



7 August 2020

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Our Ref:

Dear Mr Achterstraat

EXHIBITION – ISSUES PAPER ON THE REVIEW OF INFRASTRUCTURE CONTRIBUTIONS IN NEW SOUTH WALES

Thank you for the opportunity to provide feedback on your Issues Paper on the Review of Infrastructure Contributions in New South Wales.

The Issues Paper raises some valid and important questions with respect to the contributions framework within NSW and Council looks forward to being further involved as part of your review and as part of the preparation and implementation of any future reform to the infrastructure contribution system.

The comments provided herein are principally based on previous submissions and resolutions of the Hills Shire Council. Unfortunately the deadline for submissions has not provided sufficient time for the Elected Council to consider the questions or formulate detailed responses. In order to obtain more formal input from Council, it is recommended that as part of any future engagement, the Commission allows for a longer timeframe to provide submissions. Notwithstanding this, comments on the Issues Paper are included as Attachment 1 of this letter.

Please also find attached Council's recent submission to the Department of Planning, Industry and Environment on their Review of the Contributions Framework.

We would be happy to meet with the Productivity Commission to discuss any of the matters raised within this submission, and the operation of the contributions framework based on Council's extensive experience with Greenfield release areas and infill developments. If you have any questions in relation to this matter please contact

Yours faithfully



Attachment 1: Responses to Discussion Paper Questions
Attachment 2: Submission to DPIE – Review of Contributions Framework



Issue 1.1: Striking the right balance

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.

- *Is a 'one size fits all' approach appropriate or do parts of the State require a bespoke solution?*

Whilst a one size fits all approach would be simpler to administer, it is not considered to be practical. Areas undergoing substantial growth generally require a bespoke solution. The extent of growth, availability of infrastructure, demand for new and augmented facilities, deliverability of infrastructure and land costs vary greatly depending on the location.

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

Site specific (precinct specific) calculations have regard to the population growth, infrastructure demand and delivery, uptake and land value. This is especially relevant for areas undergoing mass urban transformation where substantial development and infrastructure delivery will occur. Within these locations nexus between demand and supply of infrastructure can be more easily established. However, it is noted that within urban infill locations which are transitioning to high and medium density transit centres, the identification and delivery of infrastructure is quite difficult as it requires substantial retrofitting of existing infrastructure. For locations which are not subject to substantial development pressure, where development is more gradual and sporadic, average rates could be considered, although under the current legal framework a nexus giving rise to the contribution would still need to be demonstrated.

It is also noted that within locations undergoing substantial urban growth, such as land release areas and urban infill locations, the delivery of essential infrastructure requires considerable land acquisition for roads, parks, playing fields, water management and community facilities. The cost of acquiring this land forms a substantial portion of the overall cost of a contributions plan. These land costs are extremely variable, even between adjoining local government areas, and can escalate quite quickly, depending on market conditions. Quite often when Council prepares a contributions plan the land value assumptions which underpin the plan are already out of date before the plan has been finalised. Applying average rates, such as land values would not be practical or reasonable and would ultimately impact on the end of plan balance.

- *Do other jurisdictions have a better approach to infrastructure funding we should explore?*

Council does not have a position on this matter.

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

A reformed contributions system should endeavour to strike a reasonable balance between the competing goals of certainty and flexibility. Ultimately, this balance can be improved by delivering the following:

- **Contribution Rates are Fair, Reasonable and Justifiable (Clear Nexus and Apportionment)**
There should be an appropriate level of transparency with respect to the determination of contribution rates. This will facilitate greater industry and community acceptance of infrastructure charges. Areas undergoing high population growth require substantial investment in infrastructure (both local and regional). The provision of this infrastructure is essential to ensuring an appropriate quality of life of future residents. Contributions

rates are frequently a source of aggravation for developers who see these contributions as an excessive and unreasonable cost to development. The broader community also incorrectly perceives these levies as Government gouging. Greater community understanding of the importance of local infrastructure, especially within land release and urban infill locations, would assist in addressing this confusion.

- **Align Infrastructure Delivery and Population Growth**

Council receives frequent complaints from residents about the slow delivery of infrastructure within growth precincts. Early in the life of a contributions plan most of the funds are allocated toward the acquisition of land. This results in a substantial delay in the delivery of capital infrastructure. This often causes extreme frustration for residents who move into a precinct without key infrastructure being available such as playing fields, parks and upgrades roads. Early acquisition of land and delivery of key infrastructure would address this issue, albeit this will further increase the cashflow requirement at the start of a plan which needs to be considered as a separate matter. However it is noted that under the current framework there are restrictions on Council's capacity to undertake this scale of forward funding as it places a substantial cashflow burden on Council. Forward funding of infrastructure requires Council to borrow funds which is difficult for Councils which have a 'no debt' position.

- **Certainty of Infrastructure Costs**

The cost of infrastructure delivery (including capital and land cost) increases considerably over time. In the absence of actual costs, the cost estimates within a plan are only ever estimates and are subject to significant variation. Development contribution rates could become much more certain and less prone to variation over time if infrastructure could be cash-flowed to occur early in the development phase, rather than after sufficient contributions have been received. This would also ensure increased value for money with land acquisition and construction costs and promote orderly development by ensuring infrastructure is delivered prior to, or in line with development (rather than after the development has occurred).

Direct contribution plans are underpinned by a substantial number of assumptions such as uptake, land and capital costs, indexation, and delivery timeframes. These assumptions, whilst necessary, create uncertainty. By having actual costs, this provides administrators and the community with certainty as there is a clear link between the contribution amount and the infrastructure which has been delivered. It would also reduce incidences of substantial end of plan deficits and/ or surpluses.

- **Timely Preparation and Review of Contribution Plans**

In order to ensure that the system can adapt to changing economic circumstances, the timeframe for preparing and reviewing contributions plans needs to be substantially reduced.

The length of the IPART and Ministerial review process is lengthy and can make plan review a slow and arduous process which limits flexibility. The Hills Council has had a number of plan amendments reviewed by IPART, with an average timeframe of 8 months (for the IPART review process) and a further 9 months following this to receive directions from the Minister. These timeframes, in addition to the time taken for Council to prepare, report and publicly exhibit a Plan, means that a simple review of a contributions plan can now take in excess of 1-2 years. This is simply too long and limits the ability for a plan to respond quickly to changing economic circumstances.

There is also currently an over-emphasis on perfect technical outcomes and apportionment which hinders the timely and efficient preparation of contributions plans and certainty for stakeholders, with very minimal difference resulting in subsequent contribution rates. Feedback should be obtained from industry bodies to determine

whether their preference is for absolute technical perfection or simplicity, transparency and timeliness.

It is suggested that councils be permitted to update IPART reviewed contribution plans to reflect actual costs of items, without having to go through an IPART review/ approval process. These updates would not change the scope of infrastructure being delivered, the yield projections or financial assumptions within the plan. Rather, the update will ensure that the in-force plans include the most up-to-date and accurate information without unnecessary delay. It is noted that this would not replace periodic whole of plan reviewed which ultimately would need to be reviewed by IPART.

- **Promote Innovative Infrastructure Solutions**

The contribution framework should promote innovation and cost efficiency and not restrict or undermine Council's capacity to put in place creative solutions to meet the demand for infrastructure. Comments raised with respect to the restrictive nature of the essential works list are discussed under Issue 3.6.

- **Early Identification of Infrastructure**

Infrastructure planning (both regional and local) should occur early in the master planning process. By the time that land is rezoned, the required infrastructure should be known, with a funding mechanism clearly identified. This will ensure that by the time that development occurs there is clarity on infrastructure requirements, infrastructure costs and contributions. It has become normal practice for the Department of Planning, Industry and Environment to rezone precincts in advance of completing adequate infrastructure planning and analysis. This leads to lag time between rezonings occurring and contributions plans taking effect (often in excess of 12-24 months), which results in infrastructure deficits, uncertainty with respect to infrastructure outcomes and locations, uncertainty with respect to contribution rates, higher costs for infrastructure delivery and inability for developers to proceed with development, despite rezonings being finalised.

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

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

Government funding or infrastructure agency to forward fund or deliver all infrastructure, with contributions plans simply reimbursing actual costs over time. Absolute certainty of contribution rate, most cost efficient method of delivering infrastructure, best planning outcome as infrastructure delivered on time and in-line with new communities arriving in the area.

Consideration should also be given to the recurring costs of infrastructure delivery, maintenance and replacement. The Issues Paper notes that '*Rates revenue funds service delivery for the existing community including recurrent costs that cannot be recovered through infrastructure contributions. The rate peg, however, acts as a financial disincentive for councils to accept development. In its presence, their rates revenue does not rise as population and land values increase. This contrasts with the both State and the Commonwealth, which are both able to expand their revenue with rising population and asset prices*'. This position is strongly supported.

As was mentioned within Council's submission on the NSW Productivity Commission's Discussion Paper - 'Kick-starting the Productivity Conversation', the rationale of rate pegging to ensure costs are controlled and to manage local government costs within limits is recognised. However greater flexibility is needed to better reflect the costs being borne by councils and respond to challenges in delivering the service levels sought by residents. In the long term Council will continue to face challenges in funding increased levels of service in new areas unless an adjustment to Council's income base is achieved with certainty. For any Council, the process of seeking a Special Rate Variation is onerous and time consuming with no certainty that favourable consideration will be given by IPART.

Each council has unique efficiency levels and clearly any removal of pegging would require careful management and accountability which, is ultimately provided by local government elections every 4 years. The Hills Shire Council is one of the most competitive, financially responsible and high performing in the State and would welcome the opportunity to contribute our expertise to progress this conversation, we would also encourage a critical examination of the costs shifted onto local government by other levels of government.

Issue 2.2: Integrating land use and infrastructure planning

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.

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

Land should not be rezoned without a contribution plan or infrastructure funding mechanism being in place. The current framework under the Environmental Planning and Assessment Act 1979 permits a precinct to be rezoned without a contribution plan or DCP being adopted. Whilst provisions can be included in planning instruments to ensure that consent cannot be granted until a DCP is in place, the same arrangement does not apply to Section 7.11 contribution plans.

