

3 August 2020

Peter Achterstraat AM
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Dear Peter,

Submission to Productivity Commission Review of Infrastructure Contributions in NSW

Thank you for the opportunity to provide comment on the Issues Paper. PIA is keen to be engaged in the testing of reform options prior to the final report.

PIA has consistently advocated for holistic reform of infrastructure funding and development contributions regimes to ensure alongside population growth communities have an acceptable standard of baseline infrastructure. Funding of the provision of this infrastructure must be balanced between public and private funding sources, and the distortion created by rate-pegging addressed.

We understand that integrated, place-based planning and funding maximises the return on investment from infrastructure expenditure.

We believe this Issues Paper identifies many of the critical points raised by the Planning profession and offers the potential for transformative reform.

This submission complements our recent submission to DPIE on operational aspects of Development Contributions ([PIA June 2020](#)) and our input to the NSW Productivity Commission (NSW PC) '*Kickstarting the Productivity Conversation*' ([PIA November 2019](#)). Our submission is guided by PIA's [national position](#) - that an infrastructure funding regime should:

- be based on planning systems principles, nexus and the fair and proportional sharing of cost;
- balance contributions obligations for developers with the needs of communities;
- be transparent, be justified and actioned via a comprehensive infrastructure funding and delivery plan;
- be known at the time plans are released; and
- beneficiaries of value generated by infrastructure and related land use changes should provide a share of the funding towards the corresponding investment.



In preparing this response, PIA acknowledges the Productivity Commission's infrastructure contributions system adopted principles of *efficiency, equity, certainty and simplicity*. These are not mutually exclusive - we want to see a contributions reform that:

- sets a price signal on where and how sustainable and viable development can occur (*efficiency*)
- accurately charges only those that benefit or give rise to the need for infrastructure (in proportion to their benefit or demand) (*equity*)
- is predictable and consistently applied - to inform the entire 'supply chain' in land development (*certainty*)
- is easy to understand and where compliance costs are kept to minimum (*simplicity*)

PIA's submission is based on input from a working group of planning and economic experts across the profession from local government, private consulting, industry peak bodies and the development sector.

PIA has structured our response in **Attachment A** using headings corresponding to the eight issues set out in *Chapter 5 'The Way Forward for this Review'*. In **Attachment B**, we also respond to specific questions posed in *Table S.1* of the Issues Paper. Where appropriate, we have cross referenced our responses to more detailed input from PIA's earlier submissions. **Attachment C** includes links to relevant PIA source material.

Thank you again for the opportunity to remain engaged. If you have any queries about our submission, please don't hesitate to contact [REDACTED]

Yours sincerely

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ATTACHMENT A: PIA SUBMISSION TO 'CH 5: THE WAY FORWARD'

A.1 Local Government rate pegging

Local government across Australia currently generates less than 4% of tax raised by all levels of government, yet it is responsible for approximately 80% of nation public assets. This is a funding issue which requires all levels of government to take a fresh look at the levels of responsibility that should exist at each level of government and thereafter the most appropriate funding regime to support the effective provision, maintenance and upgrading of this public infrastructure. .

The NSW State Government currently restricts local councils' revenues through rate pegging legislation. The reality is that there are never enough financial resources available to enable the delivery of everything the council and its community expects or desires. Cost shifting by transfer of activities previously undertaken by the State to local councils (such as recent changes to the administration of NSW Crown land) has exacerbated the challenges. Consideration should be given to removing NSW Government imposed restrictions on revenue generation, primarily from rate pegging, but also from regulation of the fees which councils can charge for their regulatory functions. In most cases these fees do not reflect the cost of delivery and do not have CPI increases applied.

Caps on council rates and de facto caps (IPART Process) on contributions obscure price signals in the market - while distorting the use of a narrow range of other available funding mechanisms. This creates pressure to optimise the use of developer contributions. In a broader sense, this distortion has intergenerational and spatial impacts:

- By tilting the incidence of infrastructure costs to the current generation through charging developer contributions up front; and
- By favouring fringe development over infill development. If the true cost of infrastructure were passed on to developers, then they would be forced to pay a lower price for land to landowners.
- Penalises council areas which facilitate or accommodate significant growth (both in urban and fringe areas)

PIA agrees with the Productivity Commission statement that *"Local government rate pegging creates a financial disincentive for councils to accept growth and increases their dependence on other revenue sources such as infrastructure contributions. The recently announced reforms to the rate peg to include a population growth factor is supported as an important step to providing councils with a funding source to further support their growing communities. It is also complementary to reform of the infrastructure contributions system."*

PIA also does not support strict caps on development contributions as they are necessary to adequately reflect a price signal of the true costs of this development. PIA favours orderly and sustainable development in both greenfield and existing urban areas.

PIA Recommendation A.1: Remove rate capping where councils maintain a satisfactory [Integrated Planning and Reporting Framework](#) that includes appropriate checks and balances on income and expenditure.

