Submission on Review of Infrastructure Contributions in NSW - NSW Productivity Commission Issues Paper

submission
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Green Global Connected

Contents

Introduction

The City of Sydney (“the City”) recognises that an effective contributions system is critical to the delivery of infrastructure needed to meet the demands of growing populations. The City relies upon various mechanisms in the current system to assist in funding infrastructure, such as development contributions and community infrastructure contributions secured by planning agreements.

Of the $1.57 billion allocated towards new infrastructure in the City’s current 10-year capital works program, around $400 million of this is likely to be funded though development contributions.

Certainty in funding the delivery of infrastructure is critical in our efforts to maintain our global city status and support Australia’s highest density urban renewal communities.

Adequate funding of infrastructure has long been, and remains, a significant challenge for local governments across NSW. In recent years, this challenge has been intensified in established urban environments such as the City’s local government area (LGA) because of the sharp rise in land acquisition costs associated with new infrastructure. The pressures on the existing system and the ongoing reliance on supplementary funding sources to ensure timely infrastructure delivery warrant the need for a comprehensive review of the contributions system.

The City welcomes the opportunity to participate in this review process. The NSW Productivity Commission’s Issues Paper (“the Issues Paper”) discusses a wide variety of contributions related topics and poses several questions seeking stakeholder feedback.

The City has focussed its response on issues and questions of relevance. This submission follows the structure of the Issues Paper in terms of issue headings but adopts its own response numeration as a response is not provided to every issue.

Well planned and adequately funded infrastructure not only has significant benefits for communities through facilities provided, it also has wider economic benefits. The Organisation for Economic Co-operation and Development (OECD) and the International Monetary Fund (IMF) have shown that for every dollar of investment in infrastructure across the board, there is generally a multiplier of 1.6 in the form of a boost to short term employment as well as a longer-term productivity gain to the economy. With this in mind and in the context of current economic conditions, there has never been a more important time to reform the contributions system to deliver the infrastructure that our communities need.

Response 1: Striking the right balance – efficiency, equity, certainty and simplicity

The City appreciates the complexities which arise when trying to balance the competing principles of efficiency, equity, certainty and simplicity in the contributions system. The City considers that a well-balanced contributions system requires the following components:

Strong understanding of existing infrastructure and communities

The starting point for smarter infrastructure planning should be developing a stronger understanding of existing infrastructure (condition, capacity, quantity, governance, proximity, utilisation etc.) and communities (demographics, density, expressed demand, participation trends, benchmarks etc.). Knowing more about existing infrastructure, how it might be optimised or adapted, and knowing more about existing communities, their current and future needs, means we can be smarter about how we use, adapt, share, staff, fund, prioritise and plan for infrastructure.

Earlier and more collaboration

Earlier and more collaboration between all stakeholders involved in infrastructure planning and provision is considered important to enable a more efficient and equitable system. A more collaborative and open approach to infrastructure planning will help ensure levels of government have adequate resources to achieve planned outcomes, maintain their long-term sustainability and providing maximum value to the community.

Population dependent funding models

When a new development increases the population demand for infrastructure such as open space and community facilities, the cost of meeting this development generated demand should remain through development contributions and community infrastructure floor space schemes rather than rates. The cost of acquiring land and constructing facilities for open space, libraries and community facilities in established areas is very significant and typically the largest cost component provided for in a contributions plan, particularly for residential development. Without these contributions – and with rate pegging and fixed income streams – councils would be unable to meet the cost of developing additional or enhanced community infrastructure. The absence of additional community infrastructure would result in access and quality inequities within each LGA and between LGAs.

Affordable infrastructure in established areas

As is noted at several points in this submission, the funding of infrastructure in established urban areas is becoming increasingly challenging given land acquisition and capital works costs. In established areas, land availability is limited, driving up acquisition costs to the point of being almost uneconomic for the intended public purposes. An effective contributions system needs to respond to this issue confronting the City and other major metropolitan areas in NSW. It impacts on our capacity to accommodate growth while ensuring equitable access to essential local infrastructure.

A clear and simple legislative and policy framework, up-to-date local plans

The existing contributions system has been subject to years of piecemeal reforms which have resulted in numerous pieces of contributions policy fragmented across Acts, Regulations, SEPPs, Ministerial Directions, Planning Circulars and Practice Notes. This makes administering contributions policy somewhat cumbersome and does not assist with transparency. It also requires users to work out if content is redundant or outdated, which is inefficient.

The City would support efforts to update, rationalise, consolidate and simplify all government legislation and policy on contributions. This would make it more accessible to all those who use it.

