Regulatory, Planning and Assessment.MBisson/SCross
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NSW Productivity Commission
For lodgement online (by 5 August 2020)
Email: ICReview@productivity.nsw.gov.au

Dear Peter Achterstraat AM
NSW Productivity Commissioner

SUBMISSION ON THE REVIEW OF INFRASTRUCTURE CONTRIBUTIONS IN NSW

Thank you for the opportunity to provide feedback on the Issues Paper, which forms part of the review into the NSW infrastructure contributions system. The City of Newcastle (CN) welcomes an improved system that supports greater certainty, transparency, efficiency and fairness in funding and delivering local and State infrastructure.

It is understood that feedback received during the exhibition period will be used to inform the direction and further consideration of potential reform options by the NSW Productivity Commission (Commission). As recommended in the Issues Paper, responses to the proposed discussion questions have been prepared by CN's Urban Planning Team, where relevant to CN.

Issues and discussion questions

Issue 1.1: Striking the right balance
CN supports a well-functioning infrastructure contributions system based upon the principles of efficiency, equity and certainty. There is a need to focus on simplifying the overall framework and providing suitable funding options to support delivery of infrastructure required either as a result of demand from development or value capture, in which benefits are shared with the community.

Issue 2.1: Enable a broader revenue source for the funding of infrastructure
As discussed in the Issues Paper, the following key funding mechanisms are available to councils in accordance with the *EP&A Act 1979* for the purposes of community infrastructure:

- Imposing a condition of development consent requiring a developer to carry out works (whether or not on land to which the application relates) – typically, this relates to things such as localised drainage/utility connections, road crossings, footpaths/street trees along frontages etc. Whilst this could be used for public domain improvements in town centres and corridors, typically this would result in a piecemeal delivery of infrastructure and it is generally more desirable to require a monetary contribution to enable council to deliver the works in a coordinated way.
- Imposing a condition of consent pursuant to section 7.11 requiring a monetary contribution or the dedication of land in accordance with an operational contributions plan. This cannot be in addition to a section 7.12 condition. A condition of consent requiring dedication of land can only be imposed if that land is identified in a section 7.11 plan.
- Imposing a condition of consent requiring a monetary levy under section 7.12 in accordance with an operational contributions plan. This can be in addition to certain requirements but not in addition to a section 7.11 condition.

- Entering into a planning agreement with the developer to make monetary contributions, carry out works or provide other material public benefits. This can be in addition to certain requirements and in addition to a section 7.11/7.12 condition.
- Requiring development to provide affordable housing or a contribution to community infrastructure via provisions of an amended LEP (i.e. a value capture scheme). In the absence of LEP provisions, a planning agreement could be used but this cannot be forced on a developer.
- Rates and special rate variations.
- Grant and subsidies from the State or Federal Government, however these typically make up a minor part of the contributions system.
- Government agency contributions – e.g. shared costs of classified road upgrades
- User charges (e.g. entry fees).

The above mechanisms warrant consideration to achieve the optimum outcome for community infrastructure provision. The next phase of consultation should provide ‘out of box ideas’ or capture best practice in other States, so they can be better considered and discussed within organisations and the elected Council.

Issue 2.2: Integrating land use and infrastructure planning
CN supports integration of land use planning and infrastructure delivery. Infrastructure delivery should reflect needs assessments prepared to guide land use and infrastructure strategies in accordance with Local Strategic Planning Statements and contributions plans. Tools to support the development of needs assessments may be beneficial including guidance to identify and report on critical thresholds or indicative timing for delivery of community infrastructure. This may support infrastructure to be provided within a reasonable timeframe, aligned with when demand is forecast to be generated, which assist with expectations for delivery.

State agencies are often involved in the process. A future contributions framework may consider how studies can be prepared to remove time delays. This approach (perhaps through the Integrated Planning and Reporting (IP&R) framework) may also consider prioritisation of local infrastructure identified in contributions plans.

Issue 3.1: Principles for planning agreements are non-binding
The recently exhibited draft practice note provides guidance on the process and roles of planning agreements. It is not considered necessary to make principles binding nor have nexus with the development as this may be too restrictive, however funds should be directed toward public infrastructure linked to the development in question. There may be cases where the community benefit has potential to support other areas of the local community better if not directly on site, but near or within the same suburb.

CN supports planning agreements as a mechanism to fund innovative solutions to community infrastructure needs, including for the purpose of value capture. The concept of value capture acknowledges that value is created by planning decisions made by public authorities and that a portion of that value should be invested into direct community benefit. It is recommended that decisions are not made to exclude this as a funding mechanism as it allows the community to share in the economic benefit granted to individual land owners from a planning decision.

