



Review of Infrastructure Contributions in New South Wales

Submission to NSW Productivity Commission
August 2020

About the Western Sydney Planning Partnership

The Western Sydney Planning Partnership was one of the key Planning and Housing initiatives of the Western City Deal: to establish a partnership approach to deliver better and more efficient planning outcomes for the Western District and Blacktown Local Government Area.

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1 Executive summary

This submission is made on behalf of the Western Sydney Planning Partnership (Planning Partnership). It presents the Planning Partnership's priorities for the reform of the infrastructure contributions systems in NSW. The Planning Partnership is a local government led initiative. Therefore, this submission focusses mostly on the funding of local infrastructure.¹

The nine councils that are part of the Planning Partnership administer almost 50 contributions plans (both s7.11 contributions plans and section s7.12 contributions plans) and the total value of infrastructure and related costs in these plans exceeds \$9.5 billion. In addition, the nine councils have entered into over 190 planning agreements which include commitments to deliver \$1.1 billion worth of local infrastructure.

The Planning Partnership appreciates the opportunity to provide input to the Review of Infrastructure Contributions in NSW and looks forward to working with the Productivity Commission during the next phase of consultation.

List of Recommendations

1. The Planning Partnership recommends that if some form of Essential Works List is retained in the future:
 - there should be a clear and stated policy basis for what is considered essential and what is not
 - it should have regard to benchmarks for the amount and type of infrastructure required to support growth
 - items on list should be clearly defined and the scope of works covered by each item be clarified
 - it should specifically address green infrastructure (ie, open space for recreation, urban and bushland and waterways)
 - where items are excluded, alternate funding sources (such as grants or SIC contributions) should be identified.
2. The Planning Partnership recommends that councils are supported to build capacity to secure land at a lower cost. This could be achieved by sharing resources across several councils. Alternatively, the NSW Government could take a more active role in supporting councils to acquire land sooner and for lower costs. This could include an expanded role for the Office of Strategic Lands.

¹ On some issues, this submission might not represent the views of individual councils or non-council members of the Planning Partnership.

3. The Planning Partnership recommends the NSW Government encourage sustainable council borrowing for essential infrastructure to support new growth. This could include:
 - Clarifying implications of borrowing on councils' fit for future standing
 - Confirming that contributions plans can include the interest cost associated with any borrowings for infrastructure in the plan
 - Government underwriting the risk in repaying borrowings
4. The Planning Partnership recommends that the Productivity Commission consider the problems an independent review of contributions plan was trying to solve and whether the IPART review function remains that best way of dealing with any of these problems that persist.
5. If an independent review is maintained in the new system of developer contributions, the Planning Partnership recommends that:
 - Existing review thresholds are replaced with suitable thresholds for each infrastructure category and are based on works-only (i.e., excluding land)
 - all parties (councils, IPART and Minister's delegate) involved in the review process be held to set timeframes.
 - the Minister's delegate be required to provide an explanation of why any independent recommendations are not supported
 - the Department of Planning, Industry and Environment commit to updating policy or relevant guidance material to address issues identified through the independent review process.
6. The Planning Partnership recommends further work is done to clarify responsibilities for providing and funding stormwater management infrastructure.
7. The Planning Partnership recommends that the Department of Planning, Industry and Environment, through a consultative process involving councils and industry, establish a standard structure and format for all contributions plans.
8. The Planning Partnership recommends councils be supported financially and through the publishing of clear guidance documents and/or templates to consolidate existing contributions plans, potentially into a single plan for each local government area.
9. The Planning Partnership recommends a review of the appropriate percentage for section 7.12 contributions.
10. The Planning Partnership recommends that:
 - a consistent policy basis for the consideration of exemptions be developed
 - the impact of the granting exemptions on the availability of funding for infrastructure be considered and where appropriate an alternate funding source identified to fill the gap created

- information regarding across the board exemptions be provided in a single source so it is easy to find.
11. The Planning Partnership recommends councils are provided with funding to update plans, invest in electronic contributions management systems and improve online access to plan-related information
 12. The Planning Partnership recommends that the Department of Planning, Industry and Environment publish clear and comprehensive policy guidance to support the implementation of a new contributions system.
 13. The Planning Partnership recommends that the Integrated Planning and Reporting Framework be adjusted to incorporate reporting on the implementation aspects of the contributions system – what has been provided, what is being provided and what is being planned for provision. This would assist with ensuring infrastructure planning and funding becomes integrated into the broader operations of council.

2 Reform priorities

2.1 Ensure secure and sustainable funding for essential infrastructure

An effective infrastructure contributions system must start with an agreement about what infrastructure is required to facilitate new development.

The NSW Government needs to be clear about its expectations for the level of service in new and changing communities and it must ensure that adequate funding is available to meet the expected level of service.

As noted in the Productivity Commission's Issues Paper, local government's revenue raising capacity is constrained. Recently announced changes to the rate peg to account for population growth will help meet some of councils' ongoing costs of servicing new residential population but should not be viewed as a funding source for upfront land and works costs.

Special variations to the rate peg are also unsuitable funding source for these upfront costs. It would take many years to generate enough money to fund essential infrastructure through revenue from a special variation (and currently the maximum period for any special variation is seven years). There are also equity implications because ratepayers in already established areas have not had to pay for growth infrastructure.

Further, if council rates are increased they will add to cost of living expenses in areas where housing affordability is already a concern. In contrast, in a well-functioning developer contributions system, a developer should be able to estimate the contribution amount, along with other known construction costs, and factor this into the price they are willing to pay for the raw land.

If councils are responsible for providing infrastructure they should be assured of secure and sustainable funding to pay for the infrastructure. It is estimated that one Western Sydney Council is unable to recover at least \$360 million of works that it will need to provide. This represents about 10 per cent of the value of all works.

If it is proven that funding for the infrastructure through developer contributions does impact development feasibility, councils should be offered grant funding.

Restricting what councils can fund from contributions without making sure there is alternative funding available to meet expected level of service can lead to inefficient models of delivery or absence of essential services. The imposition of an Essential Works List for section 7.11 contributions is particularly concerning (see breakout box below).²

² All contributions plans that propose a maximum residential contribution above the relevant review threshold (currently \$30,000 per dwelling/ lot in identified greenfield areas and \$20,000 per dwelling/ lot elsewhere) are subject to an Essential Works List. The Essential Works List is defined in the Local Infrastructure Contributions Practice Note.

Box 1. Implications of the Essential Works List

The Essential Works List includes land and works for transport; land and works for stormwater management; land and base-level embellishment for open space; land only (no works) for community facilities; and administration costs.

