

However, Wollondilly Council has sought for the levying of development contributions.

University of Newcastle Summary of Development Approvals and Contributions Paid

| Approval Date | Application No. | Location | LGA | Project Name | Consent Authority | Cost of Development | Amount Levied | Comment |
|--|-----------------|---------------|---------------------------|--|-------------------------------|--------------------------|----------------------|--|
| 14/02/2014 | DA2013/1117 | Callaghan | City of Newcastle | Bike Hubs | City of Newcastle | \$ 700,000 | \$ - | |
| 5/2/2015 | SSD 6457 | Newcastle CBD | City of Newcastle | NeWSpace | Minister for Planning | \$ 89,983,367 | \$ - | Extract from Department Approval: The proposed development is Crown development and the only works that educational facilities can be levied for as per the guidelines is contributions for drainage works or local traffic management purposes. Accordingly, as Council's contributions plan defers to section 94A of the EP&A Act establishing a flat levy for a range of an extensive range of works, the Crown development should not be levied. Furthermore, the proposal is for social infrastructure which would be providing a significant public benefit to Newcastle by strengthening the University's presence in the Newcastle CBD and providing further teaching and learning facilities. |
| 19/08/2015 | SSD 6457 - MOD1 | Newcastle CBD | City of Newcastle | NeWSpace | Minister for Planning | as above | \$ - | |
| 2/6/2015 | SSD 6457-MOD2 | Newcastle CBD | City of Newcastle | NeWSpace | Minister for Planning | as above | \$ - | |
| 22/6/2018 | DA2018/0318 | Tamworth | Tamworth Regional Council | Student Accommodation at Tamworth Education Centre (TEC) | Tamworth Council | \$ 1,187,000 | \$6,898 | |
| 2/2019 | SSD 8937 | Callaghan | City of Newcastle | Bioresoures | Minister for Planning | \$ 31,700,000 | \$ - | Extract from Department Approval: The Department considers that as the proposal is Crown development, and the University is a not for profit organisation that provides a significant social benefit to the wider community, the principles of Circular D6 apply as they would for any Crown development proposing social infrastructure. As the proposal would not result in increased runoff or the need for roadworks to the site entrance, the Department is of the opinion that the contribution requirement should not apply in this circumstance. This is consistent with the Department's position in its determination of the SSD application for the new Newcastle University building known as 'New Space' in the Newcastle CBD in 2015 |
| 1/07/2019 | DA2018/00933 | Newcastle CBD | City of Newcastle | Honeysuckle - Enabling Works | Joint Regional Planning Panel | \$ 4,992,138 | \$ 99,482.76 | 2% of CIV |
| YTBD | SSD 9262 | Newcastle CBD | City of Newcastle | Honeysuckle Concept plan | Minister for Planning | Concept Plan | | Awaiting determination - Contribution relevant at time of submission being proposed by Council, this was 2%. |
| YTBD | SSD 9510 | Newcastle CBD | City of Newcastle | Honeysuckle 1A | Minister for Planning | \$ 23,350,000 | | Awaiting determination - contribution relevant at time of submission being proposed by Council, this was 2%. Appropriate level of contribution is one of the factors in obtaining final determination |
| YTBD | SSD 9832 | Callaghan | City of Newcastle | STEMM | Minister for Planning | \$ 135,934,445 | | Awaiting Determination |
| | | | | | | \$ 287,146,950.00 | \$ 106,380.76 | |
| History of City of Newcastle Development Contributions Plan | | | | | | | | |
| Prior to 2014 Education Establishments were exempt from s94A levies in Council's Development Contribution Plan 2009. On 13 January 2014, Council amended its s 94A Plan to remove the exemption to education establishments. | | | | | | | | |
| 14 August 2017 s94A Development Contribution Plan amended to 1% for Callaghan and 2% for city centre | | | | | | | | |
| 9 September 2019 7.12 Contributions Plan amended to Callaghan 1%, city centre 3% and Honeysuckle 3% | | | | | | | | |