All precincts undergoing substantial urban growth should be subject to a special infrastructure contribution. The need to consider regional infrastructure, along with local infrastructure, early in the life of the master planning process is absolutely essential. Once a precinct is rezoned, it is very difficult to identify solutions and funding mechanisms for regional infrastructure, such as schools and regional road upgrades.

There also needs to be increased cooperation between State and Local Government to acquire land and deliver infrastructure early in the life of contributions plan. This will result in substantial costs savings within the plan, will provide certainty of costs, and will ensure that adequate infrastructure is available when residents move into a growth precinct.

The current system is setup to defer payments until as late in the process as possible, to assist with developer cash flows. While this may assist in development delivery, it means that councils are in a position of needing to either forward fund infrastructure using general revenue or delay delivery of infrastructure until contributions income has been received. This outcome is detrimental to existing communities who in-effect are being asked to subsidise the cost of money flowing into new developments out of which they will receive no dividend in return. The latter option means that new communities will already be living within a release area, without the infrastructure which has been planned to service them.

Issue 3.1: Principles for planning agreements are non-binding

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.

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

It is generally preferred for infrastructure contributions to be established through an adopted contributions plan which accounts for the overall growth within a locality, infrastructure requirements, projected land and capital costs, and apportionment. However, there are circumstances where this is simply not practical, such as site specific rezoning within locations

where master planning has not been completed or development applications which propose an outcome which was not anticipated under an applicable contributions plan. In these circumstances a site specific funding mechanism (VPA) is required. This is not the preferred approach as it generally pre-empts the outcome of the broader precinct-wide master planning. However, as long as the planning system permits and encourages site-specific developer-initiated planning proposals to proceed in advance of adequate precinct planning and infrastructure analysis, there will be a need for a VPA mechanism (or similar) to address infrastructure demands.

Negotiating contributions through planning agreements is not an exact science and often requires planning authorities to make numerous assumptions on broader growth, infrastructure requirements and costings, to ensure that a developer is making a fair and reasonable contribution. This ultimately creates uncertainty in the planning system as it enables certain development to bypass broader precinct planning process based on a contribution which may, or may not, be adequate.

Nevertheless planning agreements do have a role in the planning and development system. In order to ensure that confidence in the planning system is not undermined, the negotiation of these agreements needs to be transparent and needs to follow clear processes, procedures and considerations to ensure all parties act in an appropriate and accountable manner. VPAs also provide a mechanism to deliver critical but 'non-essential' infrastructure such as community buildings and/or libraries.

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

When establishing a fair and reasonable contributions there should be a demonstrable connection between the public benefit being offered (whether work, land or monetary contribution), the projected increase in demand for infrastructure, and the apportionment of this demand attributed to the development under assessment. When this connection is established a planning authority, and the broader community, can clearly establish whether an offer is appropriate.

Contributions which are based on 'value capture' may create an artificial incentive for planning authorities to maximise the achievable density on a site in an effort to maximise contributions, without establishing an adequate connection between the increased demand and additional infrastructure required to service the growth.

Even where 'value capture' mechanisms are applied, it is critical that the 'user-pays' approach to infrastructure contributions is maintained, with the value of contributions captured relative to the demand for additional infrastructure which results from a particular development, upzoning or event.

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

The nexus requirements for planning agreements should not need to be as strong as the requirements which underpin 7.11 contributions plans. However there should be some connection between the increase in demand resulting from a development, the contribution (public benefit) being offered, and the likely infrastructure to be delivered to meet the demand. The reason for this is that planning agreements often support proposals which pre-empt broader precinct planning, or simply propose a development outcome which was not anticipated within any applicable contributions plan. Accordingly, establishing a clear and definitive connection between demand and infrastructure items may not be possible, as broader precinct planning has not been completed.

Any review of this section of the contribution framework should ensure that VPAs continue to be a tool to facilitate the delivery of public and community benefits which are 'outside-the-box' (i.e. not previously anticipated). Completely removing this option from the contribution system could restrict opportunities for innovative outcomes. Additionally, in a competitive marketplace, a developer/

proponent should be entitled to be able to access a mechanism which allows them to distinguish their development from others.

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

Determination of State planning agreements should be subject to the same level of transparency as local planning agreements. Accountability and transparency should not only be restricted to the negotiation of local planning agreements.

Issue 3.2: Transparency and accountability for planning agreements are low

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.

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

The State Government's recent draft changes to the Environmental Planning and Assessment Regulation to require planning authorities to provide additional reporting and accounting information for planning agreements are considered to be reasonable. As it stands, all Council VPAs are publicly exhibited and reported to open meetings of Council.

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

There is merit in the State Government maintaining an online planning agreements register. However, there must be clear quality control over this centralised register to ensure that it is current and up-to-date and that this does not become another cost and compliance burden shifted to Local Government.

Issue 3.3: Planning agreements are resource intensive

Planning agreements are a resource intensive mechanism but have potential to deliver unique and innovative outcomes.

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

The practice note should provide examples of when planning agreements could be considered. However it should not be definitive. Each Council should retain discretion as an elected planning authority and could clearly articulate within a Voluntary Planning Agreement Policy when a Voluntary Planning Agreement will be considered.

Issue 3.4: Contributions plans are complex and costly to administer

Contributions plans can be opaque, making it hard for developers to calculate a potential contribution liability and the community to know what infrastructure it can expect and when. Many plans are not updated in a timely manner, leading to issues with cost escalation, outdated assumptions, and difficulty meeting community infrastructure needs. Some councils have significant contributions balances, indicating there may be barriers to timely expenditure.

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

The current IPART review process is quite cumbersome and can substantially increase the overall timeframe for preparing and implementing a contributions plan. The Hills Council has now had 11 plans/amendments reviewed by IPART, with an average timeframe of 8 months (for the IPART review process) and a further 9 months following this to receive directions from the Minister. These timeframes, in addition to the time taken for Council to prepare, report and publicly exhibit a Plan

amendment, means that a simple review of a contributions plan can now take in excess of 1-2 years, which is simply too long.

It is recognised that the intended objective of IPART's involvement in the review process is to ensure that infrastructure identified within contributions plans is appropriate and that cost estimates and subsequent contribution rates are reasonable. However, based on past experience, the length of the process only serves to create uncertainty for Council, landowners and the community and hinder Council's ability to progress with the delivery of local infrastructure to support development. Council's experience is that IPART's assumptions of costs, particularly early in the life of the Plan, end up resulting in an underestimation of actual costs. This creates additional risk to providing the necessary infrastructure to support new communities.

The scope and level of detail involved in the IPART review process has incrementally increased over the past 5 years, to the point where it is now a significant resource and cost impost to Council. In part, this is due to IPART duplicating existing auditing and quality control processes, despite Council already complying with extensive legislative requirements under the EP&A Act (relating to nexus, reasonableness of contributions and the process for preparing a contributions plan) and financial auditing and reporting requirements under the Local Government Act.

Quite often the turnover of staff and IPART's process of undertaking a holistic review of a Plan each time it is submitted (rather than just receiving a specific amendment) has resulted in significant delays in the review process. It requires Council to allocate a substantial amount of staff time to respond to the same/similar questions from IPART on multiple occasions. It also results in inconsistent findings and recommendations from IPART (often with IPART making different recommendations with respect to elements of a plan which were unchanged between subsequent IPART reviews).

Improving the IPART review and Ministerial assessment process should address the following matters:

- **Assessment Timeframes:** The current IPART and Ministerial review process can add between 12-24 months to the time taken for a Council to prepare and finalise an amendment to a contribution plan, which is simply too long.
- **Time lag for Council to update plans to reflect accurate costs:** During the IPART/Ministerial Review process, it is difficult for Council to make further changes to costs in the Plan without significantly prolonging (or restarting) the assessment process. This creates a scenario where Council may be unable to reflect critical factors such as updated land acquisition rates/cost, updated actual costs incurred or more detailed cost estimates for capital works items within an updated and adopted contributions plan (and adjust the contribution rate accordingly), for a period of up to 4 years. This is particularly problematic with respect to escalating land values, with evidence from Council's Balmoral Road Release Area indicating that over some periods of the development cycle, the cost for Council to acquire land has more than doubled over a 4 year period. For this reason it is recommended that Council be given the power to update the plan to reflect actual costs as discussed in 1.1 above.
- **Targeted Reviews:** Where a Plan has already been assessed by IPART and endorsed by the Minister, IPART should focus only on the elements of the Plan which are being amended, rather than holistic review of every element of a contributions plan each time it is submitted;
- **Assessment Criteria:** IPART should have a consistent set of criteria for assessing contribution plans. Inconsistency in the assessment process and the resulting recommendations complicates the assessment process and extends the assessment timeframe. Where IPART releases guidelines or technical advice for Councils, it is imperative that IPART then stands by this advice and applies it consistently. For example,

IPART's Local Infrastructure Benchmark Costs (April 2014) recommends that 'Councils use the benchmark costs as a guide in developing cost estimates for the purposes of levying infrastructure contributions. The onus is on councils to justify any deviation from the benchmark costs'. However, IPART's recommendations now frequently dispute Council's use of IPART's own benchmark costs, instead requiring Councils to fund and prepare more accurate cost estimates from Quantity Surveys or comparable actual costs simply to pass through the IPART review process.

For new contribution plans, Councils should be able to establish strategic cost estimates which utilise IPART's published benchmark rates, without being questioned by IPART on the application of these rates. It is simply not reasonable for IPART to expect Councils to have detailed cost estimates for items within new contribution plans.

