



29 September 2020

Mr Peter Achterstraat AM
NSW Productivity Commissioner

Sent via email: ICReview@productivity.nsw.gov.au

Dear Mr Achterstraat

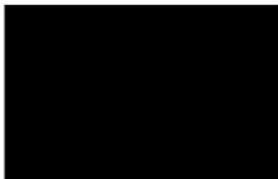
Final Submission- Review of Infrastructure Contributions in New South Wales

I refer to my letter of 5 August 2020 regarding Penrith Council's draft submission prepared in response to the Issues Paper released by the NSW Productivity Commission. Please find attached a final submission endorsed by Council at its Ordinary Meeting of 28 September 2020 for your consideration.

Also attached to this submission for your information is a copy of Councils endorsed submission to the Department of Planning, Industry & Environment (DPIE) regarding proposed changes to the Infrastructure Contributions System in NSW.

In the past year Penrith City Council has been involved in a range of significant projects involving infrastructure planning and development contributions, including:

- A comprehensive review of Councils development contributions framework, in order to implement a best practice contributions system, which will ensure streamlined and transparent processes, provide innovative solutions and importantly, deliver the required infrastructure for growth. Council has undertaken significant work in respect to growth needs assessments, preparation of new and updated contributions plans, facilitating infrastructure delivery and framework implementation. Through this work, we are making considerable investments to ensure we well placed to effectively deliver local infrastructure into the future.
- Penrith City Council is one of nine Councils within the Western Sydney Planning Partnership (PPO). As a group, we have been working towards establishing our priorities for infrastructure contribution reform and have also provided input into a submission on the issues paper written by the PPO.
- Council has been working in conjunction with Liverpool City Council, to prepare a development contributions plan for the Western Sydney Aerotropolis Precinct. We estimate over \$2 Billion of local infrastructure will be needed to appropriately service the precinct.





Noting the above, we believe we are well placed to provide valuable feedback to the Productivity Commission and welcome further engagement with Council on the issues paper and any other relevant matters.

In conjunction with the recent legislation and regulatory changes proposed by DPIE, we believe the issues paper and further work by the NSW Productivity Commission will create change for what is currently a very complex system. However, we note that the driving force for any changes to the system should reflect the importance of infrastructure in building and shaping our communities and places. While economic drivers are an important consideration, the first and foremost consideration for infrastructure contributions is the need to be able to provide the social, cultural and physical infrastructure to deliver on the vision for our places.

If you have any questions about this matter, please contact [REDACTED]
[REDACTED]

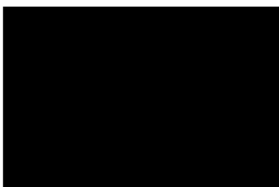
Yours sincerely

[REDACTED]

[REDACTED]

Attach.

- *Submission to NSW Productivity Commission Issues Paper*
- *Submission to DPIE- Changes to the Infrastructure Contributions System in NSW (June 2020)*



Question	Response
<p>1.1 Striking the right balance</p> <p>There can be difficulty in reconciling the competing principles of efficiency, equity, certainty, and simplicity. Failure to strike the right balance can undermine confidence in the planning system.</p> <ul style="list-style-type: none"> ▪ Is a 'one size fits all' approach appropriate or do parts of the State require a bespoke solution? ▪ What are the advantages and disadvantages of a site-specific calculation based on demand generated, compared with a broader average rate? ▪ Do other jurisdictions have a better approach to infrastructure funding we should explore? ▪ How can a reformed contributions system deliver on certainty for infrastructure contributions while providing flexibility to respond quickly to changing economic circumstances? 	<ul style="list-style-type: none"> • One size doesn't fit all- different types of development scenarios across urban infill, greenfield and rural areas and different regions of development (City vs West vs Regional) • However, too many different solutions can be confusing and costly to both Council and Developers and community. • Certainty of process is important. • Contributions system is currently based on 'user pays' principles. Any shift to a general rate across entire population is generally not supported. • Current processes, such as IPART, limit Councils ability to be flexible and respond to changes where needed. The current legislation also can prevent this from occurring. There needs to be balance between the flexibility of infrastructure contributions and the need for suitable probity. <ul style="list-style-type: none"> • i.e. the current system doesn't allow Council to respond quickly to rising land costs. • i.e. the cost and time for reviewing plans is expensive.
<p>2.1 Enable a broader revenue source for the funding of infrastructure</p> <p>Are there any potential funding avenues that could be explored in addition to those in the current infrastructure funding mix?</p>	<ul style="list-style-type: none"> • Developer makes a profit from development that creates need for infrastructure. The developer should be responsible for the cost of this infrastructure and not to other users. What is the benefit to the community to pay contributions where it is not related to them? • Any changes should consider the impact of housing affordability.