A.2 Rising infrastructure costs

Land value is a large but less predictable element in determining the infrastructure costs in contributions plans.

PIA recommend The Productivity Commission consider a combination of the following options for addressing this issue:

- **Requiring early and direct dedication of lands.** Under Victoria's subdivision act, 5% of land is required to be set aside upfront as a contribution for a range of infrastructure / public purposes. (Measures would be needed to ensure appropriate land is dedicated – not just undevelopable and/or heavily constrained areas). While early dedication represents a cost in the development process, it improves certainty and addresses the issue of subsequent land cost inflation. The clear and early expectation for land dedication would push the cost burden back towards the original landowner.
- **Reform to Land Acquisition (Just Terms) Act** to change the basis and / or point in time a just valuation is attained. There is an equity and efficiency argument for valuing land to be acquired for infrastructure / public purposes on the basis of its undeveloped value (according to those uses enabled under the pre-existing zone) – rather than its highest and best use post the provision of the infrastructure and any related upzoning. Given that the increase in land value is primarily achieved by orderly planning and delivery of infrastructure – it seems inappropriate and circular logic to increase the cost of this infrastructure by paying highest and best use land cost. In any case, some of the land to be acquired (eg for drainage) would have very limited development potential and its cost should reflect this.
- **Have a public authority purchase land for necessary drainage / water infrastructure up front.** Sydney Water is well placed to fund the upfront acquisition of the drainage component and other service corridors for water. This would be funded by their user charges. While the cost could impact on their dividend to Government, there would be a net saving based on the timing and status of the land acquired. The land acquired would be excluded from that needed to be acquired through development contributions.
- **Establish an 'equalisation scheme'.** This is a necessary companion reform where in a multi owner development precinct, one owner is disproportionately saddled with land take needed for infrastructure (such as provision of a new road) and suffers reduced potential yield. A mechanism for equitably sharing the loss of yield amongst participating landowners should be a prerequisite for all options considered.
- **Fund early acquisition of land needed for other infrastructure via a Regional Infrastructure Contribution and Fund.** PIA supported elements of the 2013 *Planning Reform White Paper* which included:
 - *"introduction of Growth Infrastructure Plans to align land use planning decisions and infrastructure planning and delivery. These plans were to be informed by Subregional Delivery Plan and identify infrastructure needs over a 10-year timeframe. A Regional Infrastructure Contribution was to be introduced to fund this infrastructure and charged on a sub-regional basis."*

- “introduction of a separate Regional Growth Fund for the acquisition of land needed for public open space and drainage. This contribution was to be charged on a regional basis.”
- PIA notes and supports the more recent development of Place-based Infrastructure Compacts (PICs) and sees these fitting into the model anticipated back in 2013.
- **Sydney Region Development Fund.** PIA has also supported the use of a regional rate surcharge to fund open space acquisition – and note the role of the Sydney Region Development Fund in this regard. The amount of this rate should be reviewed and considered as an implementation tool for the Greater Sydney Region Plan and potentially PICs.
- **Proceeds of any future ‘betterment levy’ could support early land acquisition.** (Refer value capture discussion in Section 5)
- **Remove land cost when determining the threshold for IPART review of contributions** (see box below)

Removal of land costs from IPART threshold & the need to update Contributions Plans

In PIA’s recent submission to DPIE ([PIA June 2020](#)), we advocated for the removal of land costs/contributions from the threshold for IPART review of contribution plan rates in order for contributions plans to send a price signal and to enable IPART to focus on those cost variables over which there is greater control. PIA is aware that the major contributor to exceeding the threshold is inflated land costs, and it is particularly acute in Western Sydney. We propose that the threshold relates to the works costs only in a plan.

This would not prevent IPART and DPIE examining the reasonableness of the quantum of land in a contributions plan. Provided the land values have been prepared and certified by a suitably experienced Registered Land Valuer there should be no need to review unit rates for land. The removal of land costs from the threshold also has the advantage of the threshold being relevant across the state. The current land and works threshold captures basically all Sydney greenfield contributions plans and few in regional areas because of the land price differential.

As outlined in PIA’s DPIE submission we support contributions plans being regularly updated and remaining current. The following interim measures are supported prior to a more holistic review arising from the Productivity Commission work:

- *The removal or updating of thresholds and in the interim removing the land value component as a minimum reform.*
- *Annual indexation of thresholds using CPI is an adequate measure while awaiting the outcomes of the Productivity Commission review.*
- *A review of the IPART terms of reference as they are currently broadly worded, inflexible and unclear regarding the scope of assessments.*
- *Using the cessation of the existing exemptions process to trigger reviews of plans that have not been reviewed in many years.*

PIA Recommendation A.2: Require early and direct dedication of lands for necessary infrastructure funded from a combination of sources.

A.3 Inconsistency in the application of s7.24 Special Infrastructure Contributions

The current operation of the (State) Special Infrastructure Contributions (SIC) regime has resulted in a highly siloed approach to infrastructure funding in Planned Precincts and Growth Areas where state and local contributions are considered separately. Fundamentally, what is required is a single system for funding infrastructure in Planned Precincts and Growth Areas which adequately considers both state and local infrastructure contributions. This system should result in a comprehensive infrastructure and delivery plan for each Planned Precinct and Growth Area.