Since its inception, the Essential Works List has only had minor amendments and the items on the list do not align with state or local strategic planning priorities. For example, the Western City District Plan talks about traditional facilities such as libraries being re-imagined as community hubs. However, the cost of community facilities, including libraries, is not on the Essential Works List. Across the Western City District, the forecast increase in residential population exceeds 800,000 people. Using commonly adopted social infrastructure benchmarks, 24 new libraries (including six new regional libraries) would be required to support this expected growth in population.

The Essential Works List may also exclude critical elements of the green infrastructure. For example, the Practice Note says that “The acquisition of land and the undertaking of works for environmental purposes e.g. bushland regeneration or riparian corridors are not defined as essential works for the purposes of this Practice Note” except “where it can be demonstrated that the land and/or works in question serve a dual purpose with one or more of the categories of works that meet the definition of essential infrastructure outlined above

Further, the concept of base-level embellishment for open space is poorly defined with seemingly arbitrary exclusions (“skate parks, BMX tracks and the like”), and no acknowledgement of the difficulty in meeting open space demands in infill areas where indoor facilities or embellishment beyond ‘base level’ may be a more cost-effective alternative to acquisition of land. For example, synthetic surfaces are could be more economical because you more hours of use out of them compared to grass surfaces. This means fewer fields are required. While their capital cost is more than a grass field, having to acquire less land could result in an overall saving. Synthetic surfaces also have a lower return to play timeframe after inclement weather, which means better service to the community (noting other considerations may also include urban heat, water filtration and carbon sequestration of grass pitches)

The current Essential Works List also discriminates between various types of sport and recreation. It does not include construction costs for indoor facilities which provide spaces for basketball, volleyball, indoor cricket, badminton, gymnastics and others. Of particular concern is that it does not recognise the role of modern aquatic centres provide in Australia. The *Exercise, Recreation and Sport Survey* (ERASS), a joint initiative of the Australian Sports Commission and State and Territory Departments of Sport and Recreation, conducted on an annual basis between 2001 and 2010 found that the top three participation activities for the entire 10 years of the study were Walking, Aerobic/fitness and Swimming. The modern-day aquatic centre meets the community needs for both the Aerobic/fitness and Swimming. The Ashfield Aquatic Centre currently under construction is anticipated to cost in the order of \$45 million (\$65 million allowing for a one hectare site at \$2,000/m²) and attract 500,000 visitors each year. This level of participation is likely to be reached with 10-15 outdoor ovals catering to the traditional sports of cricket and soccer and football. To provide 10 ovals requires approximately 25 hectares of land (\$500 million) plus \$2 million per oval to embellish (\$20 million), being a total cost of \$520 million. The aquatic centre is not only catering to two of the top three recreational activities, it is doing so at one eighth (12.5%) of the price.

Recommendation

1. **The Planning Partnership recommends that if some form of Essential Works List is retained in the future:**
 - **there should be a clear and stated policy basis for what is considered essential and what is not**
 - **it should have regard to benchmarks for the amount and type of infrastructure required to support growth**
 - **items on list should be clearly defined and the scope of works covered by each item be clarified**
 - **the infrastructure requirements of infill development should be recognised**
 - **it should specifically address green infrastructure (i.e., open space for recreation, urban and bushland and waterways)**
 - **where items are excluded, alternate funding sources (such as grants or SIC contributions) should be identified.**

2.2 Improve councils' capacity to secure land at a lower cost

The cost of acquiring land for local infrastructure is significant and, in some cases, exceeds half the total cost of infrastructure in a contributions plan. In greenfield areas, this is often due to the extensive amount of land required for open space and stormwater management. In infill areas, the quantity of land required may be smaller but its unit cost (e.g., dollars per square metre) is typically higher than in greenfield areas.

Councils in the Western Sydney Planning Partnership are subject to high levels of financial risk when it comes to acquiring land. Although significant, the costs included in a contributions plan are often far less than the price councils have to pay when it comes time to purchase the land. This is because land prices escalate rapidly.

To address this problem, the Planning Partnerships supports the indexation of contributions rates by a bespoke land value index or the ABS Established House Price Index (Sydney) for plans that contain a substantial amount of land and where the relevant council has not already acquired most of this land.

However, we also acknowledge that indexing contributions will generally increase contribution rates and that reforms would ideally reduce developer charges as well as ensure councils have sufficient revenue to fund acquisitions.

Several councils view compulsory acquisition as an onerous process from both an administrative and cost basis. At least one Western Sydney council has a policy not to acquire land through compulsory acquisition, instead waiting for land to be offered for sale. The Planning Partnership believes that councils could acquire land at lower costs, including through earlier acquisitions, if they had enhanced capacity and capability to:

1. Borrow funds from TCorp or another financial institution to finance acquisitions ahead of receiving contributions revenue (see recommendation below)

2. Prepare strategic land acquisition programs
3. Better negotiate the complexities of the compulsory acquisition process
4. Maintain land and prohibit illegal dumping in the time between purchase and when it is required for local infrastructure.

The lack of capacity within individual councils may be partly due to the small number of transactions undertaken by each council. This could be addressed by developing capacity and capability across a group of councils.

Alternatively, the NSW Government could take a more active role in support councils to acquire land sooner and for lower costs. This could include an expanded role for the Office of Strategic Lands (OSL). Using its acquisition expertise, OSL could help councils establish priorities for land acquisition, obtain independent valuations for each parcel of land and commence negotiations with affected landowners to successfully deliver the land to councils for local infrastructure projects.

Expanding the role of OSL may also enhance efficiencies in the land acquisition process in situations where one or more NSW Government agencies require land within the same or adjacent lot as land that is required by a local council. In such cases, the land owner would only have to deal with one party, instead of two.

Recommendation

- 2. The Planning Partnership recommends that councils are supported to build capacity to secure land at a lower cost. This could be achieved by sharing resources across several councils. Alternatively, the NSW Government could take a more active role in supporting councils to acquire land sooner and for lower costs. This could include an expanded role for the Office of Strategic Lands.**

2.3 Encourage sustainable borrowing for essential infrastructure

The Issues Paper asks whether earlier land acquisition could be funded by pooling of contributions, or borrowings. Councils in the Western Sydney Planning Partnership support borrowing between contributions accounts (pooling of contributions) for purchasing land however they often don't have the funds to do so.

The use of borrowing is constrained by perceptions that Councils in the Western Sydney Planning Partnership are concerned that borrowing from TCorp or another financial institution can jeopardise their 'fit for future' standing. In some cases, councils have prioritised borrowing for other civic projects over contribution plan items.

