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Australia's property industry

## Creating for Generations

13 August 2020

Mr Peter Achterstraat AM  
NSW Productivity Commissioner  
52 Martin Place  
SYDNEY NSW 2000

Email – [ICReview@productivity.nsw.gov.au](mailto:ICReview@productivity.nsw.gov.au)

Dear Mr Achterstraat,

### Review of Infrastructure Contributions in New South Wales – Response to Issues Paper

Thank you for the opportunity to respond to the Infrastructure Contributions Review issues paper released in July 2020. The Property Council of Australia welcomes your review and the decision to bring forward the reform timeframe. We look forward to continuing our engagement on reform of the infrastructure contributions framework to remove barriers to new housing supply and commercial development in NSW.

As Australia's peak representative of the property and construction industry, the Property Council's members include investors, owners, managers and developers of property across all asset classes. We are pleased to provide the following comments to you to assist with your review.

The COVID-19 pandemic has given rise to a challenging environment for the development industry and provides a unique opportunity to deliver important reforms to the infrastructure contributions operating within New South Wales.

There is widespread agreement that the NSW infrastructure contribution system is too complex, adds significant costs to housing development projects and does not always result in infrastructure being delivered when it is needed:

- **Contributions regime is overly complex and opaque** –the contributions regime is spread across legislation, regulations, orders, determinations, directions, practice notes, circulars and local contribution plans. There is also a lack of consistency and certainty in how the different fees and charges are calculated across different council areas. A clearer and more transparent method of planning, funding and delivery of infrastructure by State and local government is needed. This will simultaneously improve the management of funds by councils and the State Government and deliver improved outcomes for the delivery of local and regional infrastructure.

- **Contributions regime increases the cost of new housing and commercial developments** – historically, government agencies and local councils have imposed fees and charges, including utilities fees, local infrastructure contributions Special Infrastructure Contributions (SIC), affordable housing contributions, biodiversity offset schemes and other approval related items, for example technical studies, public art levies and the like. There has been little or no regard to the cumulative impact of all these costs on project viability. As an example, research by ACIL Allen estimated that taxes and charges represent around 26% of the cost of acquiring a new house in Sydney.
- **Contributions regime does not always deliver infrastructure when it is needed** - another significant issue has been local councils collecting contributions from development over many years but failing to spend those funds on infrastructure when development occurs. There must be greater accountability on local government to deliver vital community infrastructure when is needed.

The current downturn in the residential property market has heightened these concerns and put at risk future housing affordability and supply of much needed new housing and infrastructure to accommodate growing communities. A slowdown in housing construction will also have significant impacts on jobs and the broader economy, with recent analysis by the National Housing Finance and Investment Corporation showing that every \$1 million of residential construction supports nine jobs.

We therefore request that as a priority, the Government place a moratorium on the imposition of new levies, charges or costs until your review of infrastructure charges is complete.

I have attached the Property Council's submission on the Issues Paper and trust you will consider the matters we raised as you undertake your review.

Should you have any questions regarding the content of this submission do not hesitate to contact

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Yours sincerely

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Attachment 1 – Property Council submission to NSW Productivity Commission

Attachment 2 – NSW Infrastructure Contributions – Towards a fair, transparent and efficient system (Property Council)

# **Submission to the NSW Productivity Commission**

## **Review of Infrastructure Contributions in New South Wales**

**13 August 2020**

## 1.0 Introduction

### 1.1 Context for the review

The planning and collection of infrastructure contributions in New South Wales is regulated by a very complex framework that has grown by the addition of new layers of regulation over the last 20 years. Since the early 2000s a series of legislative amendments were made to the *Environmental Planning and Assessment Act 1979* that introduced amongst other contributions, Voluntary Planning Agreements, Special Infrastructure Contributions and Affordable Housing Contributions.

These amendments have increased the scope of contributions paid to local and State Governments on developments. The cumulative impact of new contributions has increased the cost of housing and other forms of development in many parts of the State and dramatically worsened affordability and project viability. These issues have been raised over many years including, in particular the response to the NSW Government housing affordability package in 2017.

Without reform to the current development contributions system there will be fewer houses produced in NSW, and Sydney in particular, due to a significant reduction in project viability. A slowdown in housing construction will also have significant impacts on jobs and the broader economy, with recent analysis by the National Housing Finance and Investment Corporation showing that every \$1 million of residential construction supports nine jobs<sup>1</sup>.

### 1.2 Principles for the infrastructure contributions system

Any funding option for urban public infrastructure should be underpinned by best-practice economic and taxation principles. Importantly, we are seeking a contributions system that is:

- fair,
- transparent
- more certain and
- efficient.

A clearer and more easily understood method of planning, funding and delivery of infrastructure by State and local government is needed. A reformed system should improve the management of funds between councils and the State Government to deliver improved outcomes for the delivery of local and regional infrastructure to service the new development it is seeking to support.