Question	Response
<p>2.2 Integrating land use and infrastructure planning</p> <p>The Greater Sydney Region Plan provides the overarching vision and infrastructure needs, which is translated into separate District Plans and Local Strategic Planning Statements. These are used by councils for land use and infrastructure planning.</p> <ul style="list-style-type: none"> ▪ How can the infrastructure contributions system better support improved integration of land use planning and infrastructure delivery? 	<ul style="list-style-type: none"> • All strategic plans need to provide indication early in the planning process as to what the future infrastructure needs are for areas. • The gateway process requirements (for LEP amendments) could incorporate the provision of an infrastructure strategy. This should form the basis for a future contributions plan (CP) for the area and allow Councils to understand early in the process potential delivery arrangements and costings. • The cumulative impacts of development levies by the three level of government needs to be considered and applied upfront. All levels of governments need a coordinated approach in preparation and release of land for rezoning and in determining an appropriate funding framework for the infrastructure required.
<p>3.1 Principles for planning agreements are non-binding</p> <p>The Planning Agreements Practice Note is currently non-binding on councils, although the Ministerial Direction exhibited by the Department aims to change this. There are no equivalent guidelines for use when negotiating planning agreements with the State. Additionally, there is little agreement between stakeholders on what the principles should be for either local or State planning agreements and there is no consensus on the appropriateness of value capture through planning agreements.</p> <ul style="list-style-type: none"> ▪ What is the role of planning agreements? Do they add value, or do they undermine confidence in the planning system? ▪ Is 'value capture' an appropriate use of planning 	<ul style="list-style-type: none"> • Planning agreements (PA) are used due to the inflexibility of Contributions Plans to be adaptive to specific needs. • PA can be innovative and provide items that a CP is unable to provide under the legislation. • PA can add value to the development, they can provide a better built form and social outcome that a CP no longer can. It can certainly benefit the developer and the community (i.e. embellishment of parks, community facilities etc). • There are specific legislative requirements for PA's and this should provide a strong basis for their development. Most Councils have PA policies that are clear and enable proper probity. Penrith City Council has recently endorsed a PA policy that clearly sets out our requirements for PA, to provide confidence for both our community and developers on

Question	Response
<p>agreements?</p> <ul style="list-style-type: none"> ▪ Should planning agreements require a nexus with the development, as for other types of contributions? ▪ Should State planning agreement be subject to guidelines for their use? 	<p>the process we expect.</p> <ul style="list-style-type: none"> • Currently there is no policy framework around value capture. A policy needs to be developed for value capture that applies to both state and local governments. Value capture, in addition to development contributions, can be an appropriate tool to use, however there needs to be appropriate LEP clauses and policies that have been exhibited to show how Councils will implement such an outcome. There needs to be strong probity and transparency where government seeks to use this mechanism. • Council currently implements a value capture mechanism in Penrith City Centre through Clause 8.7 of Penrith Local Environmental Plan 2010, which allows for a variation to FSR on certain sites if community infrastructure is provided. This value capture mechanism is used to deliver infrastructure to benefit the broader community, beyond what may be needed under a contributions plan. • There should be one rule for all levels of government and an integrated system- State Government should not limit Councils from Value capture, but then proceed to do it themselves. • Currently under our PA and Value Capture policy we have a nexus between development and infrastructure to be spent on. We generally support a nexus and don't support the collection of infrastructure contributions for general revenue. • All planning agreements (whether State or Local) should be subject to the same rules and regulations. Provides certainty and clarity to the community.

Question	Response
<p>3.2 Transparency and accountability for planning agreements are low</p> <p>Reporting and accounting requirements for planning agreements are low, although proposed changes to the Regulation may improve this. Differing practices between councils and the State in maintaining separate planning agreement registers and public notice systems is confusing and reduces transparency and accountability.</p> <ul style="list-style-type: none"> ▪ What could be done to improve the transparency and accountability of planning agreements, without placing an undue burden on councils or the State? ▪ Should councils and State government be required to maintain online planning agreement registers in a centralised system? What barriers might there be to this? 	<ul style="list-style-type: none"> • Current processes include report to Council, notification of PA including letters to the community and report back to Council • An improved process could include receiving an application number, Notifying a receipt of Letter of Offer on Councils website, tracking of decision making etc. Making entire process transparent. • There should be an online register- which Councils currently do have. Councils could be required to notify DPIE when a PA is made, and this can go on planning portal. Similar to DCPs & Contributions Plans.
<p>3.3 Planning agreements are resource intensive</p> <p>Planning agreements are a resource intensive mechanism but have potential to deliver unique and innovative outcomes.</p> <ul style="list-style-type: none"> ▪ Should the practice note make clear when planning agreements are (and are not) an appropriate mechanism? 	<ul style="list-style-type: none"> • Through our work on a contributions framework, Council has sought to streamline the process of entering into a planning agreement through the creation of a Policy and agreement templates. • Where a contributions plan already has been prepared for the land, which we believe is a best practice approach. The preparation and execution of a PA is a much shorter process. Upfront planning of infrastructure needs is a key element. • While PA can be resource intensive from a Council perspective, the benefits of the delivery of infrastructure in a timely manner are significant.