- **Nexus within State Government Release Areas and Precincts:** Council has a number of contribution plans that service release areas where the precinct planning was undertaken and implemented by the Department of Planning, Industry and Environment. In these cases, Council is essentially provided by the Government with a list of local infrastructure to be provided, as an outcome of the Department's Precinct Planning process. The contributions plan then seeks to deliver this infrastructure list. It is completely unreasonable in such circumstances for IPART's assessment to then recommend that Council delete infrastructure items from a plan, as this directly contradicts and prevents the achievement of the planning, development and infrastructure outcomes established through the extensive and in-depth Precinct Planning Process completed by the Department. This places Council in the unreasonable position of needing to justify outcomes already established by the State Government, in order to progress through a State Government-imposed review process, or being unable to implement the planning outcomes expected by the Department (and the community).
- **Strategic Cost Assessments:** For new contribution plans IPART frequently raises concern with Council's strategic cost estimates for infrastructure items, and recommends revised costings which are unreasonably low, without any real justification for why the lower costs proposed by IPART are reasonable or accurate. In order to demonstrate that these recommended costings are unreasonable and that they would result in a substantial shortfall in the funds required to deliver the infrastructure, Council is then required to procure detailed concepts (often 80-100%) and Quantity Surveys which, as a result of the need for Council to submit additional information (or accept unreasonably low costs which will result in a funding deficit), can extend the IPART assessment process by 6-12 months. Even once these documents are prepared, Council continues to receive questions on individual line items within the independent Quantity Survey.

Furthermore, IPART often recommend much lower contingency rates than what is contained within Council's procured costings. This once again results in a substantial underestimation of infrastructure costs. It is recommended that should IPART recommend Council to engage a consultant for detailed costings, it should also accept costing in full including contingency, not just the base cost plus IPART's own contingency rates.

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

Greater use of assumptions, benchmarks and simpler averaging and apportionment of costs may result in marginally higher rates and less technically optimal calculation of apportionment between individual development sites. It would however lead to shorter timeframes, greater certainty for stakeholders and most likely, lower infrastructure delivery and resourcing costs (which could then be reflected in actual costs and flow through to lower contribution rates).

Simpler plans with more frequent, faster and simpler reviews would likely protect against the potential consequences of reduced complexity. For example, a standard/typical contribution plan review process takes in excess of 24 months from start to finish. If this could be shortened

to potential a maximum of 6 months, then reviews could be undertaken frequently (annually or bi-annually) with the most accurate information being included within a plan at least every 24 months.

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

Increase the amount of costs within a contributions plan which are based on actual/known outcomes. For example, acquire land and deliver infrastructure early in the life of the plan or as part of precinct planning rezoning. This will enable Council to include actual costs within the plan and would mean that land costs were as low as possible and not subject to market increase/fluctuations over time (this would flow into the same impacts on the contribution rate). The current framework limits Council's capacity to do this. However, as mentioned previously, under the current framework there are considerable restrictions on the capacity of local government to undertake this scale of forward funding as it places a substantial cashflow burden on councils.

Certainty will also be increased if Council can undertake more frequent and streamlined reviews of plans. In order for this to occur, the IPART and Ministerial review process needs to be reduced, and become far less resource intensive.

Simpler plans, potentially at the expense of the most technically optimal apportionment and cost estimate outcomes, will greatly assist as it will enable plans to be prepared/ reviewed in a timely manner and reviewed simply and frequently. Consideration could be given to removing IPART from the process and put the released resources back into the Department of Planning, Industry and Environment to assist councils plan for and deliver infrastructure. A process could be implemented with the Department quality checking and the Land and Environment Court dealing with inappropriate conditions.

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

- *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?*

Ideally the delivery of infrastructure should roll-out in-line with population growth. However, in practice there is a lag between when contributions are paid and when infrastructure is ultimately delivered. The reason for this is that it takes time for sufficient funds to be collected, and for the infrastructure to be designed, approved and constructed. To address this most plans require contributions to be paid at the construction certificate or subdivision certificate stage. This ensures that contributions are paid slightly before the population moves into the Precinct.

It is also noted that early in the life of a contributions plan most of the funds are allocated toward the acquisition of land. This ultimately impacts on Council's capacity to deliver capital infrastructure for new residents which can cause extreme frustration for residents who move into a precinct without key infrastructure being available such as playing fields, parks and upgrades roads. The broader community do not care about land ownership, titling arrangements, the restrictive nature of 7.11 financial reserves, availability of funds or competing infrastructure priorities, nor should they. Once residents move into a precinct, if the expected infrastructure has not been provided/ upgraded, then the community will raise concern. These issues are generally not experienced within landowner initiated precincts, such as the Box Hill North ('Gables') Precinct, as the principal developer has secured the land early and is able to roll out infrastructure as future development lots are released.

From the developer's perspective there will always be a desire to pay contributions as late as possible. However from an infrastructure delivery perspective the occupation certificate stage is too

late. If this approach continues it will result in demand for the infrastructure being created well before the infrastructure is delivered which will cause extreme frustration for residents, will result in substantial administrative issues for Council and would be inconsistent with the priorities of the Region and Central City District Plan which seek to align population growth and infrastructure delivery.

It is noted that the Government has recently issued a Direction which delays payment of contributions for some development until the Occupation Certificate stage, with no consultation with Council. This will have the obvious effect of delaying the receipt of contributions income until the point in time where the Occupation Certificate is issued (effectively, when new residents move in). As a result, new residents will be moving in well in advance of when a Council can fund and deliver the infrastructure which was identified as necessary to service those residents. The current system for delaying payments makes it near impossible for a Council to deliver infrastructure in line with growth, as the funding source for the necessary infrastructure is not available until the point in time where the growth has already arrived within the Precinct (or is imminent). As noted above, it requires a Council to either forward fund from other sources (which may not be available) or simply delay the provision of infrastructure until after growth has occurred (and contributions are received). This could be alleviated through forward funding all infrastructure, which would mean that contributions income is simply a reimbursement for actual costs, with the actual cost of infrastructure and the time value of money factored into contributions upfront.

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

Yes, if the deferred payment was repaying the initial bulk funding of infrastructure provision. The certainty of actually receiving the deferred payment is only one part of the problem. The main issue is that it makes it impossible to deliver infrastructure in line with growth if the receipt of contributions income is delayed to the point of that growth actually moving in.

- 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?

From a planning perspective, the ability to access low cost loans to forward fund infrastructure would mean that these facilities can be provided early, at the cheapest price and in the most efficient way. This would then give absolute certainty for future developers with respect to future contribution rates, as contributions income would essentially just be reimbursing actual costs (with known/agreed interest rates). This would remove all uncertainty associated with changes to land costs, interest rates and construction costs over the development period (often in excess of 20 years).

However, from a financial perspective, it is important to recognise that whilst loan access for Council may provide cashflow support in the short term, it does not guarantee that contributions received at the end will be sufficient to cover the repayment of principal plus interest. The risk then falls on Council to utilise general income to cover for such potential shortfall. Additionally, many councils, as a policy setting, will not incur debt and do not want the liability on their balance sheet.

It is difficult to estimate the amount of borrowing required especially for Council that manages multiple greenfield plans. The upfront cashflow burden could result in the need for Council taking on significant amount of borrowing in order to keep development moving along. Such borrowings will have impact on Council's debt service cover ratio and its ability to take on further debt on other non-contributions plan funded projects. Contributions plans are already complex in nature and this adds an extra layer of complexity as it involves on-going monitoring of loan repayment versus contributions received and could make contributions recovery process more difficult.

It could be perceived that developers are the biggest beneficiaries in this change compared to the community as Council is the entity going out to borrow and any cash shortfall at the end will be

borne by Council. This is similar to the previously imposed contributions cap where house prices continued to soar despite its introduction. In both cases Council is the 'middle-man' bearing most risks.

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

As an alternative method of reducing the cost of infrastructure provision, consideration should be given to the establishment of a Government Agency (such as Infrastructure NSW) to manage the acquisition of land and the delivery of road, drainage and utility-related infrastructure in a coordinated manner, early in the development period for areas of growth. Key benefits of such an Agency would include:

- The ability to acquire all land for a public purpose early in the development period or as part of the precinct planning process, at the lowest possible cost. This would eliminate the effect of rising land values increasing contribution rates and remove a key variable factor from Contributions Plans;
- Ability to forward fund the delivery of new infrastructure, prior to or in line with development, allowing for greater efficiencies and savings in the delivery of infrastructure and removing impediments to growth and development associated with delayed and piecemeal delivery of infrastructure; and
- The ability to forward fund acquisition and infrastructure delivery in a coordinated manner would mean that the cost of infrastructure to service development is both reduced and fixed. As a result, Contributions Plans would be able to recover known actual costs which are unchanging over time, reducing the need for lengthy IPART assessment processes and providing absolute and long term certainty with respect to contributions rates payable for development.

Issue 3.6: Infrastructure costs and contributions rates are rising

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.

- 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?

IPART principally sees its role as reducing costs within plans, without any real regard as to how this will impact on level of service or whether it will negatively impact the end of plan balance. Whilst applying the term 'Efficient Cost' rather than 'Reasonable Cost' may enable councils to better justify alternative/ creative solutions the infrastructure provision, which may reduce overall, cost of the plan. However, the cost estimates within the Plan still need to be realistic. As stated previously, for new contribution plans IPART frequently raises concern with Council's strategic cost estimates for infrastructure items, and recommends revised costings which are unreasonably low, without any real justification for why the lower costs proposed by IPART are reasonable or accurate.

- Should the essential works list be maintained? If it were to be expanded to include more items, what might be done to ensure that infrastructure contributions do not increase unreasonably?

The Essential Works List currently limits Council to only funding the following infrastructure through contributions plans:

- Land for open space (for example, parks and sporting facilities);
- Base level embellishment of open space;
- Land (only) for community services (for example, childcare centres and libraries);
- Land and facilities for transport (including road works, traffic management and pedestrian and cyclist facilities but excluding car parking);
- Land and facilities for stormwater management; and
- The costs of plan preparation and administration.