One council has applied under the NSW Government's Low Cost Loan Initiative for a subsidy on a 10-year loan it intends to use to assist with forward-funding delivery of some infrastructure in a contributions plan. Several councils are aware of the initiative but have decided not to apply.

Recommendation

3. **The Planning Partnership recommends the NSW Government encourage sustainable council borrowing for essential infrastructure to support new growth. This could include:**
 - **Clarifying implications of borrowing on councils' fit for future standing**
 - **Confirming that contributions plans can include the interest cost associated with any borrowings for infrastructure in the plan**
 - **Government underwriting the risk in repaying borrowings.**

2.4 Refine IPART's plan assessment function

For the past decade, the Independent Pricing and Regulatory Tribunal (IPART) has been required to review certain contributions plans that propose residential contributions over a threshold amount.³

The current review arrangements are problematic for a number of reasons and have led to:

- Uncertainty for councils and developers
- Additional costs to councils (preparing applications and responding to IPART requests)
- Reliance on other funding sources
- Gaming of the system
- Geographic distortions
- Delays in approving development.

Need for an independent review

The discussion paper recently exhibited by the Department of Planning, Industry and Environment (DPIE) said that the purpose of reviewing higher-rate local infrastructure contributions plans is to ensure transparency and accountability.⁴ At other times, IPART's assessment function has been justified on the grounds of perceived 'gold-plating' of infrastructure in contributions plans. However, it is not clear that assessment by IPART is the most efficient or effective way to ensure transparency and accountability in the contributions system.

Alternative ways of enhancing transparency and accountability, or reducing the opportunities for gold-plating, may include:

- establishing clear standards or benchmark levels of provision

³ IPART assesses contributions plans that propose contributions above \$30,000 per lot or dwelling in identified greenfield areas and \$20,000 per dwelling in other areas. Some areas are exempt from review.

⁴ DPIE, *Improving the review of local infrastructure contributions plans*, Discussion Paper April 2020.

- establishing agreed asset standards for new/upgraded infrastructure
- publishing benchmark costs based on the efficient cost of meeting the required asset standards
- enhancing the accessibility of plan information (e.g. through standardised presentation of information) so that developers and other stakeholders can scrutinise plans during the statutory exhibition period.

Review thresholds

The current review thresholds are \$30,000 per dwelling/ lot in identified greenfield areas and \$20,000 per dwelling/ lot elsewhere. Importantly, these thresholds are also the cut-off point for funding of community facilities or other infrastructure that is not on the Essential Works List.

Under the current system, plans for areas with high land values are more likely to trigger the existing review thresholds, even though councils have little control over the price of land they are obliged to acquire for local infrastructure. This also means that areas with high land values are more likely to have to find alternative sources of funding for items that are not included on the Essential Works List. This is clearly not equitable.

The 'all in one' review threshold has also led councils to pursue inefficient approaches to managing development impacts. For example, one Western Sydney council removed certain stormwater management assets from a contributions plan to ensure the contribution rates did not reach the review threshold. This required the installation of many 'temporary' basins and long-term higher maintenances costs that have not been an efficient outcome.

Similarly, the policy does not recognise that the inclusion of some road infrastructure in contributions plans is to facilitate orderly development and equitably distribute the land and cost burden across the area to which the plan applies.

Earlier this year, DPIE proposed increases to the contribution thresholds. While increasing the review thresholds is welcome, it does not address the structural issues with the existing thresholds.

If, in a new system of developer contributions, an independent review role is retained, an assessment function that is triggered by contributions reaching a threshold amount, the thresholds should:

- include only works (not land) costs,
- be set for each infrastructure category (rather than all categories combined).

Further, any caps should be set with reference to the actual cost of providing the infrastructure that is required, rather than at arbitrary amounts.

Timeframe for review process and response

The IPART review process creates significant delays in the making of a new or revised contributions plan. This can, in turn, lead to delays in approving development applications⁵ and adds to the uncertainty of local infrastructure funding arrangements. While councils are held to strict deadlines for the assessment of DAs, there are no legislative timeframes for the review of contributions plans.

In its November 2019 submission to the NSW Productivity Commission, IPART reported that the review process takes an average of two years. This includes an average time period of 17 months between IPART finalising its assessment report and the applicant council receiving advice from the Minister on how to amend its plan.⁶

The Minister has recently nominated the Deputy Secretary, Greater Sydney Place and Infrastructure, to advise councils of any amendments required to the contributions plan following an IPART review. This should reduce the length of time councils have had to wait for a response however DPIE must also ensure appropriate resources are allocated to the review of IPART assessment reports and the preparation of internal advice to the Minister's delegate.

Lessons from past IPART reviews and continual feedback of findings into policy development

Over the past ten years, the largest adjustments to costs or contribution rates recommended by IPART have related to:

- the use of what it considers 'unreasonable' costing sources
- the application of allowances for cost contingencies
- methods of calculating contribution rates, including the apportionment of costs across different types of development.

These are issues that could be addressed through clearer policy guidance.

Individual councils that have submitted several plans to IPART have, over time, become more familiar with IPART's expectations on each of these matters. However, IPART's findings and recommendations do not appear to have fed into the development of NSW Government policy and guidelines. This risks councils unfamiliar with IPART's previous decisions making the same 'mistakes'. It also means that the benefit of IPART's insights are not shared with councils who have plans that do not trigger an IPART review.

Further, while IPART's reports provide robust explanations for each of its recommendations, the response from the Minister (or the Minister's delegate) only indicates which recommendations the council must address. Councils are not provided with any explanation for *why* certain

⁵ A consent authority must not determine a development application in relation to land under a Precinct Plan in the *State Environmental Planning Policy (Sydney Region Growth Centres) 2006*, unless a section 7.11 contributions plan for that land is in force. (*Environmental Planning and Assessment Regulation 2000*, cl 270A)

⁶ IPART submission to *Kickstarting the productivity conversation* discussion paper, 27 November 2019.

recommendations are supported/not supported. This is a particular concern where IPART has recommended the inclusion of certain land or works but the Minister or Minister's delegate has not agreed.

This lack of explanation also means there is no position or direction from the Minister as to how this item of infrastructure can or will be delivered.

