



12 August 2020

Peter Achterstraat AM  
NSW Productivity Commissioner  
NSW Productivity Commission

By email:  
[ICReview@productivity.nsw.gov.au](mailto:ICReview@productivity.nsw.gov.au)

Our Ref: [REDACTED]

Dear Mr Achterstraat AM

**Final Submission to Issues Paper on Review of Infrastructure Contributions in NSW**

Thank you for the opportunity to provide a submission to the Issues Paper on the Review of Infrastructure Contributions in NSW. Northern Beaches Council supports the Productivity Commission's review and looks forward to an announcement on future stakeholder roundtables.

A draft submission was provided on 5 August. As agreed by your Senior Project Officer - Strategy, please find attached our final submission to the Issues Paper. I am grateful for the extension of time which has allowed us to report this submission to our internal Development Contributions Committee and consider the organisational wide implications of questions raised in the Issues Paper. The final submission has updated the responses to questions 3.6B, 3.9B and 4.1A.

Should you require any further information or assistance in this matter, please contact

[REDACTED]

Yours faithfully

[REDACTED]

[REDACTED]

---

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Questions	Final Response as at 12 August 2020
<b>Issue 1.1: Striking the right balance</b>	
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>A. ■ Is a 'one size fits all' approach appropriate or do parts of the State require a bespoke solution?</p>	<p>A 'one size fits all' approach may not be appropriate where there are significant variances in infrastructure demand or delivery costs; and economies of scale in terms of the size of the catchment area. The current option to impose contributions under s7.12 of the EPA Act (rather than s7.11) is a good alternative which is easier to understand and administer. Allowing a simplified alternative is supported, particularly for areas with low growth or where growth is sporadic and hard to predict. However, it is recognised that contributions derived from a fixed percentage of development costs do not reflect actual demands for infrastructure and may not be equitable. For example, developments with higher quality designs incur a higher contribution. It is crucial that any simplified option to levy contributions allows councils to collect sufficient funds to provide the required level of local infrastructure.</p>
<p>B. ■ What are the advantages and disadvantages of a site-specific calculation based on demand generated, compared with a broader average rate?</p>	<p><u>Site specific calculation (current s7.11)</u>  Advantages:  - Based on specific infrastructure needs for a catchment.  Disadvantages:  - Complicated, resource intensive to prepare and administer, subject to legal appeal as reasonableness is subjective, restricted by the IPART thresholds and essential works list.  <u>Broader average rate (current s7.12)</u>  Advantages:  - Easy to understand, prepare and administer, provides certainty to applicants.  Disadvantages:  - Difficult to levy sufficient funds to provide the level of local infrastructure expected by the community.</p>
<p>D. ■ How can a reformed contributions system deliver on certainty for infrastructure contributions while providing flexibility to respond quickly to changing economic circumstances?</p>	<p>A reformed contributions system can only deliver an appropriate level of certainty for infrastructure contributions if it is clear, transparent and applied in a manner that is predictable. To be predictable it is necessary to ensure that clearly understood indices are used to forecast changes in contributions over time. Likewise, it can only provide flexibility for changing economic circumstances where appropriate indices are used to forecast changes in infrastructure costs. The Consumer Price Index is not considered to be an accurate indexation factor for construction costs. Any new system must allow for regular review and updates to reflect those costs changing. The benefits of new and improved infrastructure to existing ratepayers in terms of land value uplifts could be shared through higher rates.</p> <p>Any contributions scheme should be clear and transparent to allow early consideration of accurate contribution payments. Infrastructure requirements and funding mechanisms must be in place prior to the rezoning of land to allow contributions to be factored into development feasibility and the purchase price of land.</p>
<b>Issue 2.1: Enable a broader revenue source for the funding of infrastructure</b>	
<p>A. ■ Are there any potential funding avenues that could be explored in addition to those in the current infrastructure funding mix?</p>	<p>A combination of mechanisms could be implemented to offer a broader range of funding sources. A low cost loan scheme could be developed which allowed for the early acquisition of land as an option to reduce the costs of providing infrastructure, the requirement for the direct dedication of land that is needed for infrastructure purposes based on pre-uplift valuations and the implementation of a special rate variation category outside the existing rate pegging system to recognise the benefits for all residents of an LGA from the uplift in amenity associated with increased infrastructure.</p>
<b>Issue 2.2: Integrating land use and infrastructure planning</b>	
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.	