Unfortunately this list is extremely restrictive and does not cover the range of infrastructure and services which are considered to be essential and are expected by the community. As a result it is resulting in a looming deficit in indoor recreational venues, libraries and community meeting centres. This is especially true for Precincts which are experiencing substantial growth and where Government-led Precinct Planning processes have identified certain infrastructure outcomes, only for these to be removed from the relevant contributions plan as a result of the IPART assessment process.

As an example, the list includes the cost of acquiring land for libraries and community centres, however does not allow Council to collect contributions towards the capital cost of constructing the facility. This means that in the absence of a Council opting to fund this infrastructure through other sources of public funds (which is fundamentally contrary to the user-pays and nexus principles which underpin the contributions planning framework), significant areas of new residential development will be delivered without any adequate community facility infrastructure.

In addition, limiting open embellishment to 'base-level' only hinders Council's capacity to deliver flexible and creative solutions to address infrastructure demands. For example, Councils are unable to collect contributions towards indoor recreation facilities, despite these having substantial capacity to service large catchment areas with insufficient open space and despite the potential overall cost savings such facilities could bring to a contributions plan (as the equivalent recreation capacity delivered in the form of standard/'base level' facilities would have significant greater land acquisition requirements and costs).

While it is acknowledged that the 'Essential Works List' seeks to limit and place downward pressure on contribution rates and development costs, the current application of the list is at the expense of providing adequate infrastructure outcomes that are required to support development. This, in part, gives rise to the community view that the list serves only to reduce the cost to the developer rather than provide for appropriate infrastructure.

- *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?*

There is considered to be validity in obtaining early review and in-principle support for infrastructure items within a contributions plan early in the planning process to avoid the need to further justify the inclusion of items through the IPART review process. However this process should not simply be an additional layer of assessment and duplicate processes which will continue to be undertaken by IPART. This would result in an additional administrative burden on councils. This early review could also involve engagement with TfNSW whose input relies substantially on population warrants and traffic activity being observed, rather than concept projections.

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

Section 7.12 local infrastructure levies are low and do not reflect the cost of infrastructure.

- *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?*

The existing maximum percentage is considered to be reasonable. Council's current Section 7.12 Plan applies Shire-wide and is used to capture contributions wherever a Section 7.11 Contributions Plan is not applicable to a development. This Plan typically captures contributions from small incremental developments in established urban areas and rural areas. The Section 7.12 Plan functions differently to a typical Section 7.11 Plan (such as those applicable to land release areas), in that it accumulates smaller amounts of development contributions over a longer period of time, with a view to supplementing existing infrastructure networks and providing infrastructure that services a broader catchment and region within an LGA. Levies paid are typically applied toward the provision, extension or augmentation of public facilities, or towards recouping the cost of their provision, extension or augmentation.

Whilst the standard percentage is considered to be appropriate there are certain circumstances where a higher levy percentage may be appropriate, such employment areas and centres. As stated within Council's submission on the Department of Planning, Industry and Environment's review of the contribution framework, the current process of seeking a higher fixed percentage for Section 7.12 contributions lacks transparent criteria. In the past, Council's well-reasoned arguments and evidence established to support a request for a higher percentage levy for the North Kellyville Precinct ultimately failed. Rather than simply increasing the standard maximum percentage levy, adopting a series of consistent criteria to assist with the assessment and determination of submissions to increase maximum percentage levies in specific areas would be more appropriate.

- What would be a reasonable rate for s7.12 development consent levies?

Application of a rate which is higher than the existing 1% maximum levy should be established on a case by case basis, rather than being applied broad-brush. Within any strategic centre, local centre or economic corridor, the need for a higher percentage would principally be dependent on the relationship between the cost of infrastructure required to support growth and the projected revenue resulting from future contributions. Where the projected revenue based on the 1% levy is insufficient to cover the infrastructure costs, a higher rate would be required.

Issue 3.8: Limited effectiveness of special infrastructure contributions

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.

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

Special infrastructure contributions should not be used to permit out of sequence rezoning. These contributions are simply a funding mechanism for funding regional infrastructure. Currently, there is a major backlog of items which are identified for SIC funding and are needed to support growth that has already occurred / is happening now, with limited funds available for their delivery. The SIC seems to be problematic to apply as it is too slow in its application and opaque in its delivery. Despite this, a mechanism for regional infrastructure delivery remains critical.

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

SIC should be applied to growth precincts which are undergoing substantial urban growth/transformation which will generate demand on the following regional infrastructure:

- Transport (State/Regional roads, bus infrastructure and active transport);
- Open space and green infrastructure (regional open space and links);
- Education facilities;
- Health facilities;

- Justice and emergency service facilities;
- Biodiversity;
- Public space such as community and cultural facilities (regional libraries and sporting facilities);
- Bus infrastructure.

Given the Department's recent approach to permitting increased densities in existing urban areas through the implementation of the low rise housing diversity code, there may be a need to introduce SIC's more broadly to ensure that funds are collected from development which results in increased density (residential yield and non-residential floor space) to ensure that adequate regional infrastructure can be provided to support the growth. However, careful consideration would need to be given to the relationship between the revenue collected and infrastructure which is delivered. As growth would be more dispersed, this will make it difficult to establish clear nexus. In this regard, for locations which fall outside of a growth precinct, a funding mechanism, such as an indirect contribution system could be considered for regional infrastructure (similar to the way in which 7.12 contributions plans apply for local infrastructure).

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

It would be beneficial for there to be greater clarity from the early planning phases, of what infrastructure will be funded through SIC, what SIC costs will be, what SIC rates will be and what other infrastructure will need to be funded through local infrastructure plans.

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

The SIC program has historically lacked adequate coordination. Accordingly, having a central Agency who will be responsible for the program is considered to be reasonable, however this agency should be focussed on delivery on delivery and not administration.

There also needs to be greater transparency in the preparation and administration of SIC. Council is subject to an extremely regulated and transparent framework as part of the preparation of its local contribution plans. Accordingly, it is considered reasonable that similar transparency apply to state and regional infrastructure funding. This should include a public register which identifies where and how much SIC has been collected from particular Local Government Areas and release areas. This should enable appropriate scrutiny to ensure that the delivery of infrastructure generally aligns with the increase in demand, and also ensure that those who are paying the contributions are receiving the benefit of timely delivery of infrastructure.

- **Locations where the SIC applies**
Determination of potential new SIC areas should occur early in the master planning process. As an example, the Hills Showground Precinct was rezoned as part of the Planned Precinct Program without any SIC established for the Precinct. As a result there is no mechanism to secure funding from development for the delivery of certain state and regional infrastructure required to meet the additional demand, such as schools. To avoid such situations from occurring in the future, planning authorities and Government Agencies should be encouraged to plan for state and regional infrastructure, including possible funding mechanisms such as SIC, as part of the master planning process for any Precinct which is subject to substantial urban transformation.
- **Method of calculating SIC**
There needs to be a broad range of SIC calculation methods, depending on the circumstance of the Precinct. The determination of the value of SIC payable for any development should ideally be linked to the level of increase in demand for infrastructure, to ensure equitable distribution of the cost. With respect to the North West Growth Area SIC it has become quite apparent that there is no relationship between the projected yield, the infrastructure items to be delivered and the contribution rate being applied. As a result there

is likely to the insufficient funds to deliver the program. Council has a number of critical items within the release areas which need to be delivered as a matter of urgency. However, Council is required to compete with other Councils and State Agencies for limited funds.

○ **Approach to SIC feasibility**

While economic feasibility is an important consideration, it should not be the primary consideration in determining the appropriate value of a SIC levy. Rather it is recommended that nexus, costings and apportionment should be the key considerations. As part of the preparation or review of any SIC, detailed analysis should be undertaken with a view to ensuring that the levy:

- Has been calculated having regard to the likely cost of the infrastructure funded; and
- Generally accords with 'user-pays' principles, whereby the levy applicable to different areas is proportionate to the cost of infrastructure which directly benefits those areas.

○ **Expending SIC revenue**

If the Government identifies certain infrastructure within a SIC, and progressively levies development on the basis of funding the delivery of this infrastructure item, then landowners, developers, Council and the community should have some degree of assurance that the infrastructure will be delivered. Where the cost of infrastructure needs to be apportioned, measures need to be put in place for Government to commit to necessary funding to cover the shortfall in cost.

○ **Review of SIC**

It is noted that development within growth areas is occurring rapidly. Accordingly review of SIC programs and the SIC priorities needs to occur more frequently and quickly. Council and the community need funding certainty around major regional infrastructure projects and as such funds need to be collected from development equitably.

Issue 3.9: Difficulty funding biodiversity through special infrastructure contributions

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.

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

Special infrastructure contributions should not be funding biodiversity offsets.

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

Special infrastructure contributions are not an appropriate mechanism for biodiversity offsetting. It is already extremely difficult to secure sufficient funding for the delivery critical infrastructure such as open space and regional road upgrades. The funding of biodiversity offsets would make this task even more difficult. Accordingly, separate framework should be established for biodiversity offsets. Council has consistently lobbied for biodiversity certifying across entire local government areas. This would streamline the development assessment process.

Issue 3.10: Affordable housing

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.

- *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?*

State Environmental Planning Policy No 70 – Affordable Housing (Revised Schemes) gives councils the option of entering into affordable housing contribution schemes, where developers contribute to the cost of affordable housing.

There is not considered to be a ‘one size fits all’ solution to affordable housing and managed affordable rental housing is only one response and should not be considered in isolation. Council’s Local Strategic Planning Statement and draft Housing Strategy do not commit to the establishment of a target at this time. Rather it is noted that any scheme must be considered in conjunction with a diverse supply of housing, movement within existing affordable rental stock and supply and vacancy rates.

It is important that an evidence based approach is taken in modernising schemes and responding to the affordable housing task. At the local level, consideration is needed of the effective housing demand, the housing type and mix needed to satisfy future need, specific groups that need to be prioritised and how to distribute the supply of affordable housing to households that actually require it. Only after such investigations can appropriate tailored local responses be determined.

- *Do affordable housing contributions impact the ability of the planning system to increase housing supply in general?*

Council does not have a formal position on this.