Collaboration between Local and State Government, industry and the community is a critical component of developing a better contributions system. On behalf of our members we look forward to being part of the process of engaging with the NSW Government on a new infrastructure contributions framework.

Currently there is a layer cake of levies, charges and other taxes that operate within New South Wales and are applied at the planning application stage. This includes but is not limited to:

- local infrastructure contributions (section 7.11 and 7.12)
- Special infrastructure contributions (section 7.24)

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<sup>1</sup> National Housing Finance and Investment Corporation, Building Jobs: How residential construction drives the economy, June 2020

- Affordable housing contributions (section 7.32)
- Planning Agreements (section 7.4)
- Biodiversity offsets
- Design excellence competitions
- BASIX certificates
- Heritage Floor Space schemes
- Home Warranty Insurance or Strata building bonds and inspection levies
- RMS works authorisation deeds
- Engineering inspections
- Security deposits and other guarantees
- Planning Reform Fee
- Public Art contributions
- Community Infrastructure Contributions
- Public domain improvements and
- Mandated sustainability targets.

In 2018, the Property Council commissioned ACIL Allen Consulting to assess the impact of property taxes and charges on new housing development<sup>2</sup> – this estimated that taxes and charges represent around 26% of the cost of acquiring a new house in Sydney, and 22% of a new apartment.

While the majority of these charges and levies do not relate to infrastructure funding (and are beyond the scope of this review), they are generally imposed and levied at the same stage during the development process. We respectfully submit that there must be a process developed in future to ensure that proposals to increase development charges and levies takes account of the cumulative impact of those charges on housing and other development such as commercial developments.

## 2.0 Infrastructure Funding in New South Wales

### 2.1 Infrastructure Funding Sources

The issues paper describes a number of sources for funding infrastructure, including general taxation revenue, asset recycling to fund programs such as the Housing Affordability Fund (HAF) and Restart NSW, Commonwealth grants and council rate revenue. Each of these sources has its own challenges and limits regarding how much revenue can be allocated to new infrastructure projects.

Developer contributions are also a significant source of funding for local and regional infrastructure. For almost a decade from 2008, local infrastructure contributions under section 7.11 of the Act (previously section 94) were capped at \$20,000 per dwelling (and \$30,000 per dwelling for certain greenfield areas). In 2017, the Government announced the removal of the cap (to be staged over several years) which has now allowed some local councils to seek contributions as high as \$115,000 per dwelling.

Other funding sources include fixed development levies, affordable housing contributions and voluntary planning agreements. Each of these will be considered in more detail elsewhere within this submission.

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<sup>2</sup> ACIL Allen Consulting, Taxes and charges on new housing, June 2018

## 2.2 Challenges in State Government service provision

The issues paper has identified several challenges facing the NSW Government that will test its ability to meet future infrastructure demands. Increasing demand for infrastructure, housing undersupply, rising infrastructure costs, bushfires and COVID-19 have contributed to significant pressure on the State Government to meet its obligations to provide services to the community.

Some of these issues will be considered in our response to the issues paper.

## 2.3 Challenges in local government service provision

The issues paper has identified some of the challenges facing local government to meet rising community expectations. A significant financial barrier to local councils meeting the many services they are required to provide and maintain infrastructure is rate pegging.

Rate pegging has been identified as a major challenge for local government and not easy for councils to resolve. Often many of the cost pressures faced by local councils involve areas where costs are increasing at a rate faster than the Consumer Price Index (CPI). Where councils are faced by their costs increasing faster than their revenue, they tend to reduce the services they can offer their communities.

We submit that consideration could be given to removing the use of rate pegging in NSW to allow for long-term funding and maintenance of local infrastructure. Local council rates should reflect the unique circumstances of an area, such as delivery of infrastructure to provide growth.

Critically, the review process needs to consider how local councils expend infrastructure contribution funds collected from development and whether the past behaviour of some councils to accumulate significant sums of contributed funds is appropriate. Local councils must ensure that contribution funds collected from developers are expended on local infrastructure as close as possible to the population growth within their areas. Effective and timely deployment of funds should be addressed as a priority matter, ahead of any move to increase council rates.

## 3.0 Infrastructure contributions mechanisms and issues

### 3.1 Infrastructure contributions mechanisms

#### 3.1.1 Overview

The scope of this review includes contributions made under Part 7 of the *Environmental Planning and Assessment Act 1979*. It also includes consideration of the relationship to and impact of other charges and levies relating to the development process. We are very supportive of these and other charges being included within the scope of the review.

### **3.1.2 Planning Agreements**

Planning agreements have been a feature of the planning system since July 2005. There are two main types of planning agreements, State planning agreements and local planning agreements.