The use and role of incentive-based infrastructure funding mechanisms are important particularly where not all infrastructure can be funded by Section 7.11 / Section 7.12 contributions (which are currently restrictive). This is relevant to urban renewal areas and strategic growth areas as an option to facilitate development that results in the timely delivery of identified community infrastructure and material public benefit.

There is evidence that incentive-based infrastructure funding mechanisms can be very effective if prepared and implemented well. Incentive schemes that operate alongside LEP controls can include principles to ensure the incentive scheme is transparent, equitable, practical and feasible and the public benefits have been identified by the community through land use planning. The Issues Paper notes that revenue associated with planning agreements is rising, which demonstrates that they are a feasible option, given the voluntary take up by the development industry.

Issue 3.2: Transparency and accountability for planning agreements are low
CN supports a simple online planning agreement register in a central system or on CN's website. Improved reporting on funds received and spent overall is supported to create more transparency and accountability. Delayed timing for implementation may assist councils in the preparation of an advanced register as well as any relevant training, if there is a specific software for the central location option.

Issue 3.3: Planning agreements are resource intensive
A clear process is required for entering into a planning agreement. The draft practice note will assist with strengthening councils polices and overall consistency. It is often the case that an offer to consider further negotiation of the terms of a planning agreement are proposed by the applicant / developer late in the DA or planning proposal process, which is inconsistent with our CN policy and the draft practice note, which directs the processes to run concurrently. It is recommended that the relevant applications / proposals / agreements run concurrently and be exhibited together to assist councils with managing the time spent on planning agreements. Planning agreements are a resource intensive mechanism but have potential to deliver unique and innovative outcomes with the introduction a clear framework for their negotiation and implementation.

Issue 3.4: Contributions plans are complex and costly to administer
Additional guidance is required to assist in the preparation of robust contributions plans so that all councils adopt a reasonable and consistent approach. Best practice advice regarding the derivation of apportionment rationales, standards of provision and infrastructure needs assessments would be useful resources and create greater consistency across the State. Best practice guidelines on full refunds or those associated with modifications will support a simpler and clear process.

Section 7.11 contributions plans are particularly complex, and the contribution payable is not often clear to the community or development industry. This is reflected by the significant number of contribution quote enquiries received by council. A "hybrid" contributions plan could be considered that removes the need for two plans / parts of the Act into one. It could reflect percentages or fixed levies (only) that equate to the same contributions amount required to deliver infrastructure as adopted in Section 7.11 plans. Perhaps an LGA could be divided into a few simple rings (inner ring infill, middle ring infill and greenfield) with different percentages, which are reflective of different levels of demand for infrastructure i.e. greenfield development or areas identified for significant growth and change is likely to result in a higher percentage than infill within an established area (as per current plans). There may also be different percentages for different development types.

Another tool to assist the community and development industry is to provide councils with an online calculator for future contribution payments. The software could be free of charge (with training provided) and easily accessed and managed. If the calculator was in one central location and every council used the same software, this may assist with enquiries and provide for easy access (particularly for certifiers) who calculate contributions levies and rates in many different LGAs.

Issue 3.5: Timing of payment of contributions and delivery of infrastructure does not align
With respect to the timing of payments, council officers do 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 act against the private certifier and/or occupants of the building and this is not an advisable or desirable outcome. Accordingly, should the timing of payments be deferred to occupation certificate for more types of development and/or for the longer term for large scale development (over $10,000,000), there may be a financial impact to councils in the short term. Monitoring of any impacts upon councils and delivery of infrastructure should be undertaken at a larger scale. Deferred timing of payments should be considered more broadly, including further funding options to manage the "gap" between requiring the funds and delivery of infrastructure. Effective infrastructure planning requires certainty on expected income.

There can also be a perception that contributions funds are not being spent within a reasonable timeframe. There are cases where greenfield development requires larger sums to construct identified infrastructure such as 'district' level facilities, as well as acquisition or purchasing of land to deliver the infrastructure. This can only occur once the land has the required approvals. It may be the perception that councils are not spending money, but greenfield development can occur over many stages and years. CN supports updated websites and general reporting so that it is clear when the projects are expected to be delivered and what has been delivered with contributions funds and levies received.

Issue 3.6: Infrastructure costs and contributions rates are rising
As discussed in CN's submission on the draft reform package, contributions caps are low and to request an IPART review or amended Ministerial Direction causes long delays in finalising contributions plans, which in turn, impacts funding and delivery of the required infrastructure. An IPART review may also not be a favourable option for councils as the essential works list is limited. The essential works list should be expanded to include construction costs for community facilities, particularly libraries. It is also considered reasonable to include costs to upgrade community facilities and open spaces.