There is no reason why the contributions regime should have less accountability than that required and expected of local contributions plans prepared under S7.11. Further there is a distinct benefit in requiring the integration of local and state contributions within the framework of a S7.11 plan.

A single system should seek to remedy the following issues:

- The unnecessary duplication of work between state and local government in preparing contributions plans and the limiting factor of local government area boundaries.
- The difference in transparency and reporting required from state and local government.
- The lack of consideration of the range of funding sources available when delivering infrastructure for a Planned Precinct.
- A level of uncertainty about the total quantum required in the contributions plan.

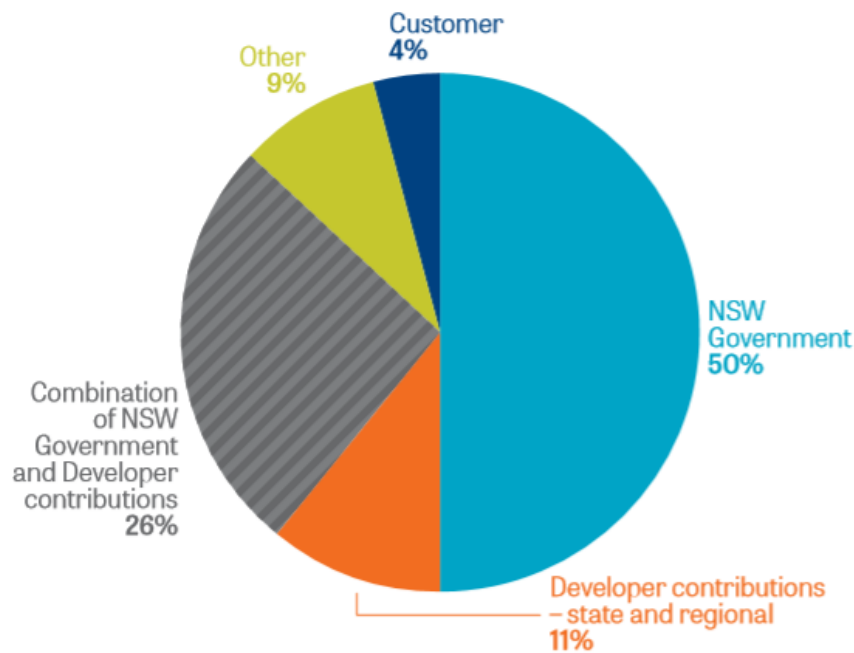
Currently, there is duplication in the work being undertaken by local and state governments in preparing contributions plans. The resultant plans carry a significant amount of administrative burden without corresponding benefit in the delivery of infrastructure. For example, PIA observed that funding for certain infrastructure listed in the Western Sydney Growth Centres SIC was duplicated with infrastructure already funded in local government s7.11 contributions plans. Instead, both levels of government should undertake a coordinated approach, in which the required infrastructure is identified and planned for in collaboration. This should occur across local government area boundaries where necessary. This would create one source of truth for developers and the community, send the right price signals and promote a coordinated roll out of the required infrastructure where responsibilities for delivery are understood from the outset. PIA's preferred position is a single infrastructure list which would be divided up between state and local government. S7.23(3A) of the EP&A Act specifically provides for SICs to be determined with both State and local council components.

There is a clear need for transparency and accountability regarding revenue and expenditure for both state and local contributions. The level of accountability and transparency required of local contributions plans is appropriate and should be extended to state contributions as part of a single comprehensive system. Currently, there are significant differences in the accountability requirements for the two levels of government, as expressed below.

Elements	S7.11 / s7.12	SICs
Regulated exhibition period or requirement	yes	no
Nexus requirement	yes	no
Regulated accounting requirements	yes	no
Appeal rights	yes	no
IPART assessment	yes (if above thresholds)	no
Practice notes	yes	no
Regulated preparation requirements	yes	minimal
Regulated amendment requirements	yes	no
Regulated review requirements	yes	no
Regulated repeal requirements	yes	no
Regulated public inspection requirements	yes	no



PIA has long-argued that a key issue with SICs is that it considers only one funding source. Beyond the clear need to consider local contributions, there is also a need to identify alternative sources of funding like value capture, taxes, grants and special rates. The current siloed approach means these alternative funding sources are rarely considered. A single system resulting in a comprehensive infrastructure funding and delivery program for each Planned Precinct and Growth Area would go some way in remedying this problem. The Place Infrastructure Compact GPOP Pilot undertook a worthwhile exercise in determining the range of funding sources available, as expressed in the figure below. This process should be a feature of plans arising from the single comprehensive system for infrastructure funding and delivery in Planned Precincts and Urban Renewal Areas.