Recommendations

- 4. The Planning Partnership recommends that the Productivity Commission consider the problems an independent review of contributions plan was trying to solve and whether the IPART review function remains that best way of dealing with any of these problems that persist.**
- 5. If an independent review is maintained in the new system of developer contributions, the Planning Partnership recommends that:**
 - **Existing review thresholds are replaced with suitable thresholds for each infrastructure category and are based on works-only (i.e., excluding land)**
 - **all parties (councils, IPART and Minister's delegate) involved in the review process be held to set timeframes.**
 - **the Minister's delegate be required to provide an explanation of why any independent recommendations are not supported**
 - **the Department of Planning, Industry and Environment commit to updating policy or relevant guidance material to address issues identified through the independent review process.**

2.5 Clarify responsibilities for providing and funding stormwater management infrastructure

The responsibility for managing stormwater is shared between private land owners, councils and state-owned corporations. The responsibilities vary by location, as well as the type of stormwater infrastructure. Strategies for managing stormwater in an urban environment may require investment in riparian land, corridor stabilisation works, detention basins, bioretention basins/ raingardens/ swales, and drainage channels.

Depending on the type and location of development, infrastructure for stormwater management is funded through one or more of the following:

- Development contributions levied pursuant to section 64 of the *Local Government Act 1993*
- Development contributions levied pursuant to section 7.11 or section 7.12 of the *EP&A Act*
- Requirements for developers to mitigate stormwater quantity and quality impacts on site (e.g., through on-site detention)

- Periodic charges on property owners levied by state-owned corporations (e.g., Sydney Water charges in the Rouse Hill Development Area).⁷

In addition to creating confusion, these funding arrangements are inequitable. In areas where contributions are levied under section 7.11 of the *EP&A Act 1979*, the stormwater component may tip residential contributions over the relevant IPART review threshold, which in turn triggers the application of an essential works list. This means that plans for these areas cannot include community facilities and these must instead be funded through council's general revenue or government grants.

Section 7.11 plans are less likely to reach the IPART-review threshold in areas where the council requires developers to provide all stormwater infrastructure through direct provision,⁸ where Sydney Water is the Trunk Drainage Authority or where stormwater is funded through contributions levied under section 64 of the *Local Government Act 1993*.

When the review thresholds "cap" were introduced, the policy did not recognise that the inclusion of stormwater, water quality and quantity devices/basins and some road infrastructure into contributions plans was not because they were "essential" but to facilitate orderly development and equitably distribute the land and cost burden across the drainage catchments and Plan. That is, these items are expected as being direct provision, but councils have included them in contributions plans in areas where there is multiple ownership, to assist all stakeholders. This purpose was lost or misunderstood when the cap was introduced, and the consequence is that social infrastructure for which development contributions were particular introduced to deliver are not being provided in lieu of items which should be direct provision.

The range of funding mechanism used also means that the costs are also borne by different parties. Notably, developers pay contributions and bear the cost of works required through direct provision. In contrast, periodic charges are borne by property owners once development is complete. Further, some charges are regulated and others are not.

The Planning Partnership is preparing a Street Design Guidelines and an Engineering Design Manual. These documents will help to achieve a better quality and more consistent approach to managing stormwater across councils in Western Sydney. However, reform of the funding arrangements to support the implementation of these documents is beyond the scope of the project.

Recommendation

- 6. The Planning Partnership recommends further work is done to clarify responsibilities for providing and funding stormwater management infrastructure.**

⁷ In 2008 the set Sydney Water's and Hunter Water's developer charges for water, wastewater and stormwater to zero.

⁸ As discussed in section 2.4, some councils have pursued direct provision of stormwater infrastructure to avoid triggering the review threshold, even though direct provision may not be the most efficient means of managing stormwater impacts. This issue could be addressed by removing or restructuring the review thresholds.

2.6 Establish a standard structure and format for all contributions plans

Practice Notes issued in 2005 and 2006 included templates for section 94 (now section 7.11) and section 94A (now section 7.12) plans, respectively. Neither template was mandatory. Some councils have used the templates with few changes since. Others never used the templates or have since updated plans to address changes to policy and local preferences. As a result, the structure and format of plans varies significantly across councils and even within some councils.

The lack of a consistent structure and format contributes to the Productivity Commissioner's observations that "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".⁹ It can also make it difficult for councils to administer plans, particularly when consultants prepared the plan or when council staff that were involved in preparing the plan are no longer employed by the council.

This problem could be addressed by creating a standard plan format and structure, possibly with certain mandatory clauses. This would minimise the need to contract technical expertise to prepare plans, make it easier for councils to administer, and make it easier for stakeholders to find the information they need.

The Planning Partnership also agrees with the Productivity Commissioner that there is a significant opportunity to take advantage of the technology that is available and use digital tools to plan for infrastructure needs. Technology can also be used to share information about what developers are required to pay.

A standard structure and format should be developed collaboratively between DPIE, councils, developers and other relevant stakeholders. The process should start with identifying the information each stakeholder requires (e.g., through focus groups) and how they would prefer to access the information (e.g., online, text based, maps etc). This will help to ensure that superfluous information is not included in a plan and that the required information is easily accessible.

Recommendation

- 7. The Planning Partnership recommends that the Department of Planning, Industry and Environment, through a consultative process involving councils and industry, establish a standard structure and format for all contributions plans.**

2.7 Consolidate contributions plans across each council, potentially into a single plan

There are currently close to 50 plans in force across the nine councils in the Western Sydney Planning Partnership. This includes both section 7.11 plans and section 7.12 plans. While most plans are for specific areas, some are for specific infrastructure types.

⁹ NSW Productivity Commission, *Review of Infrastructure Contributions in New South Wales*, p 36.

In some cases, it is unclear what plan applies to a development. Also, local policy matters that are written into individual plans (e.g., timing of payment, land dedication, indexation, credits for existing development) are sometimes inconsistent, even within the same local government area. This leads to uncertainty and administrative complexity.

Consolidating contributions plans would reduce administrative complexity and provide greater clarity about the contributions payable by development. We note that the IPART review process may provide a disincentive for councils to consolidate plans if the entire consolidated plan needs to be reviewed each time a change in one precinct occurs.

Recommendation

- 8. The Planning Partnership recommends councils be supported financially and through the publishing of clear guidance documents and/or templates to consolidate existing contributions plans, potentially into a single plan for each local government area.**

2.8 Review the appropriate percentage for section 7.12 contributions

Section 7.12 contributions operate as 'flat rate levies', meaning that they are charged as a percentage of the proposed development cost. The *Environmental Planning and Assessment Regulation 2000* sets 1% as the standard highest maximum percentage which councils can levy under a s7.12 development contributions plan. The 1% maximum was imposed when these levies were initially incorporated in the *Environmental Planning and Assessment Regulation 1979* (EP&A Act) in 2006 and the 1% was based on an equivalent system operated by the City of Sydney at the time.