Issue 3.7: The maximum s7.12 rate is low but balanced with low need for nexus
It is agreed that levies under a section 7.12 contributions plan are low and not comparable to what can be collected under a section 7.11 contributions plan. As discussed in the Issues Paper and above, section 7.11 plans are complex and no training or up to date consolidated guidelines are available to assist in their preparation or implementation. Section 7.12 contributions plans are easier to prepare and manage, however they can leave big funding gaps, as they are capped at 1% (being as low as a levy of $5,000 from a $500,000 dwelling) while under a section 7.11 plan up to $20,000 (and more for greenfield) can be contributed toward identified infrastructure projects. CN supports much higher rates under section 7.12, if supported by good planning and needs assessments that demonstrate the demand and corresponding contributions are justified.

Issue 3.8: Limited effectiveness of special infrastructure contributions
CN does not have a State Contributions Area in which State contributions are paid. It is considered good planning that they align with District Plans or other land use planning strategies.

Issue 3.10: Affordable housing
Affordable Housing (AH) contributions have a role to play in the mix of contribution streams available to councils. The framing of affordable housing in the Issues Paper is particularly concerning. There is no reference to the current need for affordable housing not only in Greater Sydney but throughout Regional NSW. AH is being addressed by other jurisdictions in innovative ways and should be presented as an opportunity, not a burden on the industry.

Development viability will be the one factor that undermines the effective adoption of AH schemes in NSW, particularly when claims relating to viability are made without supporting evidence. The introduction of the AH calculator is a useful tool to assist councils in the preparation of AH Contributions Schemes but is underpinned by viability. Importantly, under current conditions the calculator demonstrates that sites remain viable even when an AH contribution is factored into the equation.

The Issues Paper implies that the planning system has been ineffective in its delivery of AH. Advocacy for a stronger position on AH from the State has been longstanding for many councils highlighting that the current system fails to provide adequate levels of support for AH despite the significant need. When AH contribution schemes are flagged early in the development of strategic plans, predictable and consistently applied they can be factored into development costs for developers who pay less for land in the first instance.

The current value capture option which focuses on an individual site-specific rezoning is a step in the right direction. However, there remains significant opportunity for the consideration of a broad-based AH contribution levy within the contributions system that could more effectively address the current AH needs in the State and should be considered under this Review.

Issue 4.1: Sharing land value uplift
It is understood that there are two separate applications for value capture; i.e. to redistribute part of the private benefit afforded to individual land owners through windfall uplift in land value as a result of a planning decision while the mechanism for capture and or determining the uplift is complex the capture is simple. It is generally sought at the time that the landowner/applicant seeks to implement the benefit of the planning decision. The other use is to capture windfall value uplift to landowners when infrastructure that delivers the windfall is paid by public moneys. To be equitable and fair, the capture would only occur when there is a transaction in which the windfall is realised, such as with the sale of land, development of land, or if accessing equity of land value to secure funding. Otherwise, capturing the value beforehand would financially disadvantage those landowners despite not necessarily having a personal advantage of the infrastructure or being able to pay for land tax or local levies, thereby pricing out lower income residents (forced gentrification). CN supports a funding mechanism that does not disadvantage residents.

Issue 4.2: Land values that consider a future infrastructure charge
As discussed, land values can increase significantly as a result of planning decisions. Planning decisions are made in the public interest and it is fair for some of the value created to be committed to community purposes. Should a value capture charge be applied, further consideration should be given to the mechanisms that will link it with the delivery of local infrastructure.

Issue 4.3: Land acquisition for public infrastructure purposes
Early acquisition of land is often cited as an option to reduce the costs of providing infrastructure, but this is dependent on the availability of funding. Pooling of contributions to assist with purchasing land before prices increase may be considered beneficial. CN currently does not index land (but update costs with an update to a contribution plan, which is supported by a Valuation Report) but notes it is worth further consideration.

Issue 4.6: Open space
CN currently adopts standards of provision for open space and recreation facilities and supports funding these types of infrastructure from contributions. Council's adopted standards guide updates to the current section 7.11 contributions plan and other land use and infrastructure strategies.

They can be found here:

Community Assets and Open Space Policy
https://newcastle.nsw.gov.au/getmedia/4232470d-b6a3-4648-ae3d5b8997c617dd/Community_Assets_and_Open_Space_Policy.aspx
Parkland and Recreation Strategy:
https://newcastle.nsw.gov.au/getmedia/f3b52b47-efb0-4bad-8e3d7537a0517ac4/Parkland_and_Recreation_Strategy.aspx
CN is currently in the process of preparing a Social Infrastructure Strategy for the LGA.