UNSW: SUMMARY OF DEVELOPMENT CONTRIBUTIONS LEVIED

| FULL LEVY PAYABLE | | | | | |
|----------------------|-----------------|--|-------------------------------|-------|-------------------|
| Date | Application No. | Project | Consent Authority | Rate* | Note |
| 14/11/2007 | DA/694/2007 | Kangas House – alterations & conversion into a child care centre | Randwick City Council | 1% | |
| 21/01/2007 | MP07-0071 | UNSW Village – new building for on-campus student housing | Minister (Dep't as delegate) | 1% | |
| 06/06/2008 | DA/150/2008 | Metallurgy Building – alterations & additions | Randwick City Council | 1% | |
| 02/09/2008 | DA/593/2008 | International House – refurb. & extension to on-campus student housing | Randwick City Council | 1% | |
| 20/10/2009 | DA/3062009 | IT Data Centre – alterations & additions | Randwick City Council | 1% | |
| 20/01/2010 | DA/806/2009 | Solar Industrial Research Facility – new building | Joint Regional Planning Panel | 1% | |
| 12/07/2011 | DA/385/2011 | University Terraces – early works for new on-campus student housing | Randwick City Council | 1% | |
| 20/09/2011 | DA/259/2011 | Western campus car park - extension | Randwick City Council | 1% | |
| 05/10/2011 | DA/494/2011 | University Terraces – main works for new on-campus student housing | Joint Regional Planning Panel | 1% | |
| 06/12/2011 | DA/739/2011 | Kensington Colleges – early works for new on-campus student housing | Randwick City Council | 1% | |
| 11/01/2012 | DA/909/2011 | NIDA – new shade structure | Randwick City Council | 1% | |
| 15/02/2012 | DA/748/2011 | Kensington Colleges – main works for new on-campus student housing | Joint Regional Planning Panel | 1% | |
| 05/12/2012 | DA/633/2012 | NIDA – alterations & additions to main foyer | Joint Regional Planning Panel | 1% | |
| 28/08/2014 | DA/267/2014 | NIDA – alterations & additions to Graduate School | Joint Regional Planning Panel | 1% | Location specific |
| 09/03/2016 | DA/17/2016 | NIDA – replacement of signage | Randwick City Council | 0.5% | |
| 19/02/2018 | SSD 8126 | Cliffbrook Campus - redevelopment | Minister (Dep't as delegate) | 1% | |
| 12/12/2018 | CDC 18/2603/01 | Sir John Clancy Auditorium - refurbishment | CDC Certifier | 1% | Complying Dev't |
| REDUCED LEVY PAYABLE | | | | | |
| Date | Application No. | Project | Consent Authority | Rate* | Note |
| 15/07/2010 | MP09-0163 | Tyree Energy Technologies Building – main works for new building | Minister (Dep't as delegate) | 0.09% | |
| 27/11/2010 | MP09-0075 | Wallace Wurth Building - redevelopment | Minister (Dep't as delegate) | 0.19% | |
| 19/06/2013 | SSD 5373 | Materials Science & Engineering Building – new building | Minister (Dep't as delegate) | 0.38% | Location specific |
| 20/08/2015 | SSD 6674 | Biological Sciences Building – Stage 1 refurbishment & new building | Minister (Dep't as delegate) | 0.32% | Location specific |
| 13/04/2017 | SSD 7518 | Science & Engineering Building – new building | Minister (Dep't as delegate) | 0.38% | Location specific |
| 09/08/2019 | SSD 9606 | Building D14 – new building | Minister (Dep't as delegate) | 0.50% | |
| 30/07/2019 | DA/183/2018 | Mulwarree – new off-campus UNSW student housing | Sydney Eastern Planning Panel | 0.05% | Location specific |
| | | | | | |

| NO LEVY PAYABLE | | | | | |
|------------------------|------------------------|--|------------------------------|--------------|-------------|
| Date | Application No. | Project | Consent Authority | Rate* | Note |
| 21/09/2007 | DA/241/2007 | New College Post Graduate Village – new on-campus student housing | Randwick City Council | 0% | |
| 30/12/2009 | DA/896/2009 | Tyree Energy Technologies Building – early works for new building | Randwick City Council | 0% | |
| 08/11/2011 | DA/595/2011 | New College – refurbishment of on-campus student housing | Randwick City Council | 0% | |
| 10/04/2013 | SSD 5572 | Mechanical & Manufacturing Engineering Building – refurb. & new building | Minister (Dep’t as delegate) | 0% | |
| 03/06/2016 | SSD 7370 | Electrical Engineering Building - refurbishment | Minister (Dep’t as delegate) | 0% | |
| 18/10/2016 | DA/415/2016 | Village Green – temporary pavilions | Randwick City Council | 0% | |
| 21/04/2017 | SSD 7865 | Biological Sciences Building – Stage 2 – demolition & refurbishment | Minister (Dep’t as delegate) | 0% | |
| 14/03/2019 | DA/442/2018 | Botany Street Parking Station – installation of solar panels on roof | Randwick City Council | 0% | |

* *Percentage of the project's CIV (Capital Investment Value)*

Comments

Contributions levied on UNSW to date by Randwick City Council total \$5.68 million.