The Department of Planning, Industry and Environment website describes State planning agreements as being negotiated between a developer and the Minister for Planning and Public Spaces, for the provision of regional or State infrastructure. These are triggered by provisions in LEPs requiring satisfactory arrangements to be in place for the provision of 'designated State public infrastructure' in urban release areas and intensive urban development areas.

Local Planning agreements are negotiated between a developer and a council, for the provision of infrastructure to support communities. They are regulated by rules set out in the Act and Regulation, guidance provided by the Department's Practice Note issued in July 2005, and each local council's respective planning agreement policy.

Council policies for planning agreements set out the principles for planning agreements, how they are negotiated with council and their implementation. In most cases councils will seek a planning agreement to be made between itself and a developer that has sought a change to an environmental planning instrument (in most cases a LEP) through a planning proposal.

Many councils often expect planning agreements to accompany planning proposals that seek to vary planning controls as they improve the land value of a development site. Accordingly, the agreement will generally seek contributions that relate to the land value uplift sought, known as 'value capture'. Contrary to this practice, the recent Draft Secretary's Practice Note on Planning Agreements states that the use of planning agreements for the primary purpose of value capture is not supported as it leads to the perception that planning decisions can be bought and sold.

The draft Practice Note and a draft Ministerial Direction were released for public comment by the Department in April 2020. The Property Council provided the Department with our comments on the draft Practice Note in June 2020, and which identified a number of concerns with the Note's limitations about the development of planning agreements. We urge you to consider the complexity that arises from having a Practice Note that applies across the State and each council having individual policies for dealing with planning agreements. There should only be a single guide for the use of planning agreements and that should be the State Government guideline.

We submit that planning agreements do not achieve what they were originally intended to achieve. While they were seen to be a mechanism to provide infrastructure that was not necessarily anticipated in a local contribution plan, they have provided councils with an incentive to stop planning for growth and initiating strategic precinct rezoning plans. Instead some councils prefer individual landowners to request a land rezoning which enables them to encourage an offer for a planning agreement.

It is our view that planning agreements should only be used on an exceptional basis where unexpected infrastructure demands can be directly attributed to development growth. Where development is consistent with a District Plan and planning strategy, the infrastructure contribution requirements should be incorporated into the council's section 7.11 contribution plan.

It is our view that planning agreements should be used less frequently in a reformed infrastructure funding framework where councils undertake regular updates to their development contributions plans. Landowner and developers should be allowed to prepare a draft contributions plan to accompany a planning proposal as currently happens with technical assessments and analysis reports. This is currently now permitted under the Act but could form part of the reforms arising from this review.

A consistent issue with most infrastructure contributions is the assumed project contingency that is factored into the value of the works schedule for most engineering projects such as road upgrades and stormwater drainage. The contingency value should not exceed the industry best practice 10% amount.

### **3.1.3 Section 7.11 Local infrastructure contributions**

Local infrastructure contributions (section 7.11) have generally existed since the beginning of the *Environmental Planning and Assessment Act 1979* in September 1980. They are determined through contributions plans prepared under Subdivision 2 Part 7 of the Act and implemented by local councils.

The primary guidance for councils developing contributions plans is the *Environmental Planning and Assessment (Local Infrastructure) Direction 2012*, the Development Contributions Practice Note (2005) and the Local Infrastructure Contributions Practice Note (January 2019). Together these provide councils with a framework to plan, fund and deliver their local infrastructure.

An important principle of local contributions is reasonableness, which includes apportionment and nexus. Apportionment relates to the process of ensuring that any charge imposed under section 7.11 only ever reflects the demands of development and not any other demands such as that from an existing community. Nexus is the relationship between the expected types of development in a geographic area and the demonstrated need for additional public facilities created by that development. It is important that these two principles are maintained to ensure that contributions collected by local councils are reasonable.

A significant recent development with local infrastructure contributions was their uncapping and the closure of the Local Infrastructure Growth Scheme (LIGS) with the Government's housing affordability statement. Until July 2017 the maximum contribution under section 7.11 was \$20,000 per dwelling (and \$30,000 in greenfield areas). After that date, the cap on contributions was phased out in stages between July 2017 and July 2020.

Recently, a \$50,000 cap on contributions, in conjunction with a \$70 million infrastructure funding package, for certain land located within Blacktown and The Hills LGAs was put in place until 31 December 2020. This announcement was welcomed as it provided certainty to developers based in Sydney's North West Growth Area.

Any council seeking to impose conditions of consent requiring contributions above \$20,000 (and \$30,000 for greenfield areas) are required to submit their contribution plan to the Independent Pricing and Regulatory Tribunal (IPART) for review. We note that many local councils across Sydney have set their contributions at or just below the \$20,000 level to avoid the requirement to submit those plans to IPART for review. This avoids the scrutiny of justifying the actual infrastructure needs of the local community and triggering the Essential Works List criteria that applies to IPART reviews.