Question	Response
	<ul style="list-style-type: none"> The principles for entering into planning agreements should be set by the practice note with each Council including further details in their policies, that are publicly exhibited.
<p>3.4 Contributions plans are complex and costly to administer</p> <p>Contributions plans can be opaque, making it hard for developers to calculate a potential contribution liability and the community to know what infrastructure it can expect and when. Many plans are not updated in a timely manner, leading to issues with cost escalation, outdated assumptions, and difficulty meeting community infrastructure needs. Some councils have significant contributions balances, indicating there may be barriers to timely expenditure.</p> <ul style="list-style-type: none"> How could the complexity of s7.11 contributions planning be reduced? What are the trade-offs for, and potential consequences of, reducing complexity? How can certainty be increased for the development industry and for the community? 	<ul style="list-style-type: none"> Council has sought to remove the complexity of the plan making process by producing contributions plan templates, which we will seek to introduce as we prepare new plans. We are also seeking to review and consolidate the number of contributions plans we have. The basis of a development contributions plan, as the issues paper identifies, aligning nexus and apportionment, in itself is quite straightforward. The complexity of a contributions plan, we believe lies in those steps that intervene into plans, such as what works can be included in a plan, how these are to be costed and how much a Council can charge under a plan. Introduction of 'caps' and the essential works list have only increased the complexity of a plan and further deviated plans from being able to provide the right infrastructure that the community needs. This has led to more developers seeking out the use of planning agreements, where the appropriateness of works and nexus can be negotiated. There can be a substantial amount of work required to amend contributions plans, particularly where an IPART review is needed. This can also take a large length in time. Costs can be outdated quickly and costly to review plans. Community has increasing expectations of what infrastructure is essential (i.e. water play + gym equipment etc). The essential works list has not addressed this. There could be potential to establish regional benchmarks for certain infrastructure costs- such as a Western Sydney benchmark through the

Question	Response
	<p>City Deals Councils. While this could be beneficial, it would require ongoing review and update.</p> <ul style="list-style-type: none"> Identifying infrastructure at an early stage is critical. Consideration could be given for Councils to deliver an infrastructure strategy potentially as part of the LSPS, where all infrastructure needs are identified clearly, and this strategy would need to be reviewed regularly. This could mean that contributions Plans are planning mechanisms to deliver this infrastructure, like the relationship between the LSPS and LEP.
<p>3.5</p>	<p>Timing of payment of contributions and delivery of infrastructure does not align</p> <p>Developers want to delay the payment of contributions to the occupation certificate stage to support project financing arrangements. This would delay receipt of funds to councils and, in the absence of borrowing funds, may delay infrastructure delivery.</p> <ul style="list-style-type: none"> What are the risks or benefits of deferring payment of infrastructure contributions until prior to the issuing of the occupation certificate, compared the issuing of a construction certificate? Are there options for deferring payment for subdivision? Would alternatives to financial securities, such as recording the contributions requirement on property title, make deferred payment more viable? Would support to access borrowing assist councils with delivering infrastructure? What could be done to facilitate this? Are there barriers to councils to accessing the Low Cost

Question	Response
<p>Loans Initiative?</p> <ul style="list-style-type: none"> What else could be done to ensure infrastructure is delivered in a timely manner and contributions balances are spent? 	
<p>3.6 Infrastructure costs and contributions rates are rising</p> <p>Infrastructure costs are rising—particularly for land acquisition—as are contribution rates. Caps and thresholds introduced to encourage sector activity have, however undermined important market signals for development efficiency and are now likely to be reflected in higher land values. The application of the essential works list can put councils' finances under pressure given their current inability to expand their rate base in line with population growth.</p> <ul style="list-style-type: none"> Currently IPART reviews contributions plans based on 'reasonable costs', while some assert the review should be based on 'efficient costs'. What are the risks or benefits of reframing the review in this way? Should the essential works list be maintained? If it were to be expanded to include more items, what might be done to ensure that infrastructure contributions do not increase unreasonably? What role is there for an independent review of infrastructure plans at an earlier point in the process to consider options for infrastructure design and selection? 	<ul style="list-style-type: none"> In respect to this matter, Council in its submission to DPIE in June noted the following: <ul style="list-style-type: none"> <i>Council's preference is to have no threshold. This will enable councils to provide for the required infrastructure that has been identified and needed to facilitate growth and development outcomes without having to go through the lengthy IPART review process and being left with a further shortfall.</i> <i>Furthermore, plans that go to IPART can only collect contributions for limited (essential works) infrastructure. The application of an essential works lists means councils cannot collect contributions towards important infrastructure that enable and create communities such as (but not limited to) community facilities and libraries. It should also be noted that items on essential works list do not reflect the directions set by the District Plans such as community facilities and biodiversity corridors. We suggest that any review of infrastructure contributions must also review the impact of the essential works in delivering infrastructure needed for and expected by our existing and future communities.</i>

Question	Response
<p>3.7 The maximum s7.12 rate is low but balanced with low need for nexus</p> <p>Section 7.12 local infrastructure levies are low and do not reflect the cost of infrastructure.</p> <ul style="list-style-type: none"> ▪ Given that the rationale for these low rates reflects the lower nexus to infrastructure requirements, what issues might arise if the maximum percentages were to be increased? ▪ What would be a reasonable rate for s7.12 development consent levies? 	<ul style="list-style-type: none"> • In respect to this matter, Council in its submission to DPIE in June noted the following: <ul style="list-style-type: none"> a) The review is not proposing to increase the overall s7.12 maximum rate as specified under clause 25K(1)(a) of the EP&A Regulation, this will be maintained at 1% of the cost of development. We do not support this. This rate has not reviewed since 2005 and may have been based on a different cost ratio between land price and cost of works. The standard maximum percentage should be reviewed and increased. b) Based on the principles in the draft practice notes, there are two sets of potential assessment criteria, for either an increase of the maximum percentage to up to 2% or up to 3%. There needs to be flexibility to go higher than 3% in unique circumstances. There are current plans in NSW that are above this percentage. A calculation carried out by council demonstrates that in most cases a percentage of between 5-8% is required to deliver on the infrastructure needed for that community. Council is also currently working in conjunction with Liverpool City Council on developing a section 7.12 plan for the Western Sydney Aerotropolis Precinct. Very initial findings suggest that it a percentage above 3% would be needed to deliver essential infrastructure within this precinct. It appears that the intention to cap plans at 3% is to prepare a 7.11 plan rather than 7.12 plan if the percentage exceeds 3%. However, this is not appropriate. The functions and utility of both type of plans are unique and both plans are used in different circumstance. Section 7.12 plans are used where nexus and apportionment may be difficult to establish. These types of plans are particularly useful in mixed-use areas where development rates are difficult to predict such as town centres or greenfield area where the planning has not been finalised yet such as the Aerotropolis. The introduction of a cap will limit the use of 7.12 as a viable option in town centres and greenfield areas. • s7.12 plans are an appealing alternative to a s7.11 plan and enable