Source: GPOP Place Infrastructure Compact Pilot, Greater Sydney Commission

PIA Recommendation A.3(ii): Investigate integrating State infrastructure contributions within a single regime – under the local contributions framework (s7.11 plan) to ensure the same accountability for implementation applies to SICs and local contributions.

PIA Recommendation A.3(ii): Develop a single comprehensive system for infrastructure funding and delivery in precincts in which infrastructure contribution are also collected for State infrastructure (eg Planned Precincts / Priority Precincts, Growth Areas and the like).

A.4 Nexus requirements in s7.11 contribution plans

The ‘nexus’ principle requires establishing a clear connection between those who give rise to the demand for infrastructure (or benefit from it) and those who pay for it. Development contributions are based on proponents of development paying for that component of the infrastructure costs that they give rise to (and benefit from). The share of the infrastructure costs payable by proponents of development should be in proportion to the amount of demand they generate and benefit they receive.



Nexus and fair apportionment are the foundational principles of the development contributions system. They are also the basis for establishing an effective market signal for the location or size of new development. While there is an administrative burden in calculating contributions plans on this basis – it is a necessary burden - without which allocation of infrastructure costs would be arbitrary and not offer a clear market signal. The effort of preparing a comprehensive S7.11 Contributions Plan is worthwhile in greenfield (and major urban renewal) precincts where nexus is clear and a substantial portion of the considerable infrastructure costs are attributable to and concentrated around a specific development.

Where nexus and fair apportionment are traded-off for simplicity and certainty there is a high risk that the amount of contributions able to be reasonably collected from development are reduced. PIA support the application of a simple low level fixed rate of development contribution (ie S7.12) when the contribution component for infrastructure is low due to apportionment among multiple beneficiaries.

PIA has set out means to reduce the regulatory burden and optimise the balance among competing principles in our [submission](#) to *Kickstarting the Productivity Discussion* (extract in box below).

PIA Recommendation A.3(i): Recognise nexus and fair apportionment as fundamental concepts in the design of a contributions regime – and that the administrative burden in addressing them can be reduced.

Accurate establishment of nexus and fair apportionment should only be traded off against simplicity and certainty where demand for (or benefit from) new infrastructure is limited and very diffuse (eg infrastructure for dispersed urban infill).

PIA Recommendation A.3(ii): Redesign the development contributions as part of holistic reform of the infrastructure funding and delivery system based on the planning principles of:

- **Delivering infrastructure sooner for communities**
- **Improving infrastructure certainty for developers**
- **Requiring greater accountability and transparency**
- **Moving towards a simpler contributions system for all.**

This would result in:

- **Developers making reasonable up front investment towards infrastructure that serves their developments.**
- **Landowners in growth areas contributing by special local rates or additional land taxes reflecting the intergenerational benefits provided by new infrastructure.**
- **Governments allocating consolidated revenue towards growth infrastructure.**

Planning principles for infrastructure funding

The Commission's discussion paper supports a principles-based infrastructure contributions system, characterised by 'development-dependent infrastructure' funded by local and State infrastructure contributions based on an attributable share of efficient cost of delivery, and 'population-dependent infrastructure' funded by other sources, potentially some combination of user charges, local government rates, and Consolidated Fund and Restart NSW.

In PIA's view the key challenges are:

- Infrastructure delivery is uncertain
- Developer contributions are uncertain

- There is minimal transparency and accountability
- The current system is multi-layered, fragmented, opaque, complex & unstable

Arbitrary groupings of infrastructure do not solve the problem of how to provide them in a timely and financially sustainable way. It is PIA's position that, at its core, infrastructure funding mechanisms for an area must strike a balance between:

- consistent, certain and reasonable infrastructure contributions obligations for developers on the one hand; and
- certainty that the new communities will be provided with an acceptable standard of baseline infrastructure.

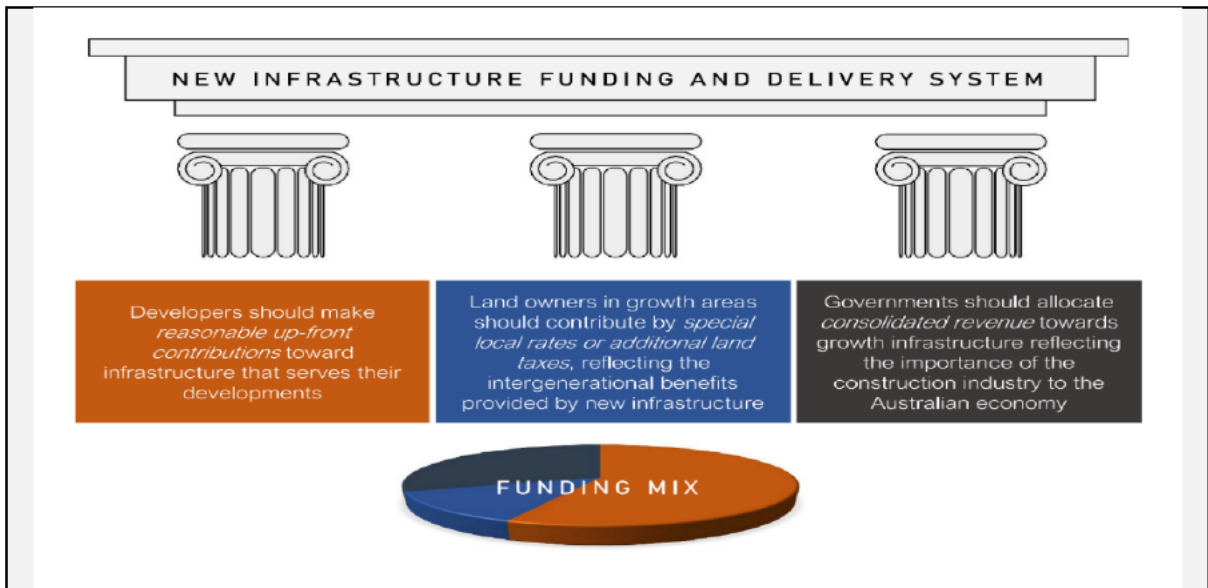
PIA suggests that there are four bedrock goals for genuine reform of the infrastructure funding and delivery system. These are shown in the following diagram:



A range of actions could be implemented in the short term (within 1 year) to advance these goals. For example:

- Continue State Budget programs that accelerate provision of lead-in infrastructure that unlocks development areas
- Speed up infrastructure delivery by requiring councils to pool their contributions funds and achieve rolling 3-year spending benchmarks.
- Have more infrastructure delivered by developers as works in kind
- End the uncertainty around 'satisfactory arrangements' contribution requirements in LEPs
- Review the role of special infrastructure contributions with a view to moving towards standard charging
- Pilot an electronic State and local contributions management system project including a contributions calculator for 3 city and 3 regional councils, in collaboration with the Department of Customer Service.
- Develop a comprehensive policy on the appropriate use of 'value sharing' schemes
- Raise the bar in accountability by establishing guidelines for councils on the use of repealed plan funds, enabling web access to downloadable contributions registers and reports on infrastructure delivered

More lasting reform (i.e. actions to be implemented over a 3+ year period) could be underpinned by a new growth infrastructure funding and delivery system based on 3 pillars shown in the following diagram:



Actions supporting the new system

- Comprehensive infrastructure delivery plans that contain all State and local infrastructure requirements and contributions in one document that is adopted at the time land is rezoned or upzoned.
- These plans will also contain delivery responsibilities and priorities, and an adopted funding mix reflecting the weightings of the 3 pillars – the weightings reflecting economic circumstances and government policy at the time.
- Empower a single agency within government to resolve disagreements between agencies about infrastructure priorities so that coherent funding plans can be recommended to Cabinet.

Ideas for implementing Pillar 1:



GROWTH INFRASTRUCTURE DELIVERY PLAN

- State & Local infrastructure schedule
- State infrastructure contributions
- Local infrastructure contributions
- Works staging & priorities
- Agency responsibilities
- Funding mix

- A schedule of standard contributions to permanently shift the focus from time-consuming and piecemeal determination of charges for each development area to the infrastructure delivery program and its funding mix. This will be a leap forward in creating investor certainty and free up councils to deliver infrastructure sooner.
- Redefine IPART's role away from time-consuming forensic analysis of individual contributions plans to setting the standard contributions schedule.
- Developers can settle any cash contribution obligation at any office of Service NSW.

Ideas for implementing Pillar 2:

- Remove rate pegging constraints for councils that achieve financial accountability benchmarks
- Develop a streamlined process for councils to implement special rates on benefitting landowners in rezoned areas.

Ideas for implementing Pillar 3:

- Consider a metro-wide levy on rates notices, land tax notices and/or DAs to comprise part of the funding mix.

Primacy of establishing an agreed funding mix early on

Agreement on a 'funding mix' must underpin lasting reform. Establishing a fair contribution is but one part of that exercise.

The GSC's attempt at this through the GPOP Place Infrastructure Compact (PIC) pilot provides a model of how to approach the task. The funding mix approach deals with infrastructure funding and delivery holistically. In the GPOP example, it is clear that developer contributions will play an important yet relatively minor role in funding the c\$20-\$30 billion in infrastructure needed for that place.

Much effort is currently applied to determining a fair and reasonable contribution rates for developers when arguably the biggest challenge is aligning the machinery and budgets of State Government to deliver the lion-share of the infrastructure over several electoral cycles.

The PIC is a genuine attempt to develop a comprehensive infrastructure funding and delivery plan for a place where significant change is expected and bring together delivery agencies to commit to a prioritised schedule of infrastructure.

A.5 Lack of principles in s.7.4 Planning Agreements

Planning Agreements continue to perform an important role for site specific determination of infrastructure contributions. They apply where the default contributions plan does not anticipate (or is unable to respond rapidly) to the nature of proposed development on a specific site.