A.	<ul style="list-style-type: none"> <li>How can the infrastructure contributions system better support improved integration of land use planning and infrastructure delivery?</li> </ul>	<p>State Government rezoning investigations must be tied to planning for infrastructure. Rezoning should not occur until a contributions plan is adopted and in force.</p> <p>The community expects infrastructure to be provided commensurate with growth. The current contributions framework generally results in a lag between payment of contributions and infrastructure delivery. It is important to minimise financial risks to Councils to encourage forward funding of infrastructure.</p>
<b>Issue 3.1: Principles for planning agreements are non-binding</b>		
<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>		
A.	<ul style="list-style-type: none"> <li>What is the role of planning agreements? Do they add value, or do they undermine confidence in the planning system?</li> </ul>	<p>Planning agreements are an important mechanism to deliver public benefits not contemplated in a contributions plan. Councils should have a clear policy on how and when planning agreements will be considered (particularly how a public benefit will be measured) to ensure transparency. It is important that each Council is able to measure public benefit themselves.</p>
B.	<ul style="list-style-type: none"> <li>Is 'value capture' an appropriate use of planning agreements?</li> </ul>	<p>Value capture is an appropriate use of planning agreements to ensure that the community share in the value uplift of planning decisions that were not anticipated by a contributions plan. If a contributions plan is prepared concurrent with precinct rezoning investigations, there should be no need for value capture. However, as long as the EPA act permits out of sequence or spot rezoning, value capture should be viewed as an appropriate tool to share the benefits of planning decisions.</p>
C.	<ul style="list-style-type: none"> <li>Should planning agreements require a nexus with the development, as for other types of contributions?</li> </ul>	<p>It is noted that a planning agreement does not need to demonstrate a nexus between demand and the public benefit (s7.4(4) of the EPA Act). Requiring a nexus will restrict the effectiveness of planning agreements and stifle innovative outcomes. It should be up to councils to determine if a proposed public benefit is appropriate.</p>
D.	<ul style="list-style-type: none"> <li>Should State planning agreement be subject to guidelines for their use?</li> </ul>	<p>Yes, to ensure transparency in the decision making across the various tiers of government. The preparation of guidelines to manage how a SIC is determined and administered is considered appropriate to improve transparency of infrastructure funding and delivery. DPIE's recently exhibited draft SIC guidelines are generally supported.</p>
<b>Issue 3.2: Transparency and accountability for planning agreements are low</b>		
<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>		
A.	<ul style="list-style-type: none"> <li>What could be done to improve the transparency and accountability of planning agreements, without placing an undue burden on councils or the State?</li> </ul>	<p>DPIE's recently exhibited amendments to the EPA Regulation seek to increase reporting requirements for planning agreements and are generally supported.</p> <p>To improve transparency, all planning authorities should have a clear policy on how and when planning agreements will be considered (particularly how a public benefit will be measured). It is important that each planning authority is able to measure public benefit themselves.</p>
B.	<ul style="list-style-type: none"> <li>Should councils and State government be required to maintain online planning agreement registers in a centralised system? What barriers might there be to this?</li> </ul>	<p>Council's are already required to maintain a planning agreement register. Recording all planning agreements through a centralised system such as the NSW Planning Portal is unlikely to improve transparency.</p>
<b>Issue 3.3: Planning agreements are resource intensive</b>		
<p>Planning agreements are a resource intensive mechanism but have potential to deliver unique and innovative outcomes.</p>		
A.	<ul style="list-style-type: none"> <li>Should the practice note make clear when planning agreements are (and are not) an appropriate mechanism?</li> </ul>	<p>No. Planning authorities should have flexibility to determine when they consider planning agreement are appropriate, however each Council should have a policy or guideline on how planning agreements will be considered and how a public benefit will be measured.</p>
<b>Issue 3.4: Contributions plans are complex and costly to administer</b>		
<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>		
C.	<ul style="list-style-type: none"> <li>How can certainty be increased for the development industry and for the community?</li> </ul>	<p>Rezoning investigations must be tied to planning for infrastructure contributions. Rezoning should not occur until a contributions plan is adopted and in force.</p>