Question	Response
	<p>some flexibility in applying a contributions plan. They provide developers a simple fixed rate to pay, particularly where the rate of development and apportionment is uncertain.</p> <ul style="list-style-type: none"> • The intended use of s7.12 contributions plans are not well described under the existing legislation or practice notes and this makes it difficult for Councils to decide which plans to implement in different circumstances. • While we understand there is 'less' nexus in preparing a s7.12 contributions plan, and on this basis, less contributions are available for Councils to collect. Councils implementing these plans are at a disadvantage where land and administrative costs shift and the percentage rate available further disadvantages Councils seeking to use a s7.12 plan.
<p>3.8 Limited effectiveness of special infrastructure contributions</p> <p>Special infrastructure contributions were introduced to strengthen delivery of state infrastructure. They can be an efficient and equitable mechanism for modest infrastructure cost recovery, while helping to ensure that development is serviced in a timely way. Over time, incremental changes and ad hoc decisions have, however, led to inconsistencies in their application, which may have limited their effectiveness.</p> <ul style="list-style-type: none"> ▪ Is it appropriate that special infrastructure contributions are used to permit out-of-sequence rezoning? ▪ Should special infrastructure contributions be applied more 	<ul style="list-style-type: none"> • In respect to this matter, Council in its submission to DPIE in June noted the following: <ul style="list-style-type: none"> a) <i>A Ministerial Order Establishes the Special Contributions Area through an amendment to the Environmental Planning and Assessment Act 1979 to include a map of the Special Contributions Area (SCA) boundary in Schedule 4 of the Act. This process of identification of an area that a SIC applies to should be simplified and easy to administer.</i> b) <i>Clear definitions should be provided on each item on the SIC Infrastructure List to understand the difference between what is provided at a State Level and what is provided at Local Level.</i> c) <i>We note that the SIC infrastructure list includes regional libraries. Clarification should be provided as to what would constitute a regional library.</i> d) <i>Clarification is sought on transport infrastructure. We recommend that</i>

Question	Response
<p>broadly to fund infrastructure?</p> <ul style="list-style-type: none"> ▪ Should they be aligned to District Plans or other land use planning strategies? ▪ Should the administration of special infrastructure contributions be coordinated by a central Government agency i.e. NSW Treasury? 	<p><i>road infrastructure is defined and included separately to Transport.</i></p> <ul style="list-style-type: none"> <i>e) Clarification is sought to understand if transport include pathways.</i> <i>f) The feasibility testing of a SIC should be carried out considering both state and local contributions. Maybe a process involving IPART. If the levy is deemed to be unfeasible, then alternate funding mechanism needs to be explored and formed.</i> <i>g) The feasibility testing of SIC contribution does not look at what the end user needs, but instead looks at what the feasibility is.</i> <i>h) The Feasibility analysis assumes that local contributions plans are finalised before the SIC. It is unrealistic to assume that the local contributions plans are finalised before the SIC.</i>
<p>3.9 Difficulty funding biodiversity through special infrastructure contributions</p> <p>Biodiversity offsetting is a key part of the plan for developing Greater Sydney and requires a secure source of funding. The application of special infrastructure contributions to support this has been inconsistent.</p> <ul style="list-style-type: none"> ▪ Should implementation of special infrastructure contributions for biodiversity offsets be subject to a higher level of independent oversight? ▪ Are special infrastructure contributions the appropriate mechanism to collect funds for biodiversity offsetting, or should biodiversity offsets be managed under a separate framework? 	<ul style="list-style-type: none"> • Biodiversity offsetting is not considered a means of infrastructure provision and should be kept separate from both local and state infrastructure contributions.
<p>3.10 Affordable housing</p> <p>Affordable housing contributions are made on top of other</p>	<ul style="list-style-type: none"> • The provision of affordable housing through infrastructure contributions process is generally supported by Council, however this needs to be