Although there have been localised variations to this maximum, at no stage has the appropriateness of the 1% levy been reviewed against changing costs and community expectations regarding the provision of infrastructure.

Recommendation

- 9. The Planning Partnership recommends a review of the appropriate percentage for section 7.12 contributions.**

2.9 Develop a consistent policy on exemptions

One of the basic principles of a fair and equitable contributions system is that generally all development should make a fair contribution to the provision of infrastructure where demand is generated. There are, however, a range of situations where an exemption from contribution or the discounting of contributions may be appropriate.

There are a range of development types that are considered exempt from the payment of a contribution. Where these development types generate demand for infrastructure, the granting of an exemption may result in a funding shortfall.

The following are some observations that relate to the current system:

- There is a lack of consistency between the exemptions that apply to local and state infrastructure contributions
- Exemptions are currently set out across a range of documents including:
 - Regulations
 - Ministerial Directions
 - Environmental Planning Instruments
 - Planning system circulars
 - Individual contributions plans.
- Many of the documents are out of date and provide little direction
- The system of exemptions has not been subject to a holistic review

This makes the system confusing and difficult to navigate. A single consolidated source of information on exemptions and how they apply across the contributions system would improve transparency and simplify navigation of the system.

To further increase certainty and equity in the contributions system a consistent approach should be applied to the consideration of exemptions in the contributions system. This could be achieved by adopting a standard set of principles to guide the assessment. This should include consideration of the following:

- Social benefit provided
- Infrastructure demand created
- Capacity to pay
- Funding shortfall created and alternate funding sources available.

Box 2. Principles for exempting development from payment of contributions

Social benefit provided

Some developments are undertaken primarily to provide a community service rather than to make a profit (e.g. schools, hospitals, libraries). Usually, such development is undertaken by a government agency, but can occasionally be undertaken by private institutions.

An exemption may be considered where the social benefit provided by the development outweighs the benefit of being paid a contribution.

Infrastructure demand created

Based on the principle of equity, development should only be required to pay for that infrastructure for which it will create demand, but the infrastructure demand created by any one development will depend on each one's unique nature. In order to provide a practical system, some basic assumptions need to be

made as it is not viable to calculate the individual demand of each development. Additionally, such demand is expected to change over the life time of the development.

In this regard, most councils and the state government adopt a 'cradle to the grave' approach where it is assumed that each development will require each type of infrastructure at some stage in its lifecycle. There are, however, certain types of development for which such an assumption is not appropriate either due to the nature of the development itself or the facilities that are provided on-site. In this case, an exemption, or a partial exemption from infrastructure types certain developments are unlikely to create a demand for, may be considered.

Capacity to pay

Although the basic principle of a contributions system is that all development should contribute equally, an exemption may be considered for developments that have a limited capacity to pay as a result of their funding models and the nature of the service they are providing (e.g. non-profits, charities).

An exemption on the basis of capacity to pay is not appropriate where a development is being undertaken on a profit-making basis or for personal gain. The cost of contributions should be factored into the feasibility assessment of the development and it is not equitable for the broader community to be expected to subsidise for-profit developments.

Funding shortfall created and alternate funding sources available

When granting an exemption or discount, the implications for the funding and provision of infrastructure should be considered. It may be unreasonable to grant an exemption where the contributions forgone will undermine the ability to provide necessary infrastructure.

Recommendation

10. The Planning Partnership recommends that:

- **a consistent policy basis for the consideration of exemptions be developed**
- **the impact of the granting exemptions on the availability of funding for infrastructure be considered and where appropriate an alternate funding source identified to fill the gap created**
- **information regarding across the board exemptions be provided in a single source so it is easy to find.**

2.10 Provide funding for councils to update plans, invest in electronic contributions management systems and improve online access

The Issues Paper recognises that the local government sector faces a significant shortage of the skills required to efficiently deliver contributions plans.¹⁰ This shortage also extends to the skills and knowledge required to administer contributions plans and identify process improvements.

A simpler contributions system is likely to reduce resourcing requirements across government, not just in the local government sector. However, the transition to a new system may take several years and during that period the strain on resources is likely to be exacerbated.

Pooling of resources of across councils is one way to address skills shortages. The Planning Partnership's developer contributions project has enabled councils to come together to share knowledge and build capacity. This has been assisted through the engagement of a consultant who is providing expert technical advice throughout the project.

Financial support from the NSW Government, to individual local councils or for regionally-based projects, would assist with the transition to a new contributions system. In particular, support could be provided to:

- update and consolidate local contributions plans
- invest in electronic contributions management systems (i.e. systems that automate the process of calculating, indexing, payment, and tracking of contributions expenditure), and/or
- improve online access to plan-related information.

A dedicated fund, operationally similar to the Planning Reform Fund which was used to support the development and implementation of planning system reforms, could be established for this purpose.

Recommendation

- 11. The Planning Partnership recommends councils are provided with funding to update plans, invest in electronic contributions management systems and improve online access to plan-related information**

2.11 Provide clear and comprehensive policy guidance

Current information and requirements for contributions are set out in an array of Regulations, Ministerial Directions, Planning Circulars and draft documents. Practice notes for the preparation of s7.11 and s7.12 plans have not been updated since 2005 and 2006, respectively. Attempts have been made to update a Planning Agreements Practice Note, with the most recent draft exhibited this year, but a final version has not yet been published.

The absence of clear and comprehensive policy guidance has led to:

¹⁰ NSW Productivity Commission, *Review of Infrastructure Contributions in New South Wales*, p 53.

- Uncertainty for both councils and developers
- Extensive costs incurred to navigate the system
- IPART influencing policy decisions with exposure to only a handful of plans
- Time consuming and costly disputes in the NSW Land and Environment Court

IPART's section 7.11 contributions plans review findings and recommendations suggests that existing gaps include:

- Guidance on the how costs should be apportioned and the appropriate units of charge for each type of infrastructure for each category of development
- Guidance on the use of cost-benchmarks for infrastructure works and plan administration.
- Guidance on suitable cost contingency allowances
- Guidance on how to estimate the cost of land required for local infrastructure.

Recommendation

- 12. The Planning Partnership recommends that the Department of Planning, Industry and Environment publish clear and comprehensive policy guidance to support the implementation of a new contributions system.**

2.12 Reporting requirements

Additional reporting requirements are often promoted as a means of improving transparency, however, reporting on its own will not result in improved transparency. Unless the reporting is actively used to monitor and improve the implementation of contributions throughout the state it adds little value and places unnecessary strain on resources.