Issue 4.1: Sharing land value uplift

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 ways a ‘value capture’ mechanism could be applied, including land tax, council rates, betterment levy, or an infrastructure contribution.

- *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?*

The greatest beneficiaries within growth areas are the existing landowners who ultimately move away from the area prior to any development occurring. These stakeholders benefit from substantial increases in their property value, as a direct result of the Government investment in the delivery of key infrastructure. These owners often sell their property to developers at inflated values which ultimately impacts on development viability, increases housing prices and substantially reduces the capacity of developers to make appropriate contributions toward infrastructure required to meet the needs and expectations of future residents.

The Hills Shire Council does not have a formal position with respect to value capture associated with increases in land value as a result of public infrastructure investment. This is ultimately a matter for Government to consider, as the major investor in public infrastructure, with particular regard to the ability for the Government to fund and deliver subsequent state-level infrastructure required to service the growth which follow.

Issue 4.2: Land values that consider a future infrastructure charge

When land is rezoned, there is often an increase in land values as a result of the change in development potential.

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

This could be a reasonable approach however there would be administrative difficulties with its implementation as the charge would need to be in-lieu of other developer charges such as local or

regional contributions so as to avoid double dipping. Furthermore these charges may simply get added to the sale value and further inflate land values. In this regard a more sustainable approach would be to forward fund land acquisition required for public infrastructure as part of the precinct planning process, prior to a precinct rezoning being finalised. If a charge was to be added it should be to repay the forward funding of infrastructure on a bond or security basis.

Issue 4.3: Land acquisition for public infrastructure purposes

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.

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

Unfortunately there is not adequate time to consider fully this option or enable our elected Council to consider a position. However, noting that rapidly increasing land values is the major driver of high contribution rates, there may be merit for the Government to undertake further discussion with councils to work up ideas/solutions which would combat this issue. It would also be useful to reconsider the role of Landcom as a master developer on behalf of Government.

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

As mentioned previously, early in the life of a contributions plan most of the funds are allocated toward the acquisition of land. This ultimately impacts on Council's capacity to deliver capital infrastructure for new residents which can cause extreme frustration for residents who move into a precinct without key infrastructure being available such as playing fields, parks and upgrades roads. Once residents move into a Precinct, if the expected infrastructure has not been provided/upgraded, then the community will raise concern. Pooling of contributions is an option. However this ultimately impacts on Council's capacity to deliver items within other infrastructure categories.

It is suggested that as an alternative method of reducing the cost of infrastructure provision, consideration should be given to the establishment of a Government Agency (such as Infrastructure NSW) to manage the acquisition of land and the delivery of road, drainage and utility-related infrastructure in a coordinated manner, early in the development period for areas of growth.

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

Higher indexation of the land component means that contribution rates are adequate to cover land costs. It is noted that Council currently applies indexation rates on land acquisition costs within its NPV modelling. However issues arise as a result the significant time taken to prepare and review the plans, due to the IPART review process. By the time a plan is adopted and in-force the valuation in the base year of the plan can be incorrect. As a result the plan simply ends up indexing an incorrect value.

Nevertheless, in order to properly address the issue of escalating land acquisition costs, there needs to be a more practical/genuine solution to acquire land early, rather than the current process of buying land after a rezoning, when fragmented land-owners are ready and when sufficient development contributions have been received to fund the acquisition. It would be appropriate to review the compulsory acquisition process in line with this item.

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.

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

The impact of property speculation on land value will ultimately impact on land acquisition costs. The best approach to address this is to acquire land early in the life of the plan to ensure that actual costs can be reflected in the plan and equitably distributed among future development within the precinct.

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 encourage speculation and drive up land values, making the corridor more expensive to provide later.

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

Early identification and preservation of corridors is essential for proper land use planning. Even without speculation land costs will escalate over time. In growth areas the rate of increase is exacerbated. However this should not be used as a reason for not identifying and preserving critically important transport corridors. If a strategic transport corridor is needed to support the growth of the District and Region, then it needs to be identified and acquired. Where acquisition is not possible in the short term, development controls such as setbacks need to be put in place, to ensure orderly development. Corridor planning should also acknowledge the current trend towards tunnelling.

Issue 4.6: Open space

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.

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

Benchmarking assists in the equitable distribution of resources. It minimises duplication and over-servicing and enables areas that are underserved, or which are likely to be underserved as the population grows, to be identified. Broadly, benchmarks assist in:

- Enabling more efficient decision making about development proposals and external requests for facility improvements.
- Informing asset management plans, and helping to establish appropriate maintenance regimes.
- Forecasting accurate costs.

Whilst standard benchmarks provide a reasonable indication of the overall quantity of open space required or supplied, it does not account for efficient access to open space, quality of the open space, improvements provided, or demand from the local community. Quite often this level of provision is not always possible due to limitations on available land or cost. Where the overall quantity of open space falls short of the standard benchmarks, councils should aim to provide well distributed and high quality open space to support a higher number of people.

Whilst open space forms a large portion of the cost of most contribution plans, this infrastructure plays an integral role in ensuring an adequate quality life of residents. The critical nature of this infrastructure is recognised in the Region Plan, District Plans and local strategic framework.

Reducing open space standards and provision, in an effort to reduce short term development costs and contributions is extremely short sighted as it will reduce the quality of life of residents which will have longer term negative social impacts on the population.

Whilst performance criteria can be used to assist councils in the planning of open space, any determination on level of service and provision should be determined by councils as the ultimate service providers.

Within the Shire's urban release areas, the acquisition of land for open space has been considerably impacted by the substantial escalation in land costs over recent years. This has reinforced the need for Council to acquire land early in the life of the plan. Furthermore, the cost of delivering playing fields has also increased substantially which has resulted in capital costs estimated within applicable contributions plans which are well in excess of what was previously estimated. As part of the plan preparation process strategic cost estimates are applied. However it is only when the fields are subject to detailed design prior to their delivery that the actual cost is becoming evident. This is often late in the life of the applicable contributions plan, when there is limited remaining development potential to enable the cost increase to be equitably distributed.

Within the Shire's urban infill areas such as the Precincts surrounding the Sydney Metro Northwest Stations other challenges have become apparent. The cost of land within these precincts is extremely high. This means that the quantum of open space required is not feasible. In these locations measures to improve the quality and distribution of open space have been pursued.

In order to address these challenges the contribution system needs to be flexible. As mentioned previously, the essential works list limits open space embellishment to 'base-level' which hinders Council's capacity to deliver flexible and creative solutions to address infrastructure demands.

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

Councils are the most appropriate authority to determine levels of service provision for open space and specifications for individual open spaces should respond to the demographics, needs and expectations (within reason) of the community which will use these spaces. As part of the planning of growth precincts and preparation of subsequent contribution plans, the location, quantum and quality of both active and passive open space should be identified in accordance with the relevant benchmarks contained within applicable local strategies and recreational strategies of each council.

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

Infrastructure contribution plans are considered to be an appropriate mechanism for funding local open space, as are VPAs or WIKs.

Issue 4.7: Metropolitan water charges

Currently, costs of new and upgraded connections for Sydney Water and Hunter Water are borne by the broader customer base rather than new development.

- *How important is it to examine this approach?*

Council does not have a formal position on this.

- *What is the best way to provide for the funding of potable and recycled water provision?*

Council does not have a formal position on this.

Issue 4.8: Improving transparency and accountability

There are limited infrastructure contributions reporting requirements.

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

The recent Review of the Contributions Framework by the NSW Department of Planning, Industry and Environment proposed a number of amendments relating to reporting on development contributions plans. These proposed amendments would require the following:

- Council to not only report on monetary contributions but also land, works, services or facilities accepted in part or full satisfaction of contribution obligations;
- Require more detail on specific infrastructure contributions including specific project and location; and
- Require Councils to publish contributions plans, indexed Section 7.11 contribution rates, annual statements and contributions registers on council's website or planning portal.

Within its submission on the Review of the Contributions Framework, Council raised no objection to the proposed reform to increase the reporting requirements for planning agreements. However the following points were recommended:

- The Department undertake further consultation with Council as part of the preparation of future reporting guidelines; and
- Council be given sufficient time to prepare its systems and processes to ensure that the requirements of the Regulation are satisfied.

Additionally, if increased compliance and reporting is required, councils should be entitled to increase the administrative component within the Contributions Plan.

- *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?*

Increased reporting on these matters may be appropriate, however further consultation should be undertaken as part of the preparation of any future reporting guidelines.

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

See response above.

Issue 4.9: Shortage of expertise and insufficient scale

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.

- *What can be done to address this issue?*

The Hills Shire Council is currently sufficiently staffed with skilled professionals to manage and deliver contributions plans. However this would be an understandable issue for smaller and more regional councils and for the State Government and its agencies.

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

It should be simplified to increase transparency, efficiency, certainty, and the ability to deliver infrastructure efficiently. Simplifying the framework to achieve these objectives would assist with resourcing requirements more generally. Notwithstanding, management of contributions plans, particularly around IPART's review process, requires Council to allocate a substantial amount of resources.

Issue 4.10: Current issues with exemptions

Exemptions from contributions are complex as they are set out across a range of planning documents and are inconsistent across contribution mechanisms.

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

There should be exemptions, however only in exceptional circumstances. The reason for this is that as most development generates demand on infrastructure and should make a fair and reasonable contribution, so long as there is a demonstrated nexus. Where an exemption is granted, the lost contribution is simply borne by the remaining development within the Precinct. The reasonableness of this should be balanced with the reasonableness of exempting certain development.

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

In any scenario the cost/burden of an exemption is shared across a larger group of the population. Either the cost is shared across other development in the precinct (which also requires the same infrastructure) or it is shared across the broader community or taxpayer. It would seem more fair and reasonable to share that cost more specifically across development in the precinct.

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

There are not considered to be neutrality issues as the development types that may benefit from an exemption would generally be unique types that provide a service to residents living within an area, rather than a development type that is a direct competitor in the same sales/product market.