A benefit arising from the IPART process has been infrastructure costs being interrogated and fewer unreasonable cost estimates and contingencies contained in section 7.11 plans. We suspect there are many contribution plans that are not reviewed by IPART that still have poorly costed infrastructure projects and high contingency costs. We would welcome the review giving consideration to resolving this issue.

We note that the Department released a paper seeking to improve the review of local infrastructure contributions plans and considered a number of scenarios to improve the process of when plans are reviewed. The Property Council submitted a response to this paper in June 2020.

We submit that councils and Government agencies must be responsible for developing and maintaining infrastructure plans if there is to be transparency and certainty in the contributions system. We would welcome improvements to the transparency of these plans and the way contributions are collected, invested and spent in a timely manner. In some cases, contributions plans may identify dozens of projects and works to be funded by development under the plan. Delivery of individual items are often spread over many years subject to council's works budget and other funding sources.

It is important that local contributions reflect the actual infrastructure needs of the community rather than being artificially inflated to follow a lift in the cap. For this reason, we would be concerned by any proposal to remove the current \$20,000 threshold for plans to be reviewed by IPART. It is important that the works contributions plan actually reflect the infrastructure needs of the community that are directly connected to a development proposal and do not seek to make amends for historic deficiencies in infrastructure provision or renewal.

A consistent issue with most infrastructure contributions is the assumed project contingency that is factored into the value of the works schedule for most engineering projects such as road upgrades and stormwater drainage. The contingency value should not exceed the industry best practice 10% amount.

### **3.1.4 Section 7.12 Fixed development consent levies**

Fixed development consent levies were introduced in 2005 following the commencement of the *Environmental Planning and Assessment Amendment (Development Contributions) Act 2005*. These have been widely taken up by many local councils as an alternative to section 7.11 contributions due to their simplicity and predictability.

In some cases, councils can seek contributions above the 1% maximum. Clause 25K of the *Environmental Planning and Assessment Regulation 2000* has generally limited fixed consent levies to no more than 1% of the value of a development project. However, in seven locations (including Liverpool CBD, Wollongong, Newcastle, Parramatta, Chatswood and Burwood), levies as high as 4% have been allowed. The City of Sydney is also seeking to raise its levy rate from 1% to 3% as part of its Central Sydney Planning Strategy.

We note that the Department released a set of draft guidelines that will be applied to requests to increase fixed development consent levies above the 1% maximum. The Property Council provided a response to the draft guidelines in June 2020.

We note that section 7.12 levies above 1% are mostly applied to non-residential commercial development in town centres and CBDs. Some councils apply section 7.11 contributions to residential development and section 7.12 levies for employment uses within mixed-use developments. There are councils that will apply the type of contribution that provides them with the highest contribution revenue. This practice should be prevented by requiring councils to identify the type of plan that will apply to certain development types rather than having multiple plans and using the one that provides the greatest revenue for the council.

A consistent issue with most infrastructure contributions is the assumed project contingency that is factored into the value of the works schedule for most engineering projects such as road upgrades and stormwater drainage. The contingency value should not exceed the industry best practice 10% amount.

### **3.1.5 Section 7.24 Special Infrastructure Contributions**

Special Infrastructure Contributions (SIC) were introduced in 2006 following the commencement of the *Environmental Planning and Assessment Amendment Act 2006*. These contributions were intended to apply to 'special contribution areas' that initially consisted of any growth centre that was declared under the *Growth Centres (Development Corporations) Act 1974*.

A SIC has been operating in the Western Sydney Growth Centres for many years and applies to land within the North West and South West growth centres. The current contribution rate for this SIC is \$221,686 per hectare, which amounts to about \$9,000 per dwelling. In 2018, the Department exhibited a new proposed SIC for the North West Growth Area that reflected changes to the rate of growth within the precinct. An updated contribution rate of \$15,426 per dwelling.

Since 2006 there have been two SICs implemented, being Western Sydney Growth Areas SIC and the Gosford City Centre SIC. Proposals for other SICs in Sydney have been developed for Bayside West, Greater Macarthur, Rhodes, St Leonards/Crows Nest, and Wilton.

SICs have been developed for two high-growth precincts on the Central Coast (Wyang Employment Zone and Warnervale Town Centre) related to the development of these areas as State Significant Sites. A further two regional SICs for the Hunter and Illawarra (West Lakes Illawarra) regions are currently being developed to deliver the infrastructure requirements of their respective regional plans. It is important to note that the State Government seeks development contributions towards State infrastructure in those locations on the basis of those SICs, even though they are only draft (and have in some cases been 'draft' since 2010).