Question	Response
<p>infrastructure contributions. The percentages are determined individually, and each scheme must demonstrate the rate does not impact development viability.</p> <ul style="list-style-type: none"> ▪ Is provision of affordable housing through the contributions system an effective part of the solution to the housing affordability issue? Is the recommended target of 5-10 per cent of new residential floorspace appropriate? ▪ Do affordable housing contributions impact the ability of the planning system to increase housing supply in general? 	<p>considered holistically with social housing and other privately delivered housing under relevant SEPPs and affordability of development more generally.</p> <ul style="list-style-type: none"> • It is important that any affordable housing targets need to be established early in the land use planning process, otherwise it may have a negatively impact on the feasibility of the development.
<p>4.1 Sharing land value uplift</p> <p>If investment in public infrastructure increases land values, then the benefits are largely captured by private property owners. 'Value capture' mechanisms can return a share of the value created by public investment to the taxpayer.</p> <p>There are several ways a 'value capture' mechanism could be applied, including land tax, council rates, betterment levy, or an infrastructure contribution.</p> <ul style="list-style-type: none"> ▪ 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? 	<ul style="list-style-type: none"> • Council currently implements a value capture mechanism through Clause 8.7 of Penrith Local Environmental Plan 2010, which allows for a variation to FSR on certain sites if community infrastructure is provided. This value capture mechanism is used to deliver infrastructure to benefit the broader community, beyond what may be needed under a contributions plan. • There needs to be consistency in the application of value capture- there cannot be one rule for state government and one for local government. • In principle value capture is generally supported, however this should not be implemented at the demise of infrastructure contributions, as they are two different matters. • Any value capture mechanism needs to be based on feasibility testing and should not impact the collection of sufficient contributions for local infrastructure.
<p>4.2 Land values that consider a future infrastructure charge</p> <p>When land is rezoned, there is often an increase in land</p>	<ul style="list-style-type: none"> • The role of an infrastructure charge on a land title has not been defined in the issues paper, and therefore difficult for Council to comment.

Question	Response
<p>values as a result of the change in development potential.</p> <ul style="list-style-type: none"> ▪ Should an “infrastructure development charge” be attached to the land title? 	<ul style="list-style-type: none"> • Is it envisaged to replace development contributions, SICs or be a value capture mechanism? • The basis of costs of an infrastructure charge would need to be clearly developed to be able to understand what type of cost would be attached. This would place more emphasis in contributions planning occurring early in the rezoning process.
<p>4.3 Land acquisition for public infrastructure purposes</p> <p>Requiring the direct dedication of the land that is needed for infrastructure purposes is an option that aims to address the problem of rapidly increasing land values.</p> <ul style="list-style-type: none"> ▪ If supported, how could direct dedication be implemented? How could this be done for development areas with fragmented land ownership? ▪ Could earlier land acquisition be funded by pooling of contributions, or borrowings? ▪ Are there other options that would address this challenge such as higher indexation of the land component? 	<ul style="list-style-type: none"> • Early acquisition of land for public infrastructure, would keep the costs of a contributions plan low, however access to suitable funding is generally not available to Council to be able to purchase this land upfront. The scale of land acquisition under many plans, particularly greenfield sites, would be likely be prohibitive for Council to seek a loan. • Direct dedication of land would be difficult to achieve, particularly in a fragmented setting, where landowners of land to be acquired may not have any incentive to dedicate their land early in the development process. • The process should not disadvantage land owners that have the entirety of their land purchased for public infrastructure. • Where there is no mechanism to lock in the land upfront, there needs to be flexibility in how Councils can index land and amend plans to reflect the real costs of the land.
<p>4.4 Keeping up with property escalation</p> <p>Land values (particularly within the Sydney metropolitan area) can increase rapidly and often increase on early signs of land being considered for future development; well ahead of the</p>	<ul style="list-style-type: none"> • The ability of Councils to be able to review their plans more often, through reducing the complexity of processes, such as IPART reviews would assist in accounting for property acquisition costs.

Question	Response
<p>rezoning process.</p> <ul style="list-style-type: none"> ▪ What approaches would most effectively account for property acquisition costs? 	
<p>4.5 Corridor protection</p> <p>Early identification of corridors has the potential to result in better land use and investment decisions. Without funds available to facilitate their early acquisition, it is likely that being 'identified' would encourage speculation and drive up land values, making the corridor more expensive to provide later.</p> <ul style="list-style-type: none"> ▪ What options would assist to strike a balance in strategic corridor planning and infrastructure delivery? 	<ul style="list-style-type: none"> • Corridor protection is an important planning mechanism, however it can lead to speculation. This is also the case when releasing broader strategy documents that establish a plan for future development- such as recently experienced in the Western Sydney Aerotropolis Precinct. • A clear direction on infrastructure delivery is needed at the time of any release of strategy documents to clearly set expectations to future developers is necessary.
<p>4.6 Open space</p> <p>While the seven-acre open space standard is not based on evidence, it nevertheless continues to be relied upon. Open space provision is moving towards a performance-based approach.</p> <ul style="list-style-type: none"> ▪ How can performance criteria assist to contain the costs of open space? ▪ Should the government mandate open space requirements, or should councils be allowed to decide how much open space will be included, based on demand? ▪ Are infrastructure contributions an appropriate way to fund 	<ul style="list-style-type: none"> • Council has adopted the Penrith Sport and Recreation Strategy, which included open space provision rates. These were generally based on the draft Greener Places Design Guide developed by the NSW Government Architect. • Councils should have the ability to set specific rates of open space, appropriate for their local government area. Significant work is undertaken by Councils on understanding the demand for open space facilities and further understanding the nexus and apportionment to new development. • In planning for appropriate open space, Councils consider ongoing maintenance costs for the facilities, which will often guide the location away from combining stormwater management systems with open space. Councils need the ability to consider this on a site by site basis.