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

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).

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

Developers should be able to provide works-in-kind in lieu of infrastructure contributions, so long as the infrastructure being provided is listed on an adopted and in-force contributions plan, and so long as certain criteria can be met (for example, where agreeing to a WIK does not hinder the delivery of other infrastructure which a Council has scheduled for higher priority/earlier delivery). Where the work is in excess of the applicable monetary contribution, then the developer should be reimbursed. Any reimbursement arrangements should be agreed between the developer and Council prior to commencement of such works. The developer should also then carry the maintenance obligation for that item until the scheduled date of delivery as per the Contributions Plan.

- *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?*

There may be some value with this approach, however it would be extremely difficult to administer, especially if credits were able to be traded between different developers (rather than used by the same developer on different developments within an area). Where works-in-kind credits exceed their monetary contribution, then the developers should be eligible for reimbursement, subject to the agreement of Council and meeting certain criteria (see above).

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

Amending the system to permit the trading of credits to other contribution areas will substantially increase the complexity of contribution planning, it will be extremely difficult to administer, and could have unintended consequences in terms of hindering the ability of a Council to deliver infrastructure under one contributions plan, as a result of a WIK under another Plan.

If this approach is pursued there would need to be definitive analysis to show that this would actually be of any benefit, compared to an approach of having a WIK (up to value of contribution credit) plus reimbursement to a developer (for any remaining unclaimed value). The industry needs to be careful in finding the right balance between ensuring the system is clear, transparent and easily administered.



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11 June 2020

Planning Policy Team
Department of Planning Industry and Environment
Locked Bag 5022,
Parramatta NSW 2124

Our Ref: [REDACTED]

Dear Sir/Madam

EXHIBITION – REVIEW OF CONTRIBUTIONS FRAMEWORK

Thank you for the opportunity to provide feedback on the review of the contributions framework. Comments on the exhibition of the following matters are attached to this letter:

- Improving the process for the review of Contributions Plans by IPART;
- Establishing principles and criteria to be used by Councils and the Department when preparing and considering requests to apply a Section 7.12 percentage levy in excess of the standard 1%;
- Draft Practice Note and Ministerial Direction relating to Planning Agreements;
- Guidelines and procedures for the Department's management of the Special Infrastructure Contributions program; and
- Proposed amendments to the Environmental Planning and Assessment Regulation 2000 with respect to development contributions.

If you have any questions in relation to this matter please contact [REDACTED]

Yours faithfully
[REDACTED]

Attachment A – Comments on the Review of Contributions Plan by IPART – Discussion Paper
Attachment B – Comments on the Criteria to Request a higher 7.12 Percentage – Discussion Paper
Attachment C – Comments on the Draft Planning Agreements Practice Note and Ministerial Direction
Attachment D - Comments on Special Infrastructure Contribution Guideline
Attachment E – Comments on Draft Amendments to the EP&A Regulation



REVIEW OF CONTRIBUTIONS PLANS BY IPART – DISCUSSION PAPER

Update the thresholds that trigger the review process

The proposal to increase the contribution rate thresholds is appropriate and supported. The existing thresholds are restrictively low and out-of-date, resulting in the need for nearly every contributions plan to be subject to the IPART assessment process. This is both costly and inefficient. Whilst the IPART review process provides independent assessment which creates some confidence in the plan's assumptions, which is necessary for plans that levy rates which are higher than expected, the process has to be more certain and timely. In this regard, it is recommended that the Department implement Option 3 within the Discussion Paper which would result in one single threshold of \$45,000 per dwelling/lot.

It is also recommended that this threshold be indexed annually in accordance with Sydney CPI, to ensure that the threshold increases broadly in line with contribution rate increases and infrastructure delivery costs. This will avoid instances where existing plans trigger the requirement for IPART assessment simply as a result of annual indexation of rates over time.

Having a single threshold for both urban in-fill and greenfield areas will result in a simple and consistent approach for all contribution plans and reflect the high cost of providing infrastructure within urban infill locations. While greenfield areas are typically subject to a higher contribution rate cap, Council's recent experience indicates that the high cost of land acquisition within urban infill areas (such as the Sydney Metro Northwest Precincts) places significant upward pressure on contribution rates. Additionally, the capital cost of delivering infrastructure in these locations is also high as it often involves service relocation and augmentation of existing infrastructure that was not previously designed to cater for the extent of growth being proposed.

Review of the IPART Terms of Reference

The current IPART review process is quite cumbersome and can substantially increase the overall timeframe for preparing and implementing a contributions plan. The Hills Council has now had 11 plans/amendments reviewed by IPART, with an average timeframe of 8 months (for the IPART review process) and a further 9 months following this to receive directions from the Minister. These timeframes, in addition to the time taken for Council to prepare, report and publicly exhibit a Plan amendment, means that a simple review of a contributions plan can now take in excess of 1-2 years, which is simply too long. It is acknowledged that the Department's discussion paper has identified some of the major flaws with the current process and Council is supportive of reducing these impediments to the efficient operation of the Contributions system.

It is recognised that the intended objective of IPART's involvement in the review process is to ensure that infrastructure identified within contributions plans is appropriate and that cost estimates and subsequent contribution rates are reasonable. However, based on past experience, the length of the process only serves to create uncertainty for Council, landowners and the community and hinder Council's ability to progress with the delivery of local infrastructure to support development. Council's experience is that IPART's assumptions of costs, particularly early in the life of the Plan, end up resulting in an underestimation of actual costs. This creates additional risk to providing the necessary infrastructure to support new communities.

The scope and level of detail involved in the IPART review process has incrementally increased over the past 5 years, to the point where it is now a significant resource and cost impost to Council. In part, this is due to IPART duplicating existing auditing and quality control processes, despite Council already complying with extensive legislative requirements under the EP&A Act (relating to nexus, reasonableness of contributions and the process for preparing a contributions plan) and financial auditing and reporting requirements under the Local Government Act.

Quite often the turnover of staff and IPART's process of undertaking a holistic review of a Plan each time it is submitted has resulted in significant delays in the review process. It requires Council

to allocate a substantial amount of staff time to respond to the same/similar questions from IPART on multiple occasions. It also results in inconsistent findings and recommendations from IPART (often with IPART making different recommendations with respect to elements of a plan which were unchanged between subsequent IPART reviews).

Having regard to Council's extensive experience with the IPART review process, the proposal to review the IPART Terms of Reference is strongly supported and it is requested that Council be provided with the opportunity to be further involved and consulted in the drafting and preparation of any new Terms of Reference. It is recommended that the following key factors be considered in a review of the Terms of Reference:

- **Assessment Timeframes** – As detailed above, the current IPART and Ministerial review process can add between 12-24 months to the time take for a Council to prepare and finalise an amendment to a contribution plan, which is simply too long.
- **Time lag for Council to update plans to reflect accurate costs** – During the IPART/Ministerial Review process, it is difficult for Council to make further changes to costs in the Plan without significantly prolonging (or restarting) the assessment process. This creates a scenario where Council may be unable to reflect critical factors such as updated land acquisition rates/cost, updated actual costs incurred or more detailed cost estimates for capital works items within an updated and adopted contributions plan (and adjust the contribution rate accordingly), for a period of up to 4 years. This is particularly problematic with respect to escalating land values, with evidence from Council's Balmoral Road Release Area indicating that over some periods of the development cycle, the cost for Council to acquire land has more than doubled over a 4 year period.
- **Targeted Reviews** – Where a Plan has already been assessed by IPART and endorsed by the Minister, IPART should focus only on the elements of the Plan which are being amended, rather than holistic review of every element of a contributions plan each time it is submitted;
- **Assessment Criteria** – IPART should have a consistent set of criteria for assessing contribution plans. Inconsistency in the assessment process and the resulting recommendations complicates the assessment process and extends the assessment timeframe. Where IPART releases guidelines or technical advice for Councils, it is imperative that IPART then stands by this advice and applies it consistently. For example, IPART's Local Infrastructure Benchmark Costs (April 2014) recommends that 'Councils use the benchmark costs as a guide in developing cost estimates for the purposes of levying infrastructure contributions. The onus is on councils to justify any deviation from the benchmark costs'. However, IPART's recommendations now frequently dispute Council's use of IPART's own benchmark costs, instead requiring Councils to fund and prepare more accurate cost estimates from Quantity Surveys or comparable actual costs simply to pass through the IPART review process.

For new contribution plans, Councils should be able to establish strategic cost estimates which utilise IPART's published benchmark rates, without being questioned by IPART on the application of these rates. It is simply not reasonable for IPART to expect Councils to have detailed cost estimates for all items within new contribution plans.

- **Exhibition of Draft Recommendation Reports** - Exhibition of draft recommendation reports is an unnecessary step in the process and results in engagement fatigue within the community. Each draft contributions plan is subject to its own public reporting and statutory exhibition process, which needs to be completed prior to the plan being submitted to IPART. A preferred and more efficient approach would be for IPART to simply provide its draft report to Council for comments. IPART has seemingly made its own decision to include discretionary consultation periods in its assessment process, increasing the length of the assessment period by at least 4 weeks, with no tangible benefit.

- Nexus within State Government Release Areas and Precincts – Council has a number of contribution plans that service release areas where the precinct planning was undertaken and implemented by the Department of Planning, Industry and Environment. In these cases, Council is essentially provided by the Government with a list of local infrastructure to be provided, as an outcome of the Department's Precinct Planning process. The contributions plan then seeks to deliver this infrastructure list. It is completely unreasonable in such circumstances for IPART's assessment to then recommend that Council delete infrastructure items from a plan, as this directly contradicts and prevents the achievement of the planning, development and infrastructure outcomes established through the extensive and in-depth Precinct Planning Process completed by the Department. This places Council in the unreasonable position of needing to justify outcomes already established by the State Government, in order to progress through a State Government-imposed review process, or being unable to implement the planning outcomes expected by the Department (and the community).
- Strategic Cost Assessments – For new contribution plans IPART frequently raises concern with Council's strategic cost estimates for infrastructure items, and recommends revised costings which are unreasonably low, without any real justification for why the lower costs proposed by IPART are reasonable or accurate. In order to demonstrate that these recommended costings are unreasonable and that they would result in a substantial shortfall in the funds required to deliver the infrastructure, Council is then required to procure detailed concepts (often 80-100%) and Quantity Surveys which, as a result of the need for Council to submit additional information (or accept unreasonably low costs which will result in a funding deficit), can extend the IPART assessment process by 6-12 months. Even once these documents are prepared, Council continues to receive questions on individual line items within the independent Quantity Survey.