Revenue collected by a SIC is used to cover some of the cost of providing regional or State infrastructure such as State and regional roads, public transport infrastructure, pedestrian and cycling paths, land for health facilities, land for emergency services, land for schools and open space improvements. SICs have also been used to fund biodiversity offsets in areas that have bio-certification arrangements in place.

There does not seem to be much transparency outside the Department regarding the way that a SIC rate is developed. The rates of each SIC varies significantly as indicated in the table below:

<b>Proposed SIC Plan</b>	<b>Exhibited SIC rate (\$/dwelling)</b>
Bayside West	\$9,000
St Leonards/Crows Nest	\$15,100
North West Growth Area	\$15,426
Rhodes	\$21,943
Greater Macarthur	\$39,710 - \$43,432
Wilton	\$59,274

It is important to note there are several important considerations behind these numbers that are not very transparent.

It should be noted that the SIC for Western Sydney, North West Growth Area and the Illawarra currently charge is applied to developments by the State Government with a 50% discount off the full rate. There is no discount or subsidy applied to the SIC rate for Greater Macarthur or Wilton, where the SIC rate will range from \$39,710 to \$59,274.

This inequitable approach has been justified on the basis of some development areas being in “sequence” and other initiated by landowners “out of sequence”. This argument is irrelevant when homes and infrastructure are being delivered equally in all growth areas, and new residents equally contribute to State revenue through stamp duty and other charges. Further it ignores the disparity between housing sub-markets in terms of ability to pay. For example, the North West Growth Area is in the north west Sydney sub-market, which has a greater ability to bear higher house prices associated with infrastructure charges. Conversely, Wilton and Greater Macarthur are in the south west Sydney sub-market, which is more sensitive to higher house prices and affordability.

We submit that all SICs should have a standard method of calculation or formula that allows all parties to understand this contribution commitment. The standard formula should be able to be replicated to each precinct to determine the appropriate SIC rate for that area. There also needs to be a ‘viability test’ so the State Government can decide if the delivery of the precinct (and support of housing/employment supply) outweighs the need for full recovery of the cost of all infrastructure. It is not always the case that development can carry the burden of paying for all the required State infrastructure.

As new SIC plans are developed we would support the Department providing an opportunity for developments to make “works-in-kind” contributions. The SIC plan should set out the process for a developer that wishes to enter into a works in kind arrangement.

Where a SIC includes a contingency component, the value of that contingency should not exceed the industry accepted 10% allowance. As the SIC for these precincts is based on cost estimates developed by State agencies, it is important that government agencies do not propose excessive cost estimates that are inflated by excessive contingency allowances.

For consistent quality infrastructure outcomes to be achieved across the State, while also addressing the transparency and certainty criteria, it would be beneficial for all stakeholders if there was a standardisation of specifications and costing assumptions for each category of required infrastructure. The process for developing SIC plans must include a benchmarking process that will ensure that infrastructure costs are accurate and consistent with industry best-practice. This could also include all SIC plans being reviewed by a panel of industry experts (or by a Government agency such as IPART) to add further scrutiny to the inputs that have been fed into the SIC planning.

Government contributions to the provision of regional infrastructure should be provided on an equitable basis across all growth areas to prevent unintended outcomes, which disadvantage the very submarkets that the government should be targeting its 'affordability' measures.

### **3.1.6 Section 7.32 Affordable Housing Contributions**

Contributions for affordable housing were introduced into New South Wales in June 2000 with the commencement of the *Environmental Planning and Assessment (Affordable Housing) Act 2000*. The legislation authorised the collection of contributions for affordable housing and validated affordable housing schemes established in Green Square, City West, St Leonards, North Sydney, Randwick and Waverley.

*State Environmental Planning Policy No 70 – Affordable Housing (Revised Schemes)* (SEPP 70) provided validation for the continuation of schemes in several locations within Sydney. Recent amendments to SEPP 70 have expanded the operation of the policy to the entire State and allow all Councils to establish schemes for the collection of contributions for affordable housing. Several councils have already commenced preparing new schemes for inclusion within their LEP.

Currently the City of Sydney operates several contributions schemes to increase the supply of affordable housing in key precincts including Green Square, Southern Employment Lands and City West. These schemes have been developed to provide housing for a mix of income groups in those precincts undergoing rapid change.

Contribution rates for affordable housing in the Green Square development area are 3% of the total residential floor area (or a monetary contribution of \$214.17/m<sup>2</sup>) and 1% for the total non-residential floor area (or a monetary contribution of \$71.36/m<sup>2</sup>). This adds a further \$21,417 to the cost of a standard 100m<sup>2</sup> dwelling.

Developments within the Southern Employment Lands are required to contribute 3% of the total residential floor area of a development for affordable housing (or a monetary contribution of \$330.71/m<sup>2</sup>) and 1% of the total non-residential floor area (or a monetary contribution of \$110.23/m<sup>2</sup>). This adds a further \$33,071 to the cost of a standard 100m<sup>2</sup> dwelling.