Question	Response
<p>open public space?</p>	<ul style="list-style-type: none"> Infrastructure contributions is an appropriate mechanism for Councils to use to fund new open space infrastructure, where a nexus can be established to new growth.
<p>4.7 Metropolitan water charges</p> <p>Currently, costs of new and upgraded connections for Sydney Water and Hunter Water are borne by the broader customer base rather than new development.</p> <ul style="list-style-type: none"> How important is it to examine this approach? What is the best way to provide for the funding of potable and recycled water provision? 	<ul style="list-style-type: none"> The approach to costs of new and upgraded water connections should be examined further, however, we would not support any changes which may impact Councils levying local contributions.
<p>4.8 Improving transparency and accountability</p> <p>There are limited infrastructure contributions reporting requirements.</p> <ul style="list-style-type: none"> What would an improved reporting framework look like? Should each council report to a central electronic repository? What elements should be included? How much has been collected by contributions plan and other mechanisms? How much council has spent, and on what infrastructure items? 	<ul style="list-style-type: none"> As part of Councils contributions framework action plan, we are currently preparing a business case to implement a new contributions tracking system, which would enable a greater transparency of our plans and future infrastructure delivery. Councils should be responsible for the reporting on these plans, however the reporting should integrate with Councils current systems and other reporting requirements.

Question	Response
<ul style="list-style-type: none"> Should an improved reporting framework consider the scale of infrastructure contributions collected? 	
<p>4.9 Shortage of expertise and insufficient scale</p> <p>The ability of the local government sector to efficiently deliver contributions plans are impaired by shortages of skilled professionals and lack of scale for smaller councils.</p> <ul style="list-style-type: none"> What can be done to address this issue? Should the contributions system be simplified to reduce the resourcing requirement? If so, how would that system be designed? 	<ul style="list-style-type: none"> The inherent complexity of infrastructure contributions and the necessary skills needed to operate in within the sector can act as a deterrent for skilled professionals to enter. Reducing the complexity of the infrastructure contributions processes and normalising the early planning of infrastructure early in the land use planning process are some steps that could assist with attracting more skilled workers to the sector.
<p>4.10 Current issues with exemptions</p> <p>Exemptions from contributions are complex as they are set out across a range of planning documents and are inconsistent across contribution mechanisms.</p> <ul style="list-style-type: none"> Given that all developments require infrastructure, should there be any exemptions to infrastructure contributions? Is it reasonable to share the cost of 'exemptions' across all of the new development rather than requiring a taxpayer subsidy? Are there any comparative neutrality issues in the providing exemptions for one type of development, or owner type, over another? 	<ul style="list-style-type: none"> Council would support one clear and consistent set of exemptions. A review of the current exemptions should be undertaken to understand the infrastructure needs in each plan and the determination of whether the benefit to the community in providing the development significantly outweighs the need to pay development contributions.

Question	Response
<p>4.11 Works-in-kind agreements and special infrastructure contributions</p> <p>Works-in-kind agreements can realise savings and efficiencies, but they can result in infrastructure being provided out of the planned sequence and prioritise delivery of some infrastructure (such as roads) at the expense of other infrastructure (such as open space and biodiversity offsetting).</p> <ul style="list-style-type: none"> ▪ Should developers be able to provide works-in-kind, or land, in lieu of infrastructure contributions? ▪ Developers may accrue works-in-kind credits that exceed their monetary contribution. Should works-in-kind credits be tradeable? What would be pros and cons of credits trading scheme? ▪ What are implications of credits being traded to, and from, other contributions areas? 	<ul style="list-style-type: none"> • Works in Kind can be a beneficial tool for Councils and can accelerate the delivery of infrastructure. • Council has an existing Works in Kind Policy but has recently sought to update this and has endorsed an updated policy for exhibition. • Council does not currently facilitate the trading of credits for Works in Kind and has no plans to facilitate this in the short term. • Accruing and trading credits would add additional complexity to our current processes. Suitable tracking systems would need to be available to Councils to enable this to occur in a transparent manner.



[Redacted]

24 June 2020

[Redacted]

Dear Mr Horobin,

**FINAL SUBMISSION
Changes to the Infrastructure Contributions System in NSW**

Thank you for the opportunity to comment on the “Changes to the Infrastructure Contributions System in NSW”. Council congratulates the Department of Planning, Industry and Environment for the community consultation undertaken to date and for keeping council involved in the process.

Council recognises the importance of having a transparent and accountable contributions framework and have already commenced a review of its own contribution’s framework with some progressive actions. We look forward to firming up and finalising our actions to continue to provide best practice and certainty for our community.

It is also noted that there is also an infrastructure contributions review being undertaken by the Productivity Commissioner and we seek further clarity on how the more immediate review of the Department be will be considered.

A draft submission was provided to you, and through the website on 12 June 2020 that outlined a summary of key matters. Council has now endorsed the final submission that is attached to this letter for your consideration.

If you have any further questions, please contact [Redacted]

Yours sincerely,

[Redacted]

[Redacted]

[Redacted]

Changes to the Infrastructure Contributions System in NSW

Thank you for the opportunity to comment on the “Changes to the Infrastructure Contributions System in NSW”. Council congratulates the Department of Planning, Industry and Environment for the community consultation undertaken to date and for keeping council involved in the process.

Council recognises the importance of having a transparent and accountable contributions framework and have already commenced a review of its own contribution’s framework with some progressive actions. We look forward to firming up and finalising our actions to continue to provide best practice and certainty for our community.

It is noted that there is also an infrastructure contributions review being undertaken by the Productivity Commissioner and we seek further clarity on how the more immediate review of the Department be will be considered. We also seek the opportunities to contribute to this process.

