

Peter Achterstraat AM
NSW Productivity Commissioner
Office of the Productivity Commissioner

Sent by email: ICReview@productivity.nsw.gov.au

Dear Mr Achterstraat,

Review of Infrastructure Contributions Issues Paper

Thank you for the opportunity to provide comments on the Productivity Commission review of infrastructure contributions in NSW.

Council supports a review of the development contributions system. In June 2020, Council provided a submission to the Department of Planning, Industry and Environment (DPIE) on the proposed short-term improvements to the contributions system and requested that the Productivity Commission engage in direct consultation with Hornsby Shire Council in undertaking its review. It is unclear whether Council's comments were considered in the development of the Commission's Issues Paper.

Given the broad scope of the Issues Paper and the limited timeframe in which to provide feedback, Council officers have reviewed the documentation and provide the following comments on the relevant issues in the Paper that correspond with matters Council has resolved a position. A copy of Council's DPIE submission should be read as part of this submission.

Issue 1.1: Striking the right balance

A 'one size fits all' approach to contributions is not appropriate as there are important differences between metropolitan and regional areas with respect to forecast growth and the delivery of infrastructure, and within metropolitan Sydney between infill and greenfield areas. The considerations for the planning and funding of infrastructure are unique to each area.

Issue 3.1: Principles for planning agreements are non-binding

Issue 3.2: Transparency and accountability for planning agreements are low

Issue 3.3: Planning agreements are resource intensive

Planning agreements provide a useful tool to deliver infrastructure in an efficient, co-operative and coordinated way. Value capture through a planning agreement is an important tool to enable councils to deliver infrastructure that is required to meet the demands of future populations over and above a s7.11 or s7.12 plan, where the current Ministerial "thresholds" limit the levying for such infrastructure.

Greater transparency regarding reporting on planning agreements is needed and supported, although this will place an additional administrative burden on Council, particularly for existing planning agreements. As the terms of existing planning agreements have already been agreed and did not envisage such an ongoing administrative burden, the requirements for additional reporting should only apply to planning agreements entered into after the commencement of amended Regulation. In this way, Council can ensure that the terms of any future agreements include an administration cost that will be borne by the proponent of the planning agreement, rather than Council.

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

Council currently requires development contributions to be paid prior to issue of a Construction Certificate (CC) rather than OC. This is because Council does not always have control over the full or partial occupation of buildings (i.e. when a private certifier is used) and there is a significant risk that occupation occurs without contributions being paid.

The burden then falls to Council to take action against the private certifier and potentially occupants of the building or the body corporate which is a difficult process. There is likely to be financial impacts to Council if payments are deferred. Therefore, the current arrangements introduced in response to the COVID-19 pandemic to facilitate deferred payment of contributions should not become permanent legislation

Issue 3.6: Infrastructure costs and contributions rates are rising

Cap thresholds have not changed since their introduction in 2008 which means that their value has continuously fallen in real terms while capital and land infrastructure costs have continued to increase. Therefore, unless a contributions plan has been IPART reviewed, indexation of contributions cannot be applied if it would cause the contribution to exceed the caps. There is a risk that eventually, most s7.11 contribution plans will be required to go through the IPART review process just to keep pace with inflation.

Thresholds for local contributions rates should be adjusted to reflect the costs associated with the rising infrastructure costs. A “do nothing” approach is not sustainable and will lead to a continuing degradation of community infrastructure service standards as the population increases. Essential works lists should be reviewed in consultation with councils.

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

The current percent levy sliding scale should be reviewed to determine whether the current thresholds up to 1% are still appropriate.

Issue 3.8: Limited effectiveness of special infrastructure contributions

SIC levies should be used in a more generalised way as “out of precinct” growth (i.e. infill development) across multiple LGAs is generating a significant demand for regional level community infrastructure (e.g. major recreation and sporting facilities) that cannot be met through traditional s7.11 development contributions given the current and mooted thresholds.

The use of SICs should align with strategic planning priorities in district and local plans, in addition to producing tangible public benefits for the community.