Essential Works List

Concurrent with any review of the IPART Terms of Reference, it is also recommended that the Department review the Essential Works List, which currently limits Council to only funding the following infrastructure through contributions plans:

- Land for open space (for example, parks and sporting facilities);
- Base level embellishment of open space;
- Land for community services (for example, childcare centres and libraries);
- Land and facilities for transport (including road works, traffic management and pedestrian and cyclist facilities but excluding car parking);
- Land and facilities for stormwater management; and
- The costs of plan preparation and administration.

IPART can only determine plans against this list. It is resulting in a looming deficit in indoor recreational venues, libraries and community meeting centres.

Unfortunately this list is extremely restrictive and does not cover the range of infrastructure and services which are considered to be essential and are expected by the community. This is especially true for Precincts which are experiencing substantial growth and where Government-led Precinct Planning processes have identified certain infrastructure outcomes, only for these to be removed from the relevant contributions plan as a result of the IPART assessment process.

As an example, the list includes the cost of acquiring land for libraries and community centres, however does not allow Council to collect contributions towards the capital cost of constructing the facility. This means that in the absence of a Council opting to fund this infrastructure through other sources of public funds (which is fundamentally contrary to the user-pays and nexus principles

which underpin the contributions planning framework), significant areas of new residential development will be delivered without any adequate community facility infrastructure.

In addition, limiting open embellishment to 'base-level' only hinders Council's capacity to deliver flexible and creative solutions to address infrastructure demands. For example, Councils are unable to collect contributions towards indoor recreation facilities, despite these having substantial capacity to service large catchment areas with insufficient open space and despite the potential overall cost savings such facilities could bring to a contributions plan (as the equivalent recreation capacity delivered in the form of standard/'base level' facilities would have significant greater land acquisition requirements and costs).

While it is acknowledged that the 'Essential Works List' seeks to limit and place downward pressure on contribution rates and development costs, the current application of the List is at the expense of providing adequate infrastructure outcomes that are required to support development. It is suggested that as an alternative method of reducing the cost of infrastructure provision, consideration should be given to the establishment of a Government Agency (such as Infrastructure NSW) to manage the acquisition of land and the delivery of road, drainage and utility-related infrastructure in a coordinated manner, early in the development period for areas of growth. Key benefits of such an Agency would include:

- The ability to acquire all land for a public purpose early in the development period or as part of the precinct planning process, at the lowest possible cost. This would eliminate the effect of rising land values increasing contribution rates and remove a key variable factor from Contributions Plans;
- Ability to forward fund the delivery of new infrastructure, prior to or in line with development, allowing for greater efficiencies and savings in the delivery of infrastructure and removing impediments to growth and development associated with delayed and piecemeal delivery of infrastructure; and
- The ability to forward fund acquisition and infrastructure delivery in a coordinated manner would mean that the cost of infrastructure to service development is both reduced and fixed. As a result, Contributions Plans would be able to recover known actual costs which are unchanging over time, reducing the need for lengthy IPART assessment processes and providing absolute and long term certainty with respect to contributions rates payable for development.

Local Roads within Land Release Areas

Whilst not a matter raised within the exhibition material, a significant issue being faced by Council relates to the construction and dedication of local roads within greenfield release areas. The requirement for developers to construct and dedicate these roads, at no cost, as a condition of consent is a long-standing and typical requirement of all development within the Shire (especially within greenfield release areas). This requirement facilitates the delivery of new local road networks within release areas which are essential to providing adequate access to individual allotments within a development.

Council's contribution plans for release areas typically include funding for the delivery of major roads (higher order roads such as collector or sub-arterial roads). Council is unable to include the costs of acquiring and constructing local roads within its contributions plans as IPART requires that Council secure the delivery of these through conditions of development consent, where possible. It is acknowledged that the inclusion of local roads within contributions plans would result in prohibitively high contribution rates for development. Accordingly, the requirement for each individual developer to construct the portion of the local road network which adjoins their development site is considered the most reasonable and cost-effective method of ensuring new development is serviced by an adequate local road network. It also ensures that the burden of constructing local roads is shared between all developers within a precinct in the most equitable way possible within the current framework.

Despite this long-standing practice, there is increasing confusion with respect to requirements for the provision of roads which are not otherwise funded within a contributions plan. Council has been subject to legal action from developers who have attempted to demonstrate that it is unreasonable for Council to require them to construct local road on multiple frontages as they can access their property from one frontage only. This is despite the local road not having any alternative funding source within a contribution plan. This simply goes against the orderly development principle. Whilst individual roads may not directly benefit every person or site within a precinct, they do form part of the overall road network. Accordingly, it is considered fair and reasonable for individual developers to be responsible for the portion of the local road network which directly adjoin their individual development sites.

Within land release areas, and other areas undergoing substantial urban growth, the determination of nexus needs to be established on a precinct wide basis. Councils should not be subject to legal challenge from developers who feel that they should not be responsible for constructing a portion of a local road, despite it directly adjoining their development site. Whilst these developers do not believe that they should fund these roads, the future users of their developments will often access the site via other local roads which have been constructed and dedicated by developers who have accepted their responsibilities as a participant in land release precinct. In this regard, it is recommended that the Environmental Planning and Assessment Act 1979 be amended to enable Council to require, as conditions of development consent, developers to construct and dedicate (at no cost) local roads within land release areas which adjoin development sites and are not funded through a contribution plan, without the need to establish site specific nexus. Clear establishment of this framework will also ensure that associated development costs can be factored into land transactions and development feasibility considerations.

Re-exhibition requirements

Formalising the position that Councils are not required to re-exhibit contribution plans following receipt of the Minister's advice is supported as re-exhibition would be unnecessary. Once the Minister provides final advice to Council, any required changes must be made wholly in accordance with this advice. Public exhibition periods at this point in the process are tokenistic and would unnecessarily delay the finalisation of contributions plans, as Council is unable to make any changes to the Plan in response to any submissions received (without then completely restarting the IPART and Ministerial assessment process).

Whilst the proposal within the Discussion Paper is supported, it is questionable as to whether the current legislation strictly requires re-exhibition to occur following the issue of the Minister's advice. The Discussion Paper implies that any changes required by the Minister following IPART's review would be a new amendment to the Plan. However, this assumption is not supported. Following the formal exhibition of a draft Plan Council considers submissions and decides whether to forward the draft Plan to IPART for review. As the Council does not formally adopt the plan at this stage, the IPART review and Ministerial endorsement process is effectively occurring during the 'post-exhibition' phase of the amendment process. Council does therefore have the authority to adopt the amendments required by the Minister as part of their final post-exhibition consideration of the Plan and re-exhibition of the plan is not considered to be required. Nevertheless, any amendment to the Regulation to clarify this matter would be supported.

Concern is raised with IPART's practice of exhibiting draft Recommendation Reports. This is an unnecessary step in the process which is not required under the Regulations and appears to have been introduced by IPART at their discretion. Given IPART's 'community consultation' period occurs shortly after the completion of Council's own statutory public exhibition period, the benefits associated with this process are questionable, especially given the substantial delays caused to the already lengthy assessment process and the engagement fatigue and confusion likely to be created amongst the community. Each draft contributions plan is subject to its own public reporting and statutory exhibition process, which needs to be completed prior to the plan being submitted to IPART and there is no tangible benefit of IPART duplicating this.

CRITERIA TO REQUEST A HIGHER S7.12 PERCENTAGE – DISCUSSION PAPER

The current process of seeking a higher fixed percentage for Section 7.12 contributions lacks transparent criteria. In the past, Council's well-reasoned arguments and evidence established to support a request for a higher percentage levy for the North Kellyville Precinct ultimately failed. Also, levying a CIV alone does not reflect different costs of land in different areas.

Currently, the centres which are subject to a higher levy have certain common elements, for example being part of a strategic centre or facilitating significant employment growth. The proposed requirement of meeting certain criteria in requesting a higher maximum percentage is positive in that it clarifies the necessary criteria that must be met in order for a higher percentage to be considered or allowed.

Comments on the proposed criteria to seek a S7.12 levy of 2% are included below:

- C1.1 and C1.2: It is unclear why eligibility for a higher Section 7.12 rate should be linked to the proportion of employment growth within a precinct, or the ratio of employment growth to residential growth. Based on the Discussion Paper these criteria are based on a review of other locations where a higher rate has been permitted. Whilst it may be reasonable for these centres to be subject to a higher rate, this should not arbitrarily preclude other mixed use centres, which do not strictly comply with these numeric thresholds. Within any strategic centre, local centre or economic corridor, the need for a higher percentage would principally be dependent on the relationship between the cost of infrastructure required to support growth and the projected revenue resulting from future contributions. Where the projected revenue based on the 1% levy is insufficient to cover the infrastructure costs, a higher rate would be required.

However, if the Department applies employment targets as an eligibility criterion, then it is requested that the criteria include reference to targets within applicable endorsed Local Strategic Planning Statements.