Up to date reasonable standards of provision are useful for future planning. It is also common for different departments or councils to use different sets of data to forecast development and this can undermine confidence in the development of contributions plans. There is a considerable body of work to be done to formulate appropriate needs assessments to underpin a consistent contributions framework.

While guidelines may assist councils in the preparation of contributions plan, it is recommended that they refer to minimum open space requirements, so councils can base local standards on demand, should they wish to increase the minimum requirement. Performance criteria can assist to contain the costs of open space but need to be clearly detailed based on need, use and function.

Issue 4.7: Metropolitan water charges
It is important to periodically examine the approach in which costs of new and upgraded connections for water are borne to ensure it is fair and reasonable. Should an additional contribution be considered and be funded by new development (and not the broader community) further consultation with the development industry should be undertaken.

Issue 4.8: Improving transparency and accountability
Improved reporting is supported and should simply refer to how much has been collected from contributions plans and planning agreements and the infrastructure projects that were delivered from contributions. This could be updated on council's website or even the NSW Planning Portal. Detailed reporting on each development application is unnecessary and will be far too resource intensive with marginal benefit.

Issue 4.9: Shortage of expertise and insufficient scale
There is clear shortage of contributions experts and specialist infrastructure planners both in government and the private sector. Additional training, conferences and the development of useful contributions tools are all required to streamline the management of contributions across the industry. Improved software will be particularly helpful for councils when calculating indexation and payments and may also assist with the operational component of managing the plans.

New technologies may be available to assist with customer service. The table provided on page 53 of the Issues Paper states that there is a shortage of planners / contributions officers, however, councils may rely on seeking assistance from consultant contributions experts to review systems and prepare new contributions plans. This can be attributed to a lack of knowledge, skills and experience in contributions, the complexity of preparing contributions plans and a lack of resources.

Issue 4.10: Current issues with exemptions
Understanding exemptions in the current contribution's framework is confusing. Councils often receive requests from various larger scale developments which incorrectly consider themselves exempt under the old Planning Circular D6, or Ministerial Direction, inconsistent with council's position. It is common for contributions not to be applied (or be applied inconsistently with councils' plans) for Major Project approvals. For example, the Issues Paper notes that a crown development – educational establishment under a section 7.12 Plan is not exempt. It should be noted that if a development (e.g. affordable housing or seniors housing more generally) be made exempt from contributions, this does not remove the underlying demand for infrastructure generated by that development.

Accordingly, a decision is then required to be made that the costs associated with this demand will be either covered by councils (under other revenue streams) or spread across all other development to be levied under the contributions plan. Depending on the quantum of development to be exempted, this might have the effect of increasing the costs (and therefore decreasing feasibility) of other forms of development.

With respect to Seniors Housing, the Commission should be mindful that, with an ageing population, there is likely to be an increase in this form of residential accommodation. The expected growth will result in Seniors Housing representing a significant proportion of future residential accommodation particularly in desirable, high-amenity areas with existing pressures on local infrastructure.

Accordingly, exemption or discounting Seniors Housing may be detrimental to council's overall ability to provide adequate community infrastructure. Furthermore, such development would only pay its fair share of contributions by virtue of typically lower residential occupancy rates and lower traffic generation. The same is true for manufactured home estates targeted toward persons aged over 55 years of age.

Issue 4.11: Works-in-kind agreements and special infrastructure contributions
CN supports negotiation with developers to provide works-in-kind or other material public benefits via planning agreements. They require sign off from Council regarding scope, standard, quality of construction etc to ensure the works are up to an appropriate standard commensurate with the value of the monetary contribution.

Works-in-kind credits will be too complex to manage. Determining the value of the works to a comparable standard would be difficult, let alone negotiating the best outcomes. In order to simplify the system, no additional layers should be put in place.

CN supports a simpler, more efficient system that allows for better coordination between infrastructure delivery and development activity when accommodating future growth. There were several observations made in the Issues Paper that could be better supported by explicitly listing the evidence, case studies and stakeholders involved in its preparation.

It is understood that the Commission will next hold stakeholder roundtables and then provide a Final Report to the Minister for Planning and Public Spaces by the end of 2020. CN would like to be consulted and continue to work together to deliver a reformed infrastructure contributions system for New South Wales.

We would be happy to elaborate on our submission. Should you have any questions, please contact [redacted]

Yours faithfully

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