When developing a reporting system, the following should be considered:

- What are the existing reporting requirements and how are they used?
- Who the data provided under the reporting requirements is aimed at and to what extent is the expected information reasonable?
- Are there any existing reporting mechanisms that could be adjusted to achieve the same outcome?

Under current reporting requirements income, expenditure, interest earned and opening and closing balances held must be reported for each plan and planning agreements as a note to the Annual Financial Statements using the current accounting standards. This provides sufficient information regarding the financial status of contributions plans to identify whether the plan is being implemented. If this information was appropriately monitored by DPIE it is sufficient to identify those councils that may require further investigation.

The Integrated Planning and Reporting Framework is the standard reporting framework for council operations. This framework references all major corporate strategic documents with the exception

of contributions plans. If additional reporting is required as to the infrastructure provided under the plan and the delivery of items under the plan it should be incorporated into this framework rather than a separate reporting mechanism.

Recommendation

- 13. The Planning Partnership recommends that the Integrated Planning and Reporting Framework be adjusted to incorporate reporting on the implementation aspects of the contributions system – what has been provided, what is being provided and what is being planned for provision. This would assist with ensuring infrastructure planning and funding becomes integrated into the broader operations of council.**

3 Response to questions in Issues Paper

The table below provides a response to each issue / discussion question. For some items, the response references the discussion and recommendations in section 2 of this submission.

| NSW Productivity Commission Issues and discussion questions | Western Sydney Planning Partnership Response |
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| <p>Issue 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"> • The fundamentals of the existing system remain strong; however, many years of ad hoc policy changes have created a system which is difficult to navigate and administer from the viewpoint of both councils and the development industry. • Both site specific (7.11) and broader average rate approach (7.12) have merit: <ul style="list-style-type: none"> ○ The site-specific approach encourages consideration of strategic issues such as timing, scope and location of development which is key to ensuring that infrastructure is delivered where and when it is needed. It also shows that the development generating the demand is funding the infrastructure rather than it being 'subsidised' by the broader community ○ The broader average rate approach allows greater flexibility without the scope of analysis required to develop detailed site-specific plans ○ Sydney should retain the ability to choose which approach, based on what is most appropriate for the development context. • For local contributions averaging contributions for each development type across a precinct (for greenfield growth areas and renewal areas) or across an entire existing area should be encouraged. Transport and open space sub-catchments should be discouraged in the name of simplicity. Areas or types of development where developers are required to address stormwater impacts on-site should pay a lower |

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| | <p>rate and therefore sub-catchments would be appropriate.</p> <ul style="list-style-type: none"> For SIC, a single metro-wide charge may be appropriate. The current SICs and draft SICs suggest a degree of precision that is negated by large subsidies/ discounts. It is unclear what flexibility is being referenced in the last question of this issue. A contributions plan is a long-term strategic document with significant financial commitment. It is difficult to deliver certainty of delivery if the income stream is not certain. In times of economic crisis, the provision of infrastructure is often relied on to kick-start the economy. Any flexibility in such circumstances would need to consider the availability of alternate funding sources when there is the most pressure applied. |
| <p>Issue 2.1: Enable a broader revenue source for the funding of infrastructure</p> <ul style="list-style-type: none"> Are there any potential funding avenues that could be explored in addition to those in the current infrastructure funding mix? | <ul style="list-style-type: none"> Alternate funding options for local government are limited and are already subject to considerable pressure. There is benefit from some current funding options being improved to ensure they provide funds in a timely way. Care needs to be taken that pressure is not added to existing funding streams through increasing demand and cost shifting. |
| <p>Issue 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"> Planning for infrastructure should be an integral component of any strategic planning process and this should be recognised in key strategic documents e.g. LSPS, LEPs, regional plans. This should not be limited to local infrastructure Strategic infrastructure planning should include the identification appropriate funding mechanisms. Greater consistency in infrastructure funding policy would assist in enabling better integration with land use planning. |

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| <p>Issue 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 agreements? • 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? | <ul style="list-style-type: none"> • Planning agreements are a valuable tool to provide for flexibility in the delivery of infrastructure. • They are often used by developers to accelerate the approval process but if not well managed this can transfer problems to later in the process where they are harder to address. • Planning agreements should not be used to circumvent strategic planning processes and should have a clear planning purpose. • Although requiring nexus with development would restrict flexibility and innovation it would address significant probity issues. • There needs to be a consistent set for guidelines applied to both State and Local Planning Agreements to ensure transparency in the system and apply consistent expectations across the stakeholders. |
| <p>Issue 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"> • Greater consideration needs to be put into the who and why of reporting to ensure any additional requirements address legitimate concerns. • If additional reporting is required, this should be wherever possible linked to existing reporting arrangements to ease the administrative burden on councils. • The development of a consistent approach to planning registers – where they are found, the information they need to include etc would make the information easier to locate. • The use of a centralised system for planning agreement registers would enable all relevant information to be stored in the one place. Such a system would need to replace the requirements on councils rather than replicated |

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| | <p>them and it must be established in such a way as it can be easily maintained by relevant parties.</p> |
| <p>Issue 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"> Guidance on when each of the contributions system mechanisms are best used should be given – not just for planning agreements. Not all councils have the same level of experience in preparation and management of planning agreements. The practice note needs to provide sufficient guidance to ensure that those councils that rarely enter into such agreement know what must be considered especially with regard to the implementation mechanisms. |
| <p>Issue 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.</p> <p>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"> Much of the complexity in the contributions system is due to ad-hoc policy changes and additional restrictions being imposed without any evaluation of their impact. The complexity of the system is compounded by the absence of clear and comprehensive policy guidance. Too much focus is placed on the minutia of detail in the name of transparency that makes the preparation and review of plans excessively complex and the documents themselves almost impossible to read. The streamlining of existing processes would allow quicker adoption times and therefore greater certainty for all stakeholders. The expectations placed on contributions plans have become unrealistic: <ul style="list-style-type: none"> They are expected to be an ‘exact science’ and able to forecast not only population growth but also changing community expectations, fluctuations in the property market and the actual cost of construction over a 10-15 year (minimum) timeframe. |