<b>Issue 3.5: Timing of payment of contributions and delivery of infrastructure does</b>	
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.	
A.	<p>▪ 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?</p>
	<p>There are significant risks in the deferral of payment of contributions to the occupation certificate stage. The principal risk is escalating infrastructure costs that may not be matched by indexation and the level of security available to ensure the payment is made. Delaying the provision of infrastructure projects increases the total cost of these works due to increases in price inflation which is generally not recouped by councils where outstanding contribution payments are adjusted by CPI in many cases. This results in unfunded liabilities for councils' Capital Works Program as the cost of infrastructure delivery increases faster than the CPI. Deferring the payment of contributions increases infrastructure deficits for the community and only benefits developers.</p> <p>There is also a time lag between payment of contributions and infrastructure delivery as councils need to collect sufficient funds, plan and manage the construction of infrastructure. Based on our analysis of the recent Ministerial Direction on deferred payment, deferring the payment of contributions will generally delay payments by at least two years and result in development not supported by infrastructure.</p> <p>Additionally, there are limited options available for deferring subdivision payments without requiring financial security for the full contribution amount.</p>
B.	<p>▪ Would alternatives to financial securities, such as recording the contributions requirement on property title, make deferred payment more viable?</p>
	<p>No, as this does not address the risks of escalating infrastructure costs (creating funding liability for councils) and delaying infrastructure construction resulting in development without supporting infrastructure. Placing a restriction/encumbrance on property title for debts or contributions payment makes a future purchaser aware. The burden of payment of the debt/contributions could be required prior to (or commensurate with) the transfer of land.</p>
C.	<p>▪ 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?</p>
	<p>Support to access borrowing would assist councils with delivering infrastructure, however, other mechanisms are required due to the risk that the contributions plan will not recover the full amount to service the loan. The barrier generally for councils to access Low Cost Loans Initiatives is the highly prescriptive nature of such schemes and the timing of schemes not aligned to the timing of the occurrence of infrastructure costs.</p> <p>There is a need for the implementation of a special rate variation category outside the existing rate pegging system to recognise the benefits for all residents of an LGA from the uplift in amenity associated with increased infrastructure where contributions fall short of meeting infrastructure costs.</p>
D.	<p>▪ What else could be done to ensure infrastructure is delivered in a timely manner and contributions balances are spent?</p>
	<p>Contributions should be collected in a general pool which allows them to be allocated based on the most efficient basis to meet the infrastructure needs. It is pointless to wait until sufficient funds are collected through development contribution levies that have been pooled in specific funds and then find that sufficient funds will never be collected to meet the infrastructure planned.</p> <p>Contribution payments must be required prior to the issue of a construction certificate to ensure that Councils have enough time to collect, plan and deliver infrastructure commensurate with development.</p>
<b>Issue 3.6: Infrastructure costs and contributions rates are rising</b>	
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.	
B.	<p>▪ 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?</p>
	<p>If the essential works list is maintained it should be expanded to include, at a minimum, the construction of community facilities (including libraries) and the undergrounding of regional utilities. While this infrastructure may not be classified as enabling infrastructure, it is considered essential to create liveable and connected communities. If the essential works list is updated to include this additional infrastructure, the current IPART review of contributions plans above the threshold will ensure that contribution rates are reasonable.</p>