Issue 3.10: Affordable housing

Council has not previously applied contributions for affordable housing under SEPP 70, but may incorporate a scheme in future planning for its major centre. Notwithstanding, planning agreements should have the flexibility to include affordable housing contributions as the ever-changing nature of housing supply and tenure means that planning agreements are ideally placed to deliver positive and potentially better outcomes than rigid legislation or statutory instruments.

Issue 4.8: Improving transparency and accountability

Improvements in reporting infrastructure contributions are welcomed. However, any framework for reporting should not place unreasonable administrative burden on councils and or add difficulty for a layperson to interpret the data.

Other issues and discussion questions:

All other issues and discussion questions raised in the Issues Paper are relevant to contributions reform. Council would appreciate further opportunity to consider these and would be pleased to take part in the stakeholder roundtables scheduled to be held in August.

Thank you once again for the opportunity to comment. I trust our comments will be taken into consideration and we look forward to further involvement in the review.

Yours faithfully

[Redacted signature]

[Redacted name]

Attachment: DPIE Submission

[Redacted name]

Attachment: Submission to DPIE – Improving the Infrastructure Contributions System



16 June 2020

Hon Rob Stokes
Minister for Planning and Public Spaces
Department of Planning, Industry and Environment

Dear Minister

Hornsby Shire Council - Submission on Improving the Infrastructure Contributions System

Thank you for the opportunity to provide comments on the Productivity Commission Review to assess how infrastructure is funded in NSW and on the Department of Planning, Industry and Environment's proposed short-term improvements to the infrastructure contributions system to make it more transparent and easier to use.

At its meeting on 10 June 2020, Council considered the attached Report and resolved to forward this submission on the NSW Government's proposal for improving the infrastructure contributions system.

Overall, Council supports a review of the development contributions system and makes the comments below concerning the discussion papers on exhibition. Council requests that the Productivity Commission engage in direct consultation with Hornsby Shire Council in undertaking its review.

This submission includes comments and concerns about the Minister's powers and recent directions under COVID-19 Legislation Amendment (Emergency Measures—Miscellaneous) Act 2020 No. 5.

1. Draft Planning Agreements Policy Framework

The draft *Planning Agreements Practice Note* (Practice Note) should not infer that value capture is not to be used until Department of Planning, Industry and Environment (DPIE) has undertaken detailed consultation with local councils and provided justification to demonstrate why it is not an appropriate mechanism to use.

The Practice Note should also provide flexibility for planning agreements to include affordable housing contributions as the ever-changing nature of housing supply and tenure means that planning agreements are ideally placed to deliver positive and potentially better outcomes than rigid legislation or statutory instruments.

2. Improving the Review of Local Infrastructure Contributions Plans

Comments on each of the proposals in the exhibited discussion paper are set out below.

Proposal 1 – Increase the value thresholds that trigger the review process

Council supports an increase to the current caps as a "do nothing" approach is not sustainable and will lead to a continuing degradation of community infrastructure service standards as the population increases.

Council supports Option 3 (increasing the cap to \$45,000) as it would provide Council with additional flexibility and would provide for a simple, State-wide approach to assist meet the significant costs of upgrading infrastructure in town centres where most future development is forecast to occur.

Proposal 2 – Implement an annual indexation mechanism for the thresholds that trigger the review process, based on the CPI

Any thresholds should be adjusted on a regular basis to ensure that they keep pace with inflationary costs. Council requests either the Road and Bridge Construction Index (NSW), or a similar index based on capital infrastructure costs be used to index the cap threshold on an ongoing basis, as it would more accurately reflect the inflationary costs of capital infrastructure than CPI.

Proposal 3 – Review the IPART terms of reference

Council supports the review of the IPART terms of reference. The Terms of Reference and/or the Practice Note should also be updated to enable IPART to review a contribution plan solely on the basis that the indexation mechanism within the plan has increased the contribution rates beyond the threshold, without requiring a detailed analysis of every aspect of the plan.

Proposal 4 – Remove existing exemptions to the review process, known as grandfathered contributions plans

Hornsby Council does not have any grandfathered contributions plans. However, a consistent approach is supported.

Proposal 5 – Remove existing requirement for councils to re-exhibit an IPART reviewed contributions plan following the receipt of advice from the Minister's nominee

Council supports the proposed amendment to the EP&A Regulation to remove the requirement for a council to re-exhibit a contributions plan after IPART review where amendments to the plan have been made at the direction of the Minister.