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| | <ul style="list-style-type: none"> ○ Development industry expects to be fully reimbursed for all works they undertake whilst demanding contribution rates be kept low. ● Reduced complexity would improve understanding of the content of plans by making them easier to read. ● Councils in the Western Sydney Planning Partnership confirmed that the reasons plans are not kept up-to-date include: <ul style="list-style-type: none"> ○ Insufficient resources for review ○ The financial impact of having out-of-date plans is unknown or not monitored within council ○ Increasing cost of essential works could tip contributions over the IPART review threshold and therefore council would not be able to collect contributions for non-essential work ○ The requirement for new (including amended) plans to be reviewed by IPART. <p>Also see discussion and recommendations in section 2.6 (Establish a standard structure and format for all contributions plans), section 2.7 (Consolidate contributions plans across each council, potentially into a single plan), section 2.10 (Provide funding for councils to update plans...) and section 2.11 (Provide clear and comprehensive policy guidance) of this submission.</p> |
| <p>Issue 3.5: 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"> ● Councils have deliberately chosen the timing for payments to align with significant gateway stages in the development process to minimise financial risk. There are significant risks of non-payment associated with the delay of payment until occupation certificated stage as councils often do not find out an occupation certificate has been released until after the fact. |

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| <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 Loans Initiative? • What else could be done to ensure infrastructure is delivered in a timely manner and contributions balances are spent? | <ul style="list-style-type: none"> • There is significant lead time for infrastructure projects and the timing for payment has been set to help enable councils to have funds available to provide the infrastructure when it is needed. • Recording the contributions requirement on the property title would add significantly to the administrative burden on councils as the process of ensuring such restrictions are imposed and then removing the restrictions when they are paid will require council resources that, under the current system, are not reimbursed by the developer. <p>Also see discussion and recommendation in section 2.3 (Encourage sustainable borrowing for essential infrastructure) of this submission.</p> |
| <p>Issue 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.</p> <p>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? | <ul style="list-style-type: none"> • The use of ‘efficient costs’ is heavily focused on reducing the cost to the payee with little reference to the practicalities of providing local infrastructure. Councils often have little control over the size, location etc of infrastructure as this is established by the State Government at rezoning stage. • Infrastructure contributions increase due to increased cost of provision. The focus should therefore be on the factors that increase the cost of providing the infrastructure such as land acquisition costs, requirements imposed by other agencies (ag water quality, traffic management). • It would be more efficient to utilise the skills of IPART, not so much in the detailed review of plans but instead in the provision of quality advice in relation to specific issues that affect pricing e.g. indexation, allowances for preliminaries, contingencies etc. |

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| <ul style="list-style-type: none"> 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? | <p>Also see discussion and recommendations in section 2.1(Ensure secure and sustainable funding for essential infrastructure) and section 2.4 (Refine IPART’s plan assessment function) of this submission.</p> |
| <p>Issue 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"> The low maximum s7.12 rate is not based on robust analysis of infrastructure cost or capacity to pay and as such is not currently fit-for-purpose Councils can seek to increase the rate, however this is a complex and poorly defined process that is unpalatable to councils as it requires considerable resources, lacks clarity and is time consuming, The low maximum rate acts as a barrier to usage placing a greater burden on Councils to use s7.11 where it is not appropriate to ensure sufficient funds are available to meet the demand created. This adds significantly to the administrative burden on councils. The maximum s7.12 rate requires further investigation to ensure that it remains a viable option for the funding of infrastructure. This rate should be set based on an analysis of the cost of infrastructure proportional to the cost of development. A review of the maximum s7.12 rate should also consider: <ul style="list-style-type: none"> Whether a sliding scale of maximum should be applied based on either the cost or the type of the development – recognising that larger developments are more likely to generate greater demand for infrastructure The interaction between s7.11 and s7.12 in development consents. Currently a Ministerial Direction requires that a consent can only apply one or the other. This actively discourages councils |

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| | <p>from adopting a mixed method approach to levying e.g. s7.11 for residential development and s7.12 for commercial development and limits the application of s7.12 in areas where it may be best suited.</p> <p>Also see discussion and recommendation in section 2.8 (Review the appropriate percentage for section 7.12 contributions) of this submission.</p> |
| <p>Issue 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 broadly to fund infrastructure? • 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? | <ul style="list-style-type: none"> • Out-of-sequence rezoning should generally be discouraged as it places a burden on councils and communities for which they are not able to adequately prepare. However, if permitted there must be a commitment to fund local infrastructure at no cost to local councils as well as the commitment to state and regional infrastructure. • The use of planning agreements in out-of-sequence should be subject to the same requirements as SIC regarding out-of-sequence development • Administration of SIC should be the responsibility of a central agency with monitoring and reporting requirements that are commensurate with those that apply to the local system to ensure that it is transparent and accountable. Relevant agencies should have to report through a central agency with regard to SIC related expenditure to ensure that they remain accountable. • The administrative arrangements for Victoria's Growth Areas Infrastructure Contribution, for which funds are held in two dedicated funds, may also be suitable for the SIC in NSW. |
| <p>Issue 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</p> | <ul style="list-style-type: none"> • Biodiversity offsets are a means of offsetting the impact of development on biodiversity. They are not a means of providing green infrastructure. • The list of infrastructure included in SICs and draft is already extensive and industry has |

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| <p>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? | <p>raised concerns about the levies that have been proposed for areas within Western Sydney and elsewhere. Councils are concerned that any increases in the SIC may be accompanied by further restrictions on what can be funded through local developer contributions.</p> <ul style="list-style-type: none"> An alternative funding source may be appropriate for biodiversity offsets given the benefits of these offsets extend beyond precinct boundaries. Any such funding should have clearly defined implementation protocols to ensure that such funds are spent as intended. |
| <p>Issue 3.10: Affordable housing</p> <p>Affordable housing contributions are made on top of other infrastructure contributions. The percentages are determined individually, and each scheme must demonstrate the rate does not impact development viability.</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? | <ul style="list-style-type: none"> The Western Sydney Planning Partnership has recently engaged a consultant to provide advice on affordable housing. The main objectives of the project are to: <ul style="list-style-type: none"> Provide context for the need of affordable housing, highlighting the unique demographic and housing market circumstances of each of the following local government areas: Blacktown, Blue Mountains, Camden, Campbelltown, Fairfield, Hawkesbury, Liverpool, Penrith and Wollondilly Summarise best practice in mandatory affordable housing provision including Australian and international Provide the basis for a consistent Western City District approach in the requirement for the housing industry to provide for affordable housing across the local government areas. <p>Relevant findings could be shared with the Productivity Commission when available.</p> |
| <p>Issue 4.1: Sharing land value uplift</p> | <ul style="list-style-type: none"> In a well-functioning developer contributions system, where developers have sufficient information to estimate the amount they will be |