<b>Issue 3.7: The maximum s7.12 rate is low but balanced with low need for nexus</b>		
Section 7.12 local infrastructure levies are low and do not reflect the cost of infrastructure.		
A.	▪ 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?	If s7.12 thresholds were increased, infrastructure provision would increase resulting in improved amenity and benefits for the community.
<b>Issue 3.8: Limited effectiveness of special infrastructure contributions</b>		
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.		
A.	▪ Is it appropriate that special infrastructure contributions are used to permit out-of-sequence rezoning?	No. If a developer wishes to progress development ahead of the timeframe anticipated by the rezoning investigations and contributions plan, they can facilitate this via a planning agreement to deliver works-in-kind.
B.	▪ Should special infrastructure contributions be applied more broadly to fund infrastructure?	Yes. A SIC should fund all identified regional infrastructure improvements generated by a development to ensure adequate infrastructure is provided commensurate with growth.
C.	▪ Should they be aligned to District Plans or other land use planning strategies?	Yes, there should be alignment with the District Plans and Regional Strategies for a fully integrated land use and planning framework to be achieved.
<b>Issue 3.9: Difficulty funding biodiversity through special infrastructure contributions</b>		
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.		
A.	▪ Should implementation of special infrastructure contributions for biodiversity offsets be subject to a higher level of independent oversight?	Council supports independent oversight on the implementation of SICs for biodiversity offsets. With the many competing interests associated with development precinct planning, it is our experience that insufficient funds may be attributed to local biodiversity offsets resulting in diminished environmental outcomes.
B.	▪ Are special infrastructure contributions the appropriate mechanism to collect funds for biodiversity offsetting, or should biodiversity offsets be managed under a separate framework?	Council supports the use of SIC funds for biodiversity offsetting. Whilst it is recognised that biodiversity offsets are managed under the new Biodiversity Offset Scheme framework (including Biodiversity Certification), SIC funds provide an appropriate mechanism to acquire land in order to establish local offsets. In the absence of such arrangements, biodiversity offset obligations are more likely to be resolved with payment to the NSW Biodiversity Conservation Trust, resulting in offsets distant to the local area. Councils and communities are more likely to accept local offsetting arrangements. SIC funds attributed to biodiversity are also needed to address environmental restoration works for lands set aside or dedicated to councils (e.g. riparian/wildlife creek line corridors). It is Council's experience that insufficient funds are set aside for initial mitigation and restoration works (e.g. creekbank stabilisation, removal of contamination, revegetation) of riparian corridors that are dedicated to Council. As a result, Council's may inherit substantial financial liabilities when taking care and control of riparian corridors which often do not qualify as biodiversity offsets (e.g. as they are cleared or disturbed and not meeting offset site standards). SIC funding should also be available for emissions offsetting.
<b>Issue 3.10: Affordable housing</b>		
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.		
A.	▪ Is provision of affordable housing through the contributions system an effective part of the solution to the housing affordability issue? Is the recommended target of 5-10 per cent of new residential floor space appropriate?	Yes, affordable housing is levied at the up-zoning stage so it is a value capture mechanism, unlike standard development contributions. The 5-10% figure was identified by the Greater Sydney Commission on the basis of their work across Sydney. It's a rough guide only. The actual amount should be based on the degree of uplift given. In some cases this will be more than 5-10% and in some cases less. If we were to apply a standard contributions approach, in addition to up-zonings, all new development should contribute a percentage to affordable housing, at a much lower rate. We would argue that this is appropriate given that demand for such social infrastructure will increase as a result of new development.
B.	▪ Do affordable housing contributions impact the ability of the planning system to increase housing supply in general?	Affordable housing contribution rates are generally only applied if viable. If unviable, they will not be applied to a development therefore should not have any impact on housing supply.
<b>Issue 4.1: Sharing land value uplift</b>		