A recent LEP amendment exhibited by the City of Canada Bay Council has proposed the establishment of an affordable housing contribution scheme that would apply to Rhodes (5% of new housing to be provided as affordable housing), the Parramatta Road Corridor (4% of new housing is to be provided as affordable housing) and 160 Burwood Road, Concord (5% of total gross floor area is to be provided as affordable housing). The equivalent monetary contributions rates for these precincts would be as follows; Rhodes (\$488.75/m<sup>2</sup>), Parramatta Road Corridor (\$430.70/m<sup>2</sup>) and 160 Burwood Road, Concord (\$578.00/m<sup>2</sup>). Should the Canada Bay Affordable Housing Scheme be approved, it will add an extra \$48,875 to the cost of a standard 100m<sup>2</sup> dwelling in Rhodes.

As councils prepare local housing strategies and affordable housing strategies, there will be more affordable housing schemes developed across Sydney. The Greater Sydney Regional Plan and each District Plan set an affordable housing target of 5-10% of new residential flood space in precincts identified for rezoning. The costs of meeting obligations under affordable housing contribution schemes will need to be factored into land values and sales prices for the areas where these schemes are being developed in the future. There remains, however, a transition period issue for sites that were purchased prior to the introduction of an affordable housing scheme. A delayed commencement or transition period of at least 5 years will be necessary for all new affordable housing schemes that are implemented.

The cumulative impact of new affordable housing contributions should form of this review. It is important that where affordable housing contributions schemes are developed and implemented, there is an adequate transition period so that the costs of contributions can be factored into land values.

It is imperative that any affordable housing contribution schemes have clear requirements regarding developer obligations so that any future costs can be included into project feasibility. The costs of meeting obligations under affordable housing contribution scheme will need to be factored into land values and sales prices for the areas where these schemes are being developed.

## 4.0 Further issues in infrastructure contributions

### 4.1 Property owners benefit from public investment in infrastructure

The issues paper has pointed to the link between infrastructure investment (particularly transport infrastructure) and increase in value of surrounding land. As new transport services are provided to an area, the resulting benefits (time savings, frequency, reliability and cost savings) will often be reflected in increased land values. The paper poses the question that where land values are lifted because of public investment, should taxpayers share in the benefits by broadening value capture mechanisms.

The Property Council's response to this question is that there may be many beneficiaries of investment in new transport infrastructure. Landowners may experience some increase in the value of their land at the time of the decision to increase transport accessibility to an area but the actual benefits can also arise following the commencement of new transport services and years later when the actual benefits of new transport services change transport behaviour.

There are many other benefits arising from Government investment in new transport infrastructure including reduced car use and better environmental outcomes.

Notwithstanding the above, it is ultimately the landowner or developer that takes considerable risk to progress development project whereas the local council is not exposed to the same risk and should not be entitled to a claim for 'value capture'.

### 4.2 Land acquisition and rising land values

The issues paper has identified the problem faced by many local councils is the disconnect between infrastructure planning, land use planning and land acquisitions. At present the usual process involves land needed for infrastructure being rezoned well in advance of it being acquired by the relevant public authority. This delay contributes to a significant increase in the value of the land to be acquired. In many cases acquisition does not occur until development contributions are collected from developments occurring in the surrounding area.

The paper poses several questions on this issue, including:

- *Should an 'infrastructure development charge' be attached to the land title?*
- *A potential option is to require direct dedication of land that is needed for infrastructure purposes. The paper asks how direct dedication could be implemented and how it would work for areas with fragmented land ownership.*
- *Earlier land acquisition funded by pooling contributions or borrowings?*
- *Other options to address this challenge such as higher indexation of the land component to reflect increases in land values.*

The Property Council response to these questions is there needs to be better coordination of growth with infrastructure delivery. The State Government has made significant improvements in this area particularly with transport and road infrastructure to new precincts. Councils need to better prepared to reserve land needed for infrastructure and acquire land for stormwater drainage, open space and other community facilities sooner. They should work with the State Government to ensure that they can secure land needed for infrastructure in advance of development commencing and land values increasing.

### 4.3 Corridors

The issues paper raises the issue of using corridor protection to enable early acquisition of land and discusses some of the issues associated with preserving corridors for future infrastructure. A question posed in the paper is what options would assist to strike a balance in strategic corridor planning and infrastructure delivery?

The Property Council's response to this issue is that we support the early protection of land needed for linear infrastructure such as road and rail transport and utilities (pipelines and energy cables). If land that may be needed in the future can be reserved under an Environmental Planning Instrument and protected, it will provide considerable savings to the community compared to expensive acquisition costs that are incurred closer to when the infrastructure is needed.