Planning agreements provide an opportunity to closely tailor infrastructure delivery to the needs of a site and enable best value in the delivery of works in kind and the dedication of land by the developer. Because they are usually established at the time of upzoning, they provide the opportunity to capture a portion of the uplift associated with change of use (or increase in development permissible under the standards) enabled by public infrastructure delivery.

The claim that planning agreements are an opportunity for development rights to be sold is misguided. While there is a question of whether community trust is affected by poor understanding of the process of negotiating planning agreements – an even greater threat would be the absence of any mechanism for the community gaining some value from uplift at the time of rezoning. PIA has adopted a [Voluntary Planning Agreement Policy](#) to help improve transparency and accountability in the preparation of planning agreements as set out below:

PIA's [submission](#) to DPIE on infrastructure contributions supports:

- The fundamental principles in the Government's [Draft Planning Agreements Practice Note](#).
- That value uplift generated by infrastructure investment and changes to land use controls should be shared (via Planning Agreements) between the landowner taking development risks and the wider community who risk the impacts to their living, working or business conditions.
- That Planning Agreements should not be seen as development opportunities being 'for sale' and that corruption risk can be mitigated by councils adopting a transparent Planning Agreement Policy.
- Planning Agreements should be undertaken in the context of council's adopted Planning Agreement Policy. This should include guidelines setting out:
 - how stakeholder engagement has demonstrated the need for the scheme;
 - its role in the funding mix adopted to deliver infrastructure in the affected area;

- the benefits to the wider community that will be achieved by the scheme;
- clearly showing how proponents can participate in the value sharing scheme (noting that such schemes are usually tied to voluntary incentive floor space provisions in an Environmental Planning Instrument (EPI));
- a consistently applied methodology for determining residual land value uplift and the value sharing rates; and
- how monies will be collected, accounted for and spent.

PIA Recommendation A.4: Reform to development contributions frameworks should retain a role for Planning Agreements that reflects the principles in the Practice Note, endorses their role in value capture (in the absence of an alternative betterment regime) and ensures that their implementation is based on an adopted policy by council (and State Government) that sets out accountability for collection and expenditure of monies.

A.6 Lack of transparency and certainty in way contributions are calculated and spent

Timely reporting tools integrated into existing ePlanning platforms should also be supported by the statewide rollout of electronic contributions calculators. This should allow proponents to identify their site, provide the development details and easily understand what rates apply and what the total payable will be. This will support contributions being factored into development feasibility from the outset and allow proponents to factor the full cost of infrastructure into their finance arrangements.

The issue of transparency and certainty in contributions is most acute in relation to state contributions, which are not subject to the same transparency and reporting requirements as local contributions.

PIA believes that the level of transparency currently required for local contributions is appropriate and that these requirements should be extended to state contributions. Both state and local contribution reporting would be bolstered by the delivery of more timely information to community and developers.

PIA supports a digital system, integrated with existing ePlanning tools available in NSW, which reports and tracks the spending of state and local contributions. Such a tool should allow the community and developers to easily understand what contributions have been collected, what they are being allocated to and when they are spent.

PIA Recommendation A.6: Integrate a digital tool within existing ePlanning systems which assists in calculating contribution and also tools to report the collection and spending of state and local contributions.

A.7 Misalignment between contributions payments and delivery of infrastructure

There is generally strong performance and sound accountability of local government expenditure of collected contributions. However, there remains concern that could be addressed by improved governance to help speed up infrastructure delivery by requiring councils to pool their contributions funds and achieve rolling 3-year spending benchmarks. These arrangements and benchmarks should be set within the context of Councils integrated planning and reporting framework and included in their contributions plan.



PIA Recommendation A.7: Set performance standards on contributions plan expenditure for both local contributions plans and SICs.

A.8 Operation of the essential works list

The essential works list operates a significant limitation on the delivery of infrastructure needed to support communities in Council areas where rates are above the relevant cap.

Currently, the essential works list is limited to:

- *land for open space (for example, parks and sporting facilities) including base level embellishment*
- *land for community services (for example, childcare centres and libraries)*
- *land and facilities for transport (for example, road works, traffic management and pedestrian and cyclist facilities), but not including carparking*
- *land and facilities for stormwater management*
- *the costs of plan preparation and administration.*

This allows for little flexibility, especially in urban renewal areas where pressure on existing infrastructure is high and land costs prohibitive. In practice, the essential works list prioritises the delivery of roads and drainage infrastructure at the expense of the important social infrastructure required to make urban renewal areas and greenfield areas liveable. However, PIA believes that the essential works list should be retained to provide a benchmark and certainty for government and developers.

The essential works list should be flexible across local government areas and reflect the genuine needs of the existing and future community. Determination of an appropriate bespoke essential works list should form part of IPART assessment for contributions plans in urban renewal areas. This assessment should allow for alternative infrastructure to be proposed subject to criteria being met and public scrutiny via the Council's integrated planning and reporting framework. Cost certainty should be maintained by requiring alternative infrastructure to be benchmarked against a prescribed list.