<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. There are several</p>		
A.	<ul style="list-style-type: none"> <li>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?</li> </ul>	<p>Value capture through options such as a betterment levy is supported in principle. This will capture a percentage of the increase in land values resulting from planning decisions. Any value capture mechanism must consider the timing of when a levy is imposed and when the payment is realised to capture developers who attempt to purchase land ahead of rezoning or planning announcements.</p>
<p><b>Issue 4.2: Land values that consider a future infrastructure charge</b></p>		
<p>When land is rezoned, there is often an increase in land values as a result of the change in development potential.</p>		
A.	<ul style="list-style-type: none"> <li>Should an "infrastructure development charge" be attached to the land title?</li> </ul>	<p>An infrastructure development charge could be attached to land titles which is derived from the difference between pre and post zoning land values to measure value uplift. This would need to factor in the rate of return for development.</p>
<p><b>Issue 4.3: Land acquisition for public infrastructure purposes</b></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>		
A.	<ul style="list-style-type: none"> <li>If supported, how could direct dedication be implemented? How could this be done for development areas with fragmented land ownership?</li> </ul>	<p>Direct dedication off a subdivision plan at the time of subdivision registration should be the first option if possible. Earlier land acquisitions could be funded by pooling contributions or forward funding however this still includes an element of risks for councils.</p>
B.	<ul style="list-style-type: none"> <li>Could earlier land acquisition be funded by pooling of contributions, or borrowings?</li> </ul>	<p>The impact of land valuation increases over time could be reduced by pooling of contributions or borrowings. However, mechanisms must be put in place to ensure councils will have sufficient funds to meet the balance of infrastructure including any loan repayments.</p>
<p><b>Issue 4.6: Open space</b></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>		
A.	<ul style="list-style-type: none"> <li>How can performance criteria assist to contain the costs of open space?</li> </ul>	<p>A performance based approach can help ensure the efficient delivery of infrastructure and that open space will be fit for purpose. It is still vitally important that there is sufficient open space to meet demand, even if the 2.83 hectare/1000 people standard is no longer strictly adhered to. Acquisition of additional land will continue to play a part in providing sufficient open space.</p> <p>A move to a performance based approach must be accompanied by a change to the current IPART requirements on what types of infrastructure councils can levy for if they are above the IPART threshold. Currently anything above basic embellishment cannot be funded through an IPART reviewed contributions plan, however the level of service expected by the community (particularly in infill sites) is higher than what can be provided by this standard.</p>
		<p>For example, a modern major centre plaza or public area is often seen as respite from multi story buildings and hard surfaces. A key way to deliver respite, minimise urban heat island effect and make the area more commercially viable and liveable is through the introduction of water elements. Under current IPART requirements, water features are not able to be funded.</p> <p>Similarly, the planting of mature trees is essential to the success of new town centres, however the best practice approach of planting them in repositories to protect infrastructure and give them the best opportunity to grow a healthy canopy cannot be funded through current IPART reviewed contributions plans.</p> <p>From a recreational view point there is significant demand for indoor sport court space which again cannot be funded under current IPART requirements, placing undue strain on councils to fund this infrastructure via alternate sources or leaving this infrastructure unfunded.</p>
B.	<ul style="list-style-type: none"> <li>Should the government mandate open space requirements, or should councils be allowed to decide how much open space will be included, based on demand?</li> </ul>	<p>Open space requirements should not be mandated. Most councils are best placed to determine their own open space requirements, which could be guided by state government guidelines.</p>
C.	<ul style="list-style-type: none"> <li>Are infrastructure contributions an appropriate way to fund open public space?</li> </ul>	<p>Yes. The importance of open space has been demonstrated most stridently through the recent COVID-19 pandemic. If councils were required to fund open space from working capital or reliance on grants alone, they could not meet this essential community need. Consideration should be given to expanding the criteria of SICs to include regional open space acquisition and embellishment.</p>
<p><b>Issue 4.8: Improving transparency and accountability</b></p>		
<p>There are limited infrastructure contributions reporting requirements.</p>		

A.	<ul style="list-style-type: none"> <li>What would an improved reporting framework look like? Should each council report to a central electronic repository?</li> </ul>	<p>Reporting is not the underlying issue. The underlying issue is the ability to ensure contributions meet infrastructure costs.</p> <p>Councils are already required to report on development contribution income and expenditure in their annual financial reports in accordance with the EPA Act and Office of Local Government requirements. This information is also subject to audit by the Office of the Auditor General. Collecting this information in a central register is unlikely to improve transparency.</p>
<b>Issue 4.10: Current issues with exemptions</b>		
<p>Exemptions from contributions are complex as they are set out across a range of planning documents and are inconsistent across contribution mechanisms.</p>		
A.	<ul style="list-style-type: none"> <li>Given that all developments require infrastructure, should there be any exemptions to infrastructure contributions?</li> </ul>	<p>Exemptions to infrastructure contributions should not be mandated, however councils should be able to include exemptions in their contributions plans if they choose.</p>
<b>Issue 4.11: Works-in-kind agreements and special infrastructure contributions</b>		
<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>		
A.	<ul style="list-style-type: none"> <li>Should developers be able to provide works-in-kind, or land, in lieu of infrastructure contributions?</li> </ul>	<p>Yes, this is an important mechanism to facilitate development and improve outcomes for the community.</p>
B.	<ul style="list-style-type: none"> <li>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?</li> </ul>	<p>No, this would further complicate the infrastructure funding framework. What would be the benefit of trading for a works-in-kind credit if you can simply pay an equivalent monetary contribution? There would be little incentive for developers to accrue works-in-kind credits if there is no market to trade them.</p>
C.	<ul style="list-style-type: none"> <li>What are implications of credits being traded to, and from, other contributions areas?</li> </ul>	<p>This would make it more difficult for councils to forecast cash flow and manage infrastructure planning/delivery.</p>