### 4.4 Provision of open space

The issues paper mentions that open space planning is based on a long-standing and poorly understood standard of 2.83 hectares for every 1,000 people. Key government agencies recommend a performance-based approach towards the provision of open space as this would better reflect the recreational needs of a community and the geographical characteristics of an area.

The paper poses three important questions related to this issue:

- *How can performance criteria assist to contain the costs of open space?*
- *Should the government mandate open space requirements or should councils be allowed to decide how much open space will be included, based on demand?*
- *Are infrastructure contributions an appropriate way to fund public open space?*

The Property Council's response to these questions is that we support use of a widely accepted benchmark for the provision of local open space and recreational areas. It is important that there is a State-wide benchmark applied rather than individual councils determining the requirements for their own communities. This should involve looking at a range of measures of what infrastructure is best for its intended purpose (quality as much as quantity) and provides the best outcome.

In greenfield areas the existing contribution system appears to be inadequate to deliver the land needed for local open space. Councils in these areas should have an alternative mechanism for the acquisition of land for open space and sports fields at land values closer to their initial rural zoning than once the land has been rezoned for urban purposes. Funds for acquisition of land needed for open space should be borrowed and repaid once development contributions are paid.

Additionally, we would not want to see infrastructure contributions being used to make up for poor historic provision of infrastructure by 'loading' new development with making good for those past deficiencies.

## 4.5 Water charges

The issues paper has noted that costs of new water connections and upgrades to existing connections are not recovered from developers. Since 2009, charges for these services have been set at zero and the water utilities recover these costs from all their consumers. The paper suggests that reintroducing these connection charges could act as a price signal for the metropolitan construction and water sectors.

The paper has posed two questions on this issue:

- *How important is it to examine this approach?*
- *What is the best way to provide for the funding of potable and recycled water provision?*

The Property Council's response to these questions is these charges were set to zero as part of the Government's 2008 Mini-Budget. This is the case for the area of operation for Sydney Water and Hunter Water. In other part of NSW, including the Central Coast, local councils continue to require developers to fund infrastructure new connections.

Given Sydney Water has recently had its pricing arrangements for the next 5 years determined by IPART, which includes the costs of providing new water and sewerage infrastructure, we recommend the Productivity Commissioner avoid considering these charges as part of the current review. Reinstating the Sydney Water and Hunter Water developer charges would only add to the cumulative impact of fees and charges and not provide any public benefit.

## 4.6 Better use of digital tools

The issues paper has highlighted a consistent concern about the current contributions system which is its lack of accountability and transparency. The overall lack of availability of information about the planning of infrastructure, how much money is collected and where/when it is being spent is a concern.

The paper has posed three questions on this issue:

- *What would an improved reporting framework look like? Should each council report to a central electronic repository?*
- *What elements should be included? How much has been collected by contributions plans and other mechanisms? How much has each council spent, and on what infrastructure items?*
- *Should an improved reporting framework consider the scale of infrastructure contributions collected?*

The Property Council's response to this issue is that we fully support better use of technology and digital tools within the infrastructure contributions system. We endorse the use of technology to provide greater transparency and certainty around the calculation, collection and spending of funds on local infrastructure. Although we support this information being reported at a local level, there would be benefits gained from the data being collected at a State and regional level to allow comparisons to be made between councils. For this reason, we would recommend that a future reporting framework should be developed using a single platform.



## 4.7 Skills and experience

The issues paper has identified a shortage of skilled professionals working in the urban planning and related fields that implement infrastructure plans (traffic and stormwater engineers, recreation and social infrastructure planning and financial accounting).

The paper poses two questions on this issue:

- *What can be done to address this issue?*
- *Should the contributions system be simplified to reduce the resourcing requirement? If so, how would the system be designed?*

The Property Council's response to these questions is that generally we support a move towards a contributions system that has less inbuilt complexity. The current system can involve considerable duplication and delay especially with section 7.11 contribution plans and planning agreements. The process for the making of a contribution plan should be streamlined and more efficient.

If local councils do not have the resources (internal staff or external consultants) to develop and implement contributions plans, the Government should look at how it can develop a standard set of guidelines that can be easily adopted by councils. Another solution could be for the local government to share technical resources at a regional level. A good example of this is the approach that has been developed for the local councils within the Western Sydney City Deal, where a Planning Partnership approach has been established and would be a good model for coordination of infrastructure planning at a regional level.

There may also be a role for the Department to assist local councils with the development of their infrastructure contributions plans and to play an arbitration/mediation role in disputes (potentially a role for the Planning Delivery Unit).

## 4.8 Exemptions

The issues paper identifies a range of exemptions from payment of local and State infrastructure contributions, largely where the development provides a public benefit. Providing an exemption means the revenue is lost to councils as there is no alternative funding sources which impairs their ability to deliver local infrastructure. As there is no way for these costs to be recovered from other development, exemptions can create financial shortfalls for local councils.