Further, the list of prescribed infrastructure for both greenfield and urban renewal areas should be expanded to include a wider range of infrastructure. This will address a significant issue in the current operation of the essential works list, which excludes the construction of community facilities. In practice, this means that community facilities and open space often form part of masterplans in urban renewal areas but remain unconstructed as it is difficult for the Council to secure the required funds for their delivery.

PIA recommends the Productivity Commission consider the following:

1. **New essential works list:** Develop a new essential works list regime including two separate lists – one for greenfield areas and one for urban renewal areas. The urban renewal area list should not be prescriptive and instead should have a flexibility clause in the guidelines,



subject to criteria being met and public scrutiny via the Council's integrated planning and reporting framework.

2. **Community services land:** Clarify what 'land for community services' means and note that in urban renewal areas, this includes land in stratum in a building.
3. **Additional prescribed infrastructure categories:** Make additions to the essential works list to allow consideration of the following:
 - a. Open space beyond land acquisition and basic embellishment – embellishment of existing facilities beyond basic embellishment, skate parks, BMX tracks, public domain embellishment (with a specific definition), public art elements, bushland embellishment, integrated environment works, riparian land embellishment, and embellishment of open space for 24-hour use. It should also be noted that streets and lanes do not always have a traffic function and can also provide critical public spaces.
 - b. Community services beyond land acquisition – multi-purpose facilities, community resource hubs, aquatic centres, recreation centres, surf clubs, embellishment of community facilities, and the construction of all community facility buildings.
 - c. Stormwater facilities beyond that for management – stormwater facilities that serve detention and treatment purpose and riparian land.

PIA Recommendation A.8: Redesign the Essential Works List to enable it to include items that have passed public scrutiny via a councils Integrating Planning and Reporting Framework.



ATTACHMENT B: PIA RESPONSES TO PC QUESTIONS (TABLE S1 Issues & Discussion Questions)

PC Issue / Questions	PIA Response
<p>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.</p>	
<p>+ Is a 'one size fits all' approach appropriate or do parts of the State require a bespoke solution?</p>	Greenfield, concentrated urban renewal sites and dispersed urban infill each need different approaches
<p>+ What are the advantages and disadvantages of a site-specific calculation based on demand generated, compared with a broader average rate?</p>	Clearer nexus and fairer apportionment based around a site specific calculation enable a more precise market signal and the ability to charge a more accurately – however 7.11 plans carry a higher administrative burden.
<p>+ Do other jurisdictions have a better approach to infrastructure funding we should explore?</p>	No single system - there are elements of every system that have merit
<p>+ How can a reformed contributions system deliver on certainty for infrastructure contributions while providing flexibility to respond quickly to changing economic circumstances?</p>	This is the subject of our submission
<p>Issue 2.1: Enable a broader revenue source for the funding of infrastructure</p>	
<p>+ Are there any potential funding avenues that could be explored in addition to those in the current infrastructure funding mix?</p>	Betterment levies, special local rates, regional rates and other land taxes
<p>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.</p>	
<p>+ How can the infrastructure contributions system better support improved integration of land use planning and infrastructure delivery?</p>	By funding place outcomes – see PIC
<p>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.</p>	
<p>+ What is the role of planning agreements? Do they add value, or do they undermine confidence in the planning system?</p>	They add value and are necessary to tailor a solution for one off upzoning – however there is a proliferation via 'satisfactory arrangements' clauses which should be reduced.
<p>+ Is 'value capture' an appropriate use of planning agreements?</p>	Yes



PC Issue / Questions	PIA Response
+ Should planning agreements require a nexus with the development, as for other types of contributions?	Yes - for the infrastructure contributions component – but not necessarily for any value capture component
+ Should State planning agreement be subject to guidelines for their use?	Yes – as per local government
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?	Planning agreements should be prepared and implemented in line with an adopted succinct planning agreement policy
+ Should councils and State government be required to maintain online planning agreement registers in a centralised system? What barriers might there be to this?	Not reviewed
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?	Yes
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?	See submission A.3, A.4
+ What are the trade-offs for, and potential consequences of, reducing complexity?	See submission A.3, A.4
+ How can certainty be increased for the development industry and for the community?	See submission A.3, A.4
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?	Not reviewed
+ Would alternatives to financial securities, such as recording the contributions requirement on property title, make deferred payment more viable?	Not reviewed



PC Issue / Questions	PIA Response
+ 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?	Not reviewed
+ What else could be done to ensure infrastructure is delivered in a timely manner and contributions balances are spent?	Not reviewed
<p>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.</p>	
+ 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?	Refer submission
+ 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?	Expanded
+ 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?	Refer submission
<p>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.</p>	
+ 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?	There is room to increase the current arbitrarily set maximum percentages considerably before issues arise.
+ What would be a reasonable rate for s7.12 development consent levies?	
<p>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 <i>ad hoc</i> decisions have, however, led to inconsistencies in their application, which may have limited their effectiveness.</p>	
+ Is it appropriate that special infrastructure contributions are used to permit out-of-sequence rezoning?	Yes - to maintain a price signal in favour of orderly land development and efficient infrastructure delivery
+ Should special infrastructure contributions be applied more broadly to fund infrastructure?	Refer submission
+ Should they be aligned to District Plans or other land use planning strategies?	Yes
+ Should the administration of special infrastructure contributions be coordinated by a central Government agency i.e. NSW Treasury?	Not reviewed