- C1.3: The criterion should provide scope/flexibility for a Section 7.12 contributions plan with a higher rate to be adopted prior to finalisation of planning controls granting uplift within a Precinct. For example, where uplift is strategically identified but not yet reflected in planning controls for an entire precinct, a Section 7.12 Plan could continue to apply the standard levy of 1% to development up to a specified floor space ratio, with the higher percentage rate triggered only once planning controls for a given site are amended. This would enable a precinct-wide Section 7.12 contributions plan to be prepared and adopted in advance of the finalisation of planning controls, providing upfront certainty to developers and enabling site specific planning proposals within these precincts to be considered in the context of a contributions framework which accounts for the strategically identified uplift.
- C1.4: The infrastructure required to support growth within strategic centres, local centres and economic corridors is broad and will ultimately depend on the context of the Precinct, including the projected mix of future land uses. Concern is raised with the application of a maximum cap on roads for traffic and stormwater management infrastructure at 49% of the cost of plan. It is recognised that future plans should endeavour to provide a variety of infrastructure to improve amenity and level of service, and should not simply levy for a single infrastructure category. However, placing an arbitrary cap on an infrastructure category is considered to be unreasonable and of minimal benefit.

The infrastructure required to support traditional mixed use commercial/residential precincts will be very different to that required in precincts which primarily have an employment role such as business parks. When the primary focus of the precinct is for employment, it is entirely likely and reasonable that the infrastructure costs would be more heavily weighted towards traffic/transport upgrades, public domain improvements and plaza spaces. It is considered

more reasonable for the criterion to simply require a variety of infrastructure categories to service growth, with the final split ultimately to be determined on a case by case basis and having regard to the role and function of the precinct and cost of infrastructure at that location.

- C1.7: The requirement to justify why a Section 7.11 contributions plan should not be applied is not considered to be necessary. As 7.12 contribution plans are a fair and reasonable method of securing contributions for infrastructure, it is unclear why this criterion should be applied as a limiting factor if all other criteria can be satisfied.

Comments on additional criteria - 3% Maximum Levy:

- C2.1 and C2.2: It is unclear why additional criteria should apply when seeking a 3% levy. Ultimately the rate being applied should depend on the projected growth (cost of future development) within the Precinct and the total cost of the infrastructure being delivered. So long as there is a strong relationship between the future growth and the infrastructure being delivered, and so long as both the costs and projected revenue are appropriately justified, then having additional criteria to quarantine funds for district level infrastructure would not be necessary. Also, as higher rates will only apply to strategic centres, town centres and economic corridors, it stands to reason that the infrastructure being delivered to support the centre will likely always result in a broader community benefit.

DRAFT PLANNING AGREEMENTS PRACTICE NOTE AND MINISTERIAL DIRECTION

The revised Practice Note is substantially similar to the existing Practice Note and where new guidance has been included, it is considered to be a reasonable inclusion, which is consistent with the process, procedures and considerations already applied by The Hills Shire Council in the application of Planning Agreements.

It is noted that should the proposed revisions to the Practice Note be finalised by the State Government and associated Ministerial Direction issued, Council would then be required to further revise the draft policies on VPAs which had previously been prepared in order to reflect the requirements of the revised Practice Note.

Council is currently in the process of preparing, and progressing, a number of policies to guide the preparation and assessment of VPAs and Works in Kind Agreements. As part of the assessment and consideration of most planning proposals, arrangements are established for developers to make contributions toward the delivery of local infrastructure. This is usually by way of a VPA. Accordingly the outcome of the current review of the Contribution Framework and implementation of legislative amendments will update how Council considers and assesses offers to enter into VPAs. Given the comprehensiveness of the State Government's review (including, most notably, the VPA framework), it is difficult to progress work on these policies at this time, until the outcomes of the Government's review is finalise.

DRAFT SPECIAL INFRASTRUCTURE CONTRIBUTIONS GUIDELINES

Establishing guidelines to ensure transparency in the preparation and administration of SIC is appropriate. Council is subject to an extremely regulated and transparent framework as part of the preparation of its local contribution plans. Accordingly, it is considered reasonable that similar transparency apply to state and regional infrastructure funding. This should include a public register which identifies where and how much SIC has been collected from particular Local Government Areas and release areas. This should enable appropriate scrutiny to ensure that the delivery of infrastructure generally aligns with the increase in demand, and also ensure that those who are paying the contributions are receiving the benefit of timely delivery of infrastructure.

Locations where the SIC applies

Determination of potential new SIC areas should occur early in the master planning process. As an example, the Hills Showground Precinct was rezoned as part of the Planned Precinct Program without any SIC established for the Precinct. As a result there is no mechanism to secure funding from development for the delivery of certain state and regional infrastructure required to meet the additional demand. To avoid such situations from occurring in the future, planning authorities and Government Agencies should be encouraged to plan for state and regional infrastructure, including possible funding mechanisms such as SIC, as part of the master planning process for any Precinct which is subject to substantial urban transformation.

Method of calculating SIC

The Guideline highlights that it is important to ensure that a SIC can be applied to a range of land uses that generate infrastructure demand and this can require a range of SIC calculation methods to be utilised. The standard calculation methods identified within the Guideline are:

- A charge per net developable hectare in greenfield areas;
- A charge per dwelling and/or gross floor area in urban infill areas; and
- In some exceptional cases, a charge based on percentage of the capital investment value (CIV) will be considered to further simplify the calculation method.

Permitting a range of SIC calculation methods, depending on the circumstance of the Precinct, is considered to be appropriate. The determination of the value of SIC payable for any development should ideally be linked to the level of increase in demand for infrastructure, to ensure equitable distribution of the cost. However where a proposed SIC seeks to levy development based on non-residential floor space, clear direction should be provided as to what land uses and floor space will be included in the calculation. Similar clarity would also be required for residential development and the different types of residential uses and dwelling types.

Approach to SIC feasibility

The Guideline provides a general overview of the approach to SIC feasibility analysis and identifies various considerations including planning uplift, development/construction costs, affordable housing and local developer contributions. Whilst the Guideline identifies factors which could impact on feasibility, it does not articulate how each of these factors would be considered through the SIC preparation process. Furthermore, the Guideline comments that when undertaking feasibility analysis, the higher of the adopted local contributions charge or the rate cap will be used. However as the rate cap will be abolished in July 2020, the Guideline should be updated to reflect this.

When applying local contributions, it is recommended that the Guideline outline the following pathways:

1. Where an existing SIC is being reviewed by the Department - the feasibility analysis should account for the full contribution rates within the applicable local contributions plan. The Department should consult Council on which rates to apply; or
2. Where a new SIC is being prepared for an area which is proposed to be rezoned for increased density - it is likely that in these circumstances there will not yet be an adopted or in-force 7.11 contributions plans which accounts for the future growth within the relevant precinct. The Department should consult Council and apply the most recent rates from any draft contributions plan prepared for the precinct. Where a draft contributions plan is not available the Department, in consultation with the relevant Council, should apply contribution rates from comparable contribution plans.

While economic feasibility is an important consideration, it should not be the primary consideration in determining the appropriate value of a SIC levy. Rather it is recommended that nexus, costings and apportionment should be the key considerations. As part of the preparation or review of any SIC, detailed analysis should be undertaken with a view to ensuring that the levy:

- Has been calculated having regard to the likely cost of the infrastructure funded; and
- Generally accords with 'user-pays' principles, whereby the levy applicable to different areas is proportionate to the cost of infrastructure which directly benefits those areas.

Timing of payments and administration

Where the SIC levies development based on yield, the Department may end up being reliant on private certifiers to appropriately impose conditions requiring payment of the SIC levy and to ensure that the appropriate contributions are paid. As mentioned within Council's submission of the draft Western Sydney Growth Area SIC, in Council's experience, certificates are often issued without the private certifier imposing the appropriate conditions requiring payment under the applicable Section 7.11 or 7.12 contributions plan (where complying development is proposed) or verifying that the contributions owed have been paid. This results in considerable loss in contribution income for Council and a significant administrative burden to audit complying development certificates issued, and issue notices to the relevant private certifiers. As part of the implementation of changes to the SIC Scheme, it is recommended that the Guidelines clearly outline the responsibilities of private certifiers and how any breach of these responsibilities will be addressed.

Expending SIC revenue

The Guideline state that 'the principles of nexus and apportionment appropriately constrain the SIC's ability to fully recover the full cost of new infrastructure even in areas with the highest rates of growth. The SIC is therefore not a commitment to the delivery of any infrastructure item'. Concern is raised with respect to this statement. If the Government identifies certain infrastructure within a SIC, and progressively levies development on the basis of funding the delivery of this infrastructure item, then landowners, developers, Council and the community should have some degree of assurance that the infrastructure will be delivered. Where the cost of infrastructure needs to be apportioned, measures need to be put in place for Government to commit to necessary funding to cover the shortfall in cost.

Review of SIC

It is noted that development within growth areas is occurring rapidly. Accordingly review of SIC programs and the SIC priorities needs to occur more frequently and quickly. Council and the community need funding certainty around major regional infrastructure projects and as such funds need to be collected from development equitably.

DRAFT AMENDMENTS TO THE EP&A REGULATION 2000

Reporting on development contributions

No objection is raised to the proposed reform to increase the reporting requirements for development contributions. However the following points are recommended:

- The Department undertake further consultation with Council as part of the preparation of future reporting guidelines;
- Council be given sufficient time to prepare its systems and processes to ensure that the requirements of the Regulation are satisfied;
- The proposed reforms should not apply retrospectively due to the considerable administrative difficulties associated with tracing historic development applications and contributions; and

When expenditure is reported, Council should not be required to publish acquisition costs for individual parcels as this could impact on future land acquisition negotiations. Rather, it is requested that land acquisitions be reported in aggregate.

Reporting on planning agreements

No objection is raised to the proposed reform to increase the reporting requirements for planning agreements. However the following points are recommended:

- The Department undertake further consultation with Council as part of the preparation of future reporting guidelines; and
- Council be given sufficient time to prepare its systems and processes to ensure that the requirements of the Regulation are satisfied.

Streamlining the process for making a CP following receipt of Minister's advice

Matters relating proposed amendments to the Regulation are discussed in greater detail earlier in this submission under the attachment relating to the Discussion Paper on 'Improving the review of local infrastructure contributions plans'.