Following are Council’s general comments and on each of the exhibited document for your consideration.

1. DRAFT PLANNING AGREEMENTS POLICY FRAMEWORK

- a) The practice notes states that in general, the use of planning agreements for the primary purpose of value capture is not supported and that planning agreements should not be used explicitly for value capture in connection with the making of planning decisions.

Penrith LEP 2010 clause 8.7 allows for variation to FSR on certain sites if community infrastructure is provided (purpose is to capture value for the community). A VPA is the mechanism used to achieve this. The clause has been approved by the Department of Planning Industry and Environment and therefore a practice note should not override or be at odds with a Local Environmental Plan provision. The policy is existing and will provide infrastructure for the community. It should be noted that it is not council’s intent is to capture value as a source of general revenue. The intent is to deliver community infrastructure which is very well defined in the Penrith Local Environmental Plan 2010. It is recommended that the use of value capture for the purposes of infrastructure provision should be explored further.

- b) The practice note recommends that a draft planning agreement that has been signed by the developer should accompany a development application, with negotiation of the agreement occurring during the prelodgement phase of the application. This will not be possible most of the time or supported, as negotiations generally happen at the assessment stage when the full impact of the proposal is determined, and the agreement can be drafted to responds to this We recommend that a letter of offer to enter into a VPA is sufficient at the initial phase of the assessment of the application and executed prior to the development application being determined.

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- c) The Practice note states that agreements must not include benefits wholly unrelated to the development. We seek clarification on what is wholly unrelated. It may not always be possible or necessary to demonstrate a direct nexus.
- d) The acceptability test requires that planning agreements are directed towards legitimate planning purposes, that can be identified in the statutory planning controls and other adopted planning strategies and policies applying to development. This is difficult to achieve if it is attached to a planning proposal, where a contributions plan has not yet been prepared and development is out of sequence. Furthermore, works may not be identified in a DCP or Contributions plan but still reasonable.

Planning agreements is a tool for delivering innovative or complex infrastructure and public benefit outcomes. They provide a way to negotiate flexible outcomes in respect of development contributions that deliver sustainable development while achieving key economic, social and environmental objectives. Therefore, they should not be limited to matters identified in statutory planning controls.

- e) The practice note refers to submissions. The Environmental Planning and Assessment Regulation requires 'notification' of planning agreements. Does the practice note imply that there is an intention to change legislation to enable to the consideration of submissions? What is the extent of the consideration of these submissions?

2. IMPROVING THE REVIEW OF LOCAL INFRASTRUCTURE CONTRIBUTIONS PLANS

- a) Three options are being proposed to update the thresholds that trigger the IPART review process. Council's preference is to have no threshold. This will enable councils to provide for the required infrastructure that has been identified and needed to facilitate growth and development outcomes without having to go through the lengthy IPART review process and being left with a further shortfall. Furthermore, plans that go to IPART can only collect contributions for limited (essential works) infrastructure. The application of an essential works lists means councils cannot collect contributions towards important infrastructure that enable and create communities such as (but not limited to) community facilities and libraries. It should also be noted that items on essential works list do not reflect the directions set by the District Plans such as community facilities and biodiversity corridors. We suggest that any review of infrastructure contributions must also review the impact of the essential works in delivering infrastructure needed for and expected by our existing and future communities.
- b) The cost of land acquisition is a major factor in contributions plans which affects housing affordability. The impact of land cost needs to be considered if a threshold is to be maintained. There should be different indexation for land and works.

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- c) If the Department was of the view that a threshold needs to stay, then our preference would be one threshold of \$45,000 for established and release areas. One value is easier to administer, instead of having to apply to DPIE for release areas.
- d) Consideration should be given to review threshold that excludes the land component of contributions.
- e) There are certain land and works within a contributions plan that deal with inequity between multiple land owners such as stormwater detention basins. Consideration should be given whether these should be included in the threshold or not, as premium value is being paid for these acquisitions.
- f) We support the implementation of an annual indexation mechanism in the instance that the department seeks to require a threshold that triggers the review process. However, we believe that a CPI index will be too low and needs to align more with costs and works within the plan, such as the building and construction index and a separate index for land.

3. REVIEW THE IPART TERMS OF REFERENCE

We support the:

- a) introduction of a targeted review of additional information to facilitate quicker review in situations where a plan has already been reviewed, allowing a targeted review rather than requiring IPART to review the whole plan when additional information is supplied.
- b) the simplification of consultation requirements so that IPART is only required to consult with the relevant council. While IPART may still consult with other parties as appropriate on a case by case basis and as detailed in the practice note, the updated terms of reference would not make this a requirement.
- c) the removal of the existing requirement for councils to re-exhibit an IPART reviewed contributions plan following the receipt of advice from the Minister's nominee.

However, we do not support the removal of the existing exemptions to the review process, known as grandfathered contributions plans. Penrith Council has one plan in schedule 1 known as Claremont Meadow Stage 2 which is still in operation. There are works in the Claremont Meadow Stage 2 plan that are yet to be delivered. We seek to retain the grandfathering of this contribution plan as this could leave a funding gap for infrastructure in this plan where it exceeded any threshold introduced. We do not believe it is reasonable to require an IPART review of this plan after operating for a number of years

4. CRITERIA TO REQUEST A HIGHER SECTION 7.12 PERCENTAGE

- a) The review is not proposing to increase the overall s7.12 maximum rate as specified under clause 25K(1)(a) of the EP&A Regulation, this will be

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maintained at 1% of the cost of development. We do not support this. This rate has not reviewed since 2005 and may have been based on a different cost ratio between land price and cost of works. The standard maximum percentage should be reviewed and increased.