3. Section 7.12 Development Contributions Percentage Rates

Council supports the proposed criteria for reviewing submissions seeking a higher maximum percentage levy. However, Council requests a review of the current percent levy sliding scale to determine whether the current thresholds up to 1% are still appropriate.

4. Special Infrastructure Contributions Guidelines

Council supports the preparation of SIC Guidelines, particularly the expanded stakeholder and community consultation provisions. Council is currently undertaking a review of planning controls in the Hornsby Town Centre which is likely to significantly increase resident and employment populations and a State Significant Precinct planning process is underway for the Cherrybrook Station Precinct. These urban renewal precincts may qualify for determination as a SCAs and it would be appropriate for Council to be involved in the preparation of any SIC which may relate to land within the Hornsby LGA.

Further, Council requests consideration of the use of a SIC levy in a more generalised way as “out of precinct” growth across multiple LGAs is generating a significant demand for regional level community infrastructure that cannot be met through traditional s7.11 development contributions.

5. Amendments to the EP&A Regulation

Comments on the proposal changes to the Regulation are set out below.

Proposal 1 – Reporting on Development Contributions Plans

Council supports the proposal to provide more detailed reporting. However, the level of detail outlined in the discussion paper is not supported due to the unreasonable administrative burden on Council and the difficulty a layperson would have in interpreting the data. It is recommended that an aggregate of income and expenditure for each facility category be provided, along with a summary of project completed in the preceding 12 months.

Proposal 2 – Reporting on Planning Agreements

Council supports greater transparency in regard to reporting on planning agreements. However, the requirements for additional reporting should only apply to planning agreements entered into after the commencement of the amended regulation.

Proposal 3 – IPART Reviewed Contributions Plans

Council supports the proposed amendment to the EP&A Regulation to remove the requirement for a council to re-exhibit a contributions plan after IPART review where amendments to the plan have been made at the direction of the Minister.

COVID-19 Legislation Amendment (Emergency Measures—Miscellaneous) Act 2020 No 5

The NSW Government recently introduced legislative changes to Section 7.17 of the EP&A Act.

On 18 May 2020, a Direction was issued to all councils that contributions can be pooled for different purposes, including those identified in more than one contributions plan, to facilitate the provision of the public amenities and public services to which any of those contributions plans relate.

Although at the time of writing, no Direction has been issued with respect to the timing of payments, it is anticipated that a Direction may be given to direct consent authorities that any condition of development consent requiring a contribution must specify the date for payment as prior to issue of an Occupation Certificate (OC).

Council currently requires development contributions to be paid prior to issue of a Construction Certificate (CC) rather than OC. This is because Council does not always have control over the full or partial occupation of buildings (i.e. when a private certifier is used) and there is a significant risk that occupation occurs without contributions being paid.

The burden then falls to Council to take action against the private certifier and potentially occupants of the building or the body corporate which is a difficult process. Accordingly, concern is raised regarding any potential Directions to Council on the timing of payment for development contributions, as it would have financial impacts to Council.

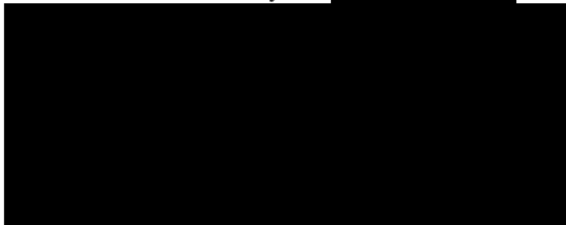
Also, on 18 May 2020, a Direction was issued under Section 9.1 to Hornsby Council (and others). The Direction requires the preparation of a capital works program detailing how the Council will draw down on the unspent contributions funds on hand over the next 12-18 months.

The Direction requires information about the program of works to be provided to the Minister within 6 weeks, by 3 July 2020.

Council expresses concern regarding the short timeframe to provide details of the capital works program of Section 7.11 projects as outlined in the Direction.

Once again thank you for the opportunity to comment on the Department's proposed changes to development contributions. I trust our comments will be taken into consideration in finalising any changes.

Yours faithfully



Attachment: Directors Report PL13/20