The paper poses two questions on this issue:

- *Given that all developments require infrastructure, should there be any exemptions to infrastructure contributions?*
- *Is it reasonable to share costs of 'exemptions' across all new development rather than requiring a taxpayer subsidy?*
- *Are there any comparative neutrality issues in the providing exemptions for one type of development, or owner type, over another?*

The Property Council's response to these questions is we support and encourage Government to review the list of exemptions from infrastructure contributions that currently exist.

There are many types of developments that enjoy an exemption such as schools, churches, affordable housing and community facilities that do not make any contribution towards local stormwater drainage, road upgrades and open space facilities despite generating a need for those facilities and works. As noted within the Issues Paper, where these exemptions exist other types of development must carry the financial burden of funding this infrastructure. Often this is residential development which is asked to carry the major burden of infrastructure funding. A fairer system would involve all infrastructure costs being shared between land use types, including employment land uses contributing towards the relevant infrastructure (such as road upgrades and other transport infrastructure).

We would welcome the development of recommendations on this issue that we could provide more detailed comments.

#### 4.9 Works in kind

The issues paper identifies dedication of land and 'works in kind' as an alternative to monetary payment of infrastructure contributions. In some situations, the value of land dedicated together with the works can exceed the infrastructure liability of a proposed development and a 'credit' may be generated. Developers can sometimes use a credit to offset the infrastructure liability of a future/nearby development.

The paper has posed three questions on this issue:

- *Should developers be able to provide work-in-kind, or land, in lieu of infrastructure?*
- *Developers may accrue works-in-kind credits that exceed their monetary contribution. Should works-in-kind credits be tradeable? What would be the pros and cons of credits trading scheme?*
- *What are the implications of credits being traded to, and from, other contributions areas?*

The Property Council's response to these questions is we support the use of works-in-kind (including land dedication) and it should always be an option for most local contributions. Developers are better placed to undertake infrastructure works concurrently with their developments and, in most cases, faster and at a lower cost to a council contractor, however there must be standardised specifications for the different infrastructure categories to ensure a quality outcome is achieved.

Where a developer undertakes works in kind on behalf of a council and obtains a credit against future development, those credits should be tradeable with other developers carrying out projects within the same precinct. Ultimately, councils should be encouraging developers to provide works in kind where possible and where the value of those works exceed the contributions liability of a development, the credits owing to a developer should either be transferable to another developer in the same precinct or towards the same developers contribution liability within another precinct or contributions area.

## 5.0 The way forward for this review

Chapter 5 of the issues paper addresses the way forward for the review process. Eight important issues have been identified for further consideration with stakeholders and we welcome further attention being given to these matters. In addition to this submission, we would welcome the opportunity to work with the Productivity Commission in respect of any the issues we have raised.

The contributions system in NSW has expanded to become very complex and multi-layered across precincts and development types. The pain points vary between greenfield areas being developed for new housing where contributions are reaching more than \$100,000 per dwelling and high-density apartments in urban renewal areas with significant costs imposed through planning agreements and satisfactory arrangements clauses. Finding a solution to these must extend beyond imposing another type of levy and involve a rethink of the way infrastructure is planned, funded and delivered.

While there are inherent problems in the current system and the best outcomes for the State, community and industry are not being achieved there are key changes that can be made to improve the system.

In February 2020 we provided an analysis of the complexity of the State's infrastructure contribution problem to the Minister for Planning and Public Spaces and the State's Treasurer. A copy is attached for your information.

Below are some of the recommendations we suggested where action could be taken over the short, medium and longer term to address the efficiency of the system, feasibility of investment and improved certainty.

	<b>Efficiency of system</b>	<b>Feasibility of investment</b>	<b>Certainty for all</b>
<b>Short term</b>	Clearer communications between the State and local government in greenfield areas. Improve the acquisition of land needed for critical infrastructure.	Cumulative impact is halted – all new costs/charges must be justified and supported through modelling or a regulatory impact statement.	Section 7.11 should be capped at a maximum rate and increased annually by CPI.
<b>Medium term</b>	State Infrastructure Financing Commission to provide growth loans through a Growth Area Bond to act as a financing mechanism allowing councils to borrow funds up front and provide key infrastructure and repay through levies.	Where section 7.11 charges are exorbitantly high, the 'why' must be examined. Are there geographic constraints that warrant a State or region funded solution – funded either through HAF or another source.	Digitise the approach to development contributions for each council
<b>Long term</b>	Removing the rate peg should be explored, with special provisions in place for apartments and other developments.		A centralised system – such as a State Infrastructure Financing Commission – can centrally collect local contributions and disperse to councils.

We would welcome the opportunity to discuss these ideas and other recommendations with you and other stakeholders at the earliest opportunity.

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