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| <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? | <p>required to pay, the contribution amount can be factored into the price developers are willing to offer for raw land. The effect is therefore similar to a betterment levy in the sense that it reduces the windfall gains accrued by landowners.</p> <ul style="list-style-type: none"> • A value capture mechanism should not be introduced if will in any way constrain the ability of local councils to levy contributions for local infrastructure. • There may be merit in replacing the existing Special Infrastructure Contribution (SIC) with a betterment levy. |
| <p>Issue 4.2: Land values that consider a future infrastructure charge</p> <p>When land is rezoned, there is often an increase in land 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"> • Recording the contributions requirement on the property title would add significantly to the administrative burden on councils as the process of ensuring such restrictions are imposed and then removing the restrictions when they are paid will require council resources that, under the current system, are not reimbursed by the developer. |
| <p>Issue 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"> • Land dedication under the contributions plan is one means available to councils to reduce the impact of rapidly increasing land values and is an appropriate approach for development where there are few landowners. • It is not, however, appropriate where there are fragmented land patterns as it does not address issues of equity and would not address potential funding shortfalls in such areas. • Relying on dedications may not support the orderly development of land, especially where land is held in fragmented ownership. • Councils need to consider ongoing management and maintenance of land dedication. • Several Western Sydney councils have policies on land dedications. This may be an area where greater consistency across councils could be |

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| | <p>achieved through clear guidance from the NSW Government. In particular, further guidance is sought on the application of the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> when land is required to be dedicated.</p> <ul style="list-style-type: none"> • Most councils already support pooling of contributions to acquire land. However, in many cases sufficient funds are not available. • Indexation of the land component of contributions rates helps councils avoid a revenue shortfall but it does not encourage earlier acquisition of land. • Councils have also identified issues with the processes associated with compulsory acquisition that contribute to high land costs: <p>Also see discussion and recommendations in section 2.2 (Improve councils' capacity and capability to secure land at a lower cost) and section 2.3 (Encourage sustainable borrowing for essential infrastructure) of this submission.</p> |
| <p>Issue 4.4: Keeping up with property escalation Land values (particularly within the Sydney metropolitan area) can increase rapidly and often increase on early signs of land being considered for future development; well ahead of the rezoning process.</p> <ul style="list-style-type: none"> • What approaches would most effectively account for property acquisition costs? | <ul style="list-style-type: none"> • Many councils struggle to keep plans up-to-date which contributes to potential revenue shortages when land costs are escalating rapidly. For reasons plans are not kept up-to-date see response to issue 3.4. <p>Also see comment on indexation in section 2.2 (Improve councils' capacity and capability to secure land at a lower cost) and recommendation in section 2.10 (Provide funding for councils to update plans...) of this submission.</p> |
| <p>Issue 4.5: Corridor protection Early identification of corridors has the potential to result in better land use and investment decisions. Without funds available to facilitate their early acquisition, it is likely that being 'identified' would</p> | <ul style="list-style-type: none"> • Corridor protection must be identified in a strategic plan and will require a long-term commitment to strategic directions. • Corridor protection creates an expectation that the land will be acquired ahead of time, |

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| <p>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? | <p>particularly if the corridor is identified for acquisition in an LEP. This creates the risk that acquisition could be forced upon the acquisition authority ahead of time and without adequate funding.</p> <ul style="list-style-type: none"> • If a corridor is protected for an extended period, especially as a natural reserve, the community may expect the land to be retained as open space and/or biodiversity/habitat protection. |
| <p>Issue 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 open public space? | <ul style="list-style-type: none"> • In the absence of standards for the provision of open space it can be very difficult for councils to secure enough open space for new development (let alone provide enough for existing development). • Performance criteria are welcome but should not be seen as a means of <i>constraining</i> the cost of open space. • Any NSW Government requirements for open space should have regard to the needs (demand) of the community. Standards and calculations based on demand are not mutually exclusive. • Councils must have a secure and sustainable source of funding to ensure open space standards can be met. • Infrastructure contributions an appropriate way to fund the capital (land and works) costs of public open space that meets the demand created by new development. This is consistent with the impactor-pays principle of infrastructure funding. |
| <p>Issue 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? | <ul style="list-style-type: none"> • If Sydney Water and Hunter Water charges were reinstated careful consideration should be given to the potential impact on existing arrangements. • The customer bases of Sydney Water and Hunter Water are much larger than any council's rate base. This means that the cost of servicing |

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| <ul style="list-style-type: none"> • What is the best way to provide for the funding of potable and recycled water provision? | <p>new development can be spread across a wider group, which is more equitable.</p> |
| <p>Issue 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? • Should an improved reporting framework consider the scale of infrastructure contributions collected? | <ul style="list-style-type: none"> • Councils need to have confidence that the reporting system is not overly cumbersome and that it integrates with council systems so there is no duplication of effort. • If councils are required to report to a central repository, a stocktake should first be undertaken of the lessons learned through the recently imposed requirement to lodge all development applications (DAs) through the NSW Planning Portal website. <p>Also see discussion and recommendations in section 2.12 (Reporting requirements) of this submission.</p> |
| <p>Issue 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? | <p>Problems associated with shortages of skilled professionals and lack of scale for smaller councils could be addressed through a combination of:</p> <ul style="list-style-type: none"> • sharing of resources across several councils • simplifying the contributions system (including through a standard structure and format for all contributions plans and • financial support for councils, especially in the transition to a new contribution system • publishing of clear and comprehensive policy guidance <p>Also see discussion and recommendations in section 2.2 (Improve councils' capacity and capability to secure land at a lower cost), section 2.6 (Establish a standard structure and format for all contributions plans), section 2.10 (Provide funding for councils to update plans...) and section 2.11 (Provide clear and comprehensive policy guidance) of this submission.</p> |

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| <p>Issue 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? | <p>See discussion and recommendation in section 2.9 (Develop a consistent policy on exemptions) of this submission.</p> |
| <p>Issue 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 (WIK) Agreements provide opportunities for developers to deliver infrastructure for the community much earlier than Council would often be able to achieve, as they are already constructing works on site. Councils’ policies on WIK Agreements vary. In particular, councils have different policies on how the value of works provided can be offset against requirements to make monetary contributions (e.g., some councils will only offset the value of works-in-kind against the development contribution required for that particular type of work) and how any surplus value is reimbursed/credited. This may be an area where greater consistency across councils could be achieved through clear guidance from the NSW Government. Trading credits between contributions areas may encourage WIK but adds complexity. |