PC Issue / Questions	PIA Response
<p>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.</p>	
<p>✦ Are special infrastructure contributions the appropriate mechanism to collect funds for biodiversity offsetting, or should biodiversity offsets be managed under a separate framework?</p>	Not reviewed
<p>✦ Should implementation of special infrastructure contributions for biodiversity offsets be subject to a higher level of independent oversight?</p>	Not reviewed
<p>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.</p>	
<p>✦ 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?</p>	Yes
<p>✦ Do affordable housing contributions impact the ability of the planning system to increase housing supply in general?</p>	No
<p>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.</p>	
<p>✦ Where land values are lifted as a result of public investment, should taxpayers share in the benefits by broadening value capture mechanisms? What would be the best way to do this?</p>	Yes (there are opportunities to consider betterment levies)
<p>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.</p>	
<p>• Should an "infrastructure development charge" be attached to the land title?</p>	Not reviewed
<p>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.</p>	
<p>✦ If supported, how could direct dedication be implemented? How could this be done for development areas with fragmented land ownership?</p>	See PIA Submission A.2
<p>✦ Could earlier land acquisition be funded by pooling of contributions, or borrowings?</p>	Yes
<p>✦ Are there other options that would address this challenge such as higher indexation of the land component?</p>	Refer earlier submissions



PC Issue / Questions	PIA Response
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?	See A.2
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 acquisition or dedication – See A.2
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?	Not reviewed
† Should the government mandate open space requirements, or should councils be allowed to decide how much open space will be included, based on demand?	Not reviewed
† Are infrastructure contributions an appropriate way to fund open public space?	Yes – but alongside other measures (rates etc) where the broader community benefit
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?	See A.2
† What is the best way to provide for the funding of potable and recycled water provision?	Not reviewed
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?	Not reviewed
† 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?	Not reviewed
† Should an improved reporting framework consider the scale of infrastructure contributions collected?	Not reviewed
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?	Adequate resourcing, training, cpd, career progression
† Should the contributions system be simplified to reduce the resourcing requirement? If so, how would that system be designed?	Yes – see within
Issue 4.10: Current issues with exemptions	



PC Issue / Questions	PIA Response
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?	Exemptions should be minimised to maintain price signal
+ Is it reasonable to share the cost of 'exemptions' across all of the new development rather than requiring a taxpayer subsidy?	Not reviewed
+ Are there any comparative neutrality issues in the providing exemptions for one type of development, or owner type, over another?	Not reviewed
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, <i>in lieu</i> of infrastructure contributions?	Yes – where there is a net public benefit
+ 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?	No – WIK relates to the actual setting in order to retain nexus
+ What are implications of credits being traded to, and from, other contributions areas?	Not supported



ATTACHMENT C: PIA POLICY AND SUBMISSIONS ON INFRASTRUCTURE FUNDING AND DEVELOPMENT CONTRIBUTIONS

PIA has developed a series of detailed positions on infrastructure and its funding at both the national and state level. We have also made numerous submissions in recent years which address the issues raised in the Issues Paper.

B.4 Relevant PIA Policy and Submissions links

- PIA National Position Statement on Infrastructure and its Funding (2017): <https://www.planning.org.au/documents/item/8889>
- PIA National Discussion Paper on Infrastructure and its Funding (2017): <https://www.planning.org.au/documents/item/8890>
- PIA NSW Position Statement on Infrastructure Delivery and Funding (August 2019): <https://www.planning.org.au/policy/infrastructure-funding-and-delivery-nsw>
- PIA NSW submission on Voluntary Planning Agreement (VPA) Practice Note (Jan 2017): <https://www.planning.org.au/documents/item/8193> and our position paper: <https://www.planning.org.au/documents/item/7922>
- PIA NSW submission to DPIE Infrastructure Contributions Documents (June 2020): <https://www.planning.org.au/documents/item/10750>
- PIA NSW response to the Minister's planning reform priorities (including infrastructure contributions): www.planning.org.au/documents/item/10647 (May 2020)
- PIA NSW submission to Greater Sydney Commission Place-Based Infrastructure Compact (December 2019): www.planning.org.au/documents/item/10405
- PIA NSW submission to 'Kickstarting the Productivity Conversation' (November 2019): www.planning.org.au/documents/item/10356
- PIA NSW Hunter Branch submission to Hunter SIC Draft Determination (March 2019): www.planning.org.au/documents/item/9741
- PIA NSW submission to Legislative Assembly on Housing Affordability (Sept 2017): <https://www.planning.org.au/documents/item/8659>