- b) Based on the principles in the practice notes, there are two sets of potential assessment criteria, for either an increase of the maximum percentage to up to 2% or up to 3%. There needs to be flexibility to go higher than 3% in unique circumstances. There are current plans in NSW that are above this percentage. A calculation carried out by council demonstrates that in most cases a percentage of between 5-8% is required to deliver on the infrastructure needed for that community. Council is also currently working in conjunction with Liverpool City Council on developing a section 7.12 plan for the Western Sydney Aerotropolis Precinct. Very initial findings suggest that it a percentage above 3% would be needed to deliver essential infrastructure within this precinct.

It appears that the intention to cap plans at 3% is to prepare a 7.11 plan rather than 7.12 plan if the percentage exceeds 3%. However, this is not appropriate. The functions and utility of both type of plans are unique and both plans are used in different circumstance. Section 7.12 plans are used where nexus and apportionment may be difficult to establish. These types of plans are particularly useful in mixed-use areas where development rates are difficult to predict such as town centres or greenfield area where the planning has not been finalised yet such as the Aerotropolis. The introduction of a cap will limit the use of 7.12 as a viable option in town centres and greenfield areas.

- c) The criteria requires that the area must be identified in the relevant strategic plan and must include a 'significant' employment growth target for the centre. Penrith Local Government Area has centres that are not identified in the District Plan but warrant the application of a section 7.12 plan, above 1%. Furthermore, council is preparing a section 7.12 plan to apply across the whole LGA for non-residential uses and will be seeking to apply a 2% through this plan. These criteria will be difficult to demonstrate despite the need for a higher percentage to deliver on the required infrastructure. This plan would be in place until such time a S7.11 Plan is developed, and the full infrastructure needs are identified through precinct planning, for example.
- d) The proposal to require approval from the Minister to seek changes to the works schedule for the purposes of a higher percentage will delay development as result of a process that may take significant time.
- e) The additional criteria for the 3% increase require the contribution plan to include funding and delivery of district-level infrastructure, representing at least 10% of total value of the contributions plan. The section 7.12 plan needs to be more flexible in its application of the percentage to fund district level works as this will further increase the percentage from 3%; and local infrastructure should be the priority. Furthermore, the district infrastructure is not defined for us to provide further feedback. So there needs to be clarity on

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definitions of district infrastructure and how this will be based. Would there be a requirement for a needs assessment to be carried out.

- f) The proposed changes, specifically the cap on the percentage charged under a s7.12 plan, do not provide a feasible option for Councils to consider their use to facilitate infrastructure provision in greenfield areas, such as the Aerotropolis precinct.
- g) One of the questions asked in the exhibition is that are there any alternative criteria that should be considered? It is difficult to prepare a s7.11 plan in early planning of areas as detailed needs analysis has to be carried out. A s.7.12 plan would capture contributions until such time as detailed work is undertaken including state significant development. A recent example is the planning for the Aerotropolis.

5. DRAFT SPECIAL INFRASTRUCTURE CONTRIBUTIONS (SIC) GUIDELINES

- a) A Ministerial Order Establishes the Special Contributions Area through an amendment to the Environmental Planning and Assessment Act 1979 to include a map of the Special Contributions Area (SCA) boundary in Schedule 4 of the Act. This process of identification of an area that a SIC applies to should be simplified and easy to administer.
- b) Clear definitions should be provided on each item on the SIC Infrastructure List to understand the difference between what is provided at a State Level and what is provided at Local Level.
- c) We note that the SIC infrastructure list includes regional libraries. Clarification should be provided as to what would constitute a regional library.
- d) Clarification is sought on transport infrastructure. We recommend that road infrastructure is defined and included separately to Transport.
- e) Clarification is sought to understand if transport include pathways.
- f) The feasibility testing of a SIC should be carried out considering both state and local contributions. Maybe a process involving IPART. If the levy is deemed to be unfeasible, then alternate funding mechanism needs to be explored and formed.
- g) The feasibility testing of SIC contribution does not look at what the end user needs, but instead looks at what the feasibility is.
- h) The Feasibility analysis assumes that local contributions plans are finalised before the SIC. It is unrealistic to assume that the local contributions plans are finalised before the SIC.

6. PROPOSED AMENDMENTS TO ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000

- a) We support a contributions system that is transparent and holds councils accountable. We are investing into systems that will improve our reporting capabilities. However, there is lack of clarity as to what the new reporting

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requirements will be and what purpose will it serve. There is a lot of emphasis on reporting requirements for councils to achieve accountability and monitoring within the developer contributions framework. However, it is unclear how this will facilitate community participation.

- b) Councils will need sufficient notice to prepare the reporting systems and to be able to provide this information. Clarity is sought on when this will take effect.
- c) The proposed reporting will have resource implications specially for VPA reporting. Is it suggested that this will be written into agreements as an obligation for developers to undertake and report to council for publication? Clarity is sought on the triggers for disclosure of reporting works delivered / handed over to council.
- d) Clarity is sought on if there is a saving or transitional provision for current agreements.