Randwick City Council's Development Contributions Plan is prepared under the provisions of s7.12 (previously s.94A) of the EP&A Act. Council is given discretion under the Plan as to whether it levies contributions on a Development Application. The discretion has been inconsistently applied to UNSW.

The undertaking of works by Council pursuant to its Development Contributions Plan is not prescribed and is not time specific.

Contributions that have been reduced by the Department from Council's full 1% levy are inconsistent in calculation and application.

Contributions have been levied inconsistently between projects of similar purpose e.g. student housing.

Key infrastructure such as health does not attract a levy.

Date: April 2020

UTS MEMORANDUM

UTS PROGRAM MANAGEMENT OFFICE

TO: [REDACTED] DATE: 27 APRIL 2020
 ACTION: FOR INFORMATION RESPOND BY:
 FROM: [REDACTED] FILE NO: N/A
 SUBJECT: UTS DEVELOPMENT CONTRIBUTIONS

Summary

Planning Part 3A

- Contributions were not imposed by the DPE for the UTS City Campus Broadway Precinct Concept Plan (Part 3A).

Planning State Significant Development

- Contributions were not imposed by the DPE for the UTS Blackfriars Research Precinct State Significant Development Stage 1.

Major Projects

- Contributions were not sought by authorities for the 4 Major Projects in the UTS Concept Plan (Part 3A) (A case for no Development Contribution is included in the EAR for UTS Central (Section 6.11, page 84). UTS Central is part of the UTS Concept Plan).
- A development contribution (S94) was imposed in the Major Project Approval for the Dr Chau Chak Wing Building (Gehry Architects). The contribution was in the form of Public Domain Works undertaken by UTS in lieu of a Section 94 payment.

Stage Significant Development Stage 2

- A Development Contribution (S7.11) is sought for 1 project (Blackfriars Research Building). The Draft Approval Conditions have not been released.

Development Applications

- A Development Contribution (S7.11) was imposed for UTS Building 4A.
- A Development Contribution (S94) was imposed for UTS Botany Technical Laboratory.
- A Development Contribution (S94) was NOT imposed for UTS Botany Environmental Laboratories in the same building at Botany as above.

Details of the projects included in the summary above are noted in the following:

| Project | Year | Use | Authority | Development Contribution | Development Cost/ CIV | Comments |
|--------------------------------------|------|----------------------|----------------|--|-----------------------|--|
| Blackfriars Research Building | 2019 | Research | DPE | Section 7.11 requested by City of Sydney | \$42.4M | Pending Approval. UTS objected to Section 7.11 request |
| UTS Building 4A | 2018 | Science Laboratories | City of Sydney | Section 7.11 \$100,374.00 | \$26.9M | UTS objected unsuccessfully |

| Project | Year | Use | Authority | Development Contribution | Development Cost/ CIV | Comments |
|--|------|-----------------------------|-----------------|---|-----------------------|---|
| UTS Botany | 2018 | Environmental Laboratories | Bayside Council | Nil | Approx. \$15.0M | |
| | 2016 | Technical Laboratory | Bayside Council | Section 94A \$187,164.00 | \$20.6M | UTS objected unsuccessfully |
| UTS Central | 2016 | UTS Library, Faculties, T&L | DPE | Nil | Approx \$200.0M | UTS Concept Plan Project |
| UTS Building 7 | 2011 | Faculty of Science | DPE | Nil | \$92.3M | UTS Concept Plan Project |
| UTS Building 11 | 2011 | Faculty of Engineering | DPE | Nil | \$223.0M | UTS Concept Plan Project |
| UTS Building 8 (Gehry Architects) | 2010 | School of Business | DPE | Public Domain Works undertaken by UTS in lieu of Section 94 | \$131.9M | Not part of UTS Concept Plan. City of Sydney requested Section 94 is applied. UTS objected unsuccessfully |
| UTS Building 6 Addition | 2009 | Student Residences | DPE | Nil | \$69.0M | UTS Concept Plan Project |

If you have any queries please do not hesitate to contact the undersigned.

Regards,

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