The City is also supportive of the need for local contributions plans to be kept up to date, reflective of the infrastructure needs and costs associated with growing populations. The City demonstrates this through keeping our contributions plans up to date. Our Central Sydney contributions plan dates from 2013 and we have recently completed exhibition on a 2020 version. Our s7.11 plan, which applies more widely throughout the LGA, dates from 2015. The City also remains committed to seeking the Department of Planning, Industry and Environment's (DPIE) rescission of the Redfern Waterloo Contributions Plan 2006 which applies in our LGA, as we believe this plan no longer provides adequate funding, appropriate infrastructure or delivery within a reasonable timeframe to meet community needs. The Redfern Waterloo Contributions Plan 2006 is an example of an outdated plan that does not achieve efficiency, equity or certainty for infrastructure funding for the City. The City awaits progress on this issue from DPIE.

Response 2: Integrating land use and infrastructure planning

With the publication of council Local Strategic Planning Statements across NSW, the NSW Government has the opportunity to complement these locally developed visions for growth with a framework that addresses the sequencing, funding and delivery of local infrastructure.

To achieve improved integration of land use planning and infrastructure delivery as envisioned in strategic plans, stronger collaboration and engagement between NSW State Government agencies, local government, industry and the community is critical.

Place-based infrastructure Compact (PIC)

The Greater Sydney Commission's pilot Place-based Infrastructure Compact (PIC) for Greater Parramatta and Olympic Peninsula is potential tool that could be utilised to promote stronger collaboration and engagement.

The PIC is developed and implemented in 5 steps:

1. Setting the vision and outcomes, developing scenarios and forecasting land use change
2. Identifying infrastructure needs and costs, and integrating with scenarios developed in Step 1
3. Evaluating the costs and benefits for a preferred scenario and sequencing
4. Refining infrastructure proposals and prioritisation for funding over 10 years through a Strategic Business Case

5. Implementation of the PIC and Strategic Business Case through the planning system and NSW Budget processes

The PIC has merit because it is developed in collaboration with NSW infrastructure providers. NSW collaborators for the pilot PIC included Transport, Planning, Health, Education, Sport and Recreation, Sydney Water, Ausgrid, Create NSW and Emergency Services, just to name a few. Collaboration could be tailored for each individual place depending on needs.

Local government's participation in the development and implementation of any PIC would be essential in order to ensure local infrastructure is identified and supported. Some councils will not have the resources, background strategies and staff expertise to carry out this function, so NSW Government assistance would be required in those instances. This might include the development of local infrastructure provision standards which would permit infrastructure comparison across NSW and Districts and in the long-term, drive equity in access to facilities.

If the PIC progresses through step 4 to step 5, the certainty of having infrastructure projects committed through the NSW Budget, NSW State Government agency and local government asset management strategies and capital works programs will provide the potential of certainty around infrastructure provision.

Response 3: Principles for planning agreements are non-binding

Planning agreements contribute positively to the planning system by providing a legal method of securing public benefits for the community in a timely manner. Planning agreements often encourage innovative approaches to integrating the public benefits with the development and works-in-kind delivery.

Planning agreements can cater for a broad range of in-kind public benefits including land and community infrastructure as well as monetary contributions. Introducing a nexus with the development such as is required for s7.11 contribution plans is not supported as it could limit the development potential of some areas where the opportunity to deliver public benefits on site or in the immediate vicinity is already limited.

Introducing similar guidelines for planning agreements with the State Government (often ‘commitments’ in state approvals – however the applicant can seek to vary them like a condition during the course of the development with little transparency). This would be a positive step to providing consistency across different levels of government.

Response 4: Transparency and accountability for planning agreements are low

The City supports DPIE’s proposals in their contributions reforms package (exhibited May-June 2020) which aim to improve reporting and access to information on contributions, including planning agreements.

The City is not in favour of a centralised online planning agreement register to be used by councils and State Government. Rather, the City is supportive of councils and the State

Government maintaining their own planning agreement registers which can be tailored to their own organisation's data collection systems.

The City receives around 26 public benefit offers secured by planning agreements per annum on average and tracks them using a register that is integrated in the City's planning administration system (Pathway) so that information is linked to the applications they relate to and the GIS system at the City.

As planning agreements need ongoing management for the life of the related development, integration with the City's systems is critical to the effectiveness of the City's governance. This would not be possible if using a centralised system. The ability to maintain and update this register is critical in ensuring the governance and probity of managing planning agreements is met. Likewise, the City's financial system, Technology One is used to monitor expenditure of monetary contributions against their designated purpose and track the delivery of works in kind. Additionally, copies of executed agreements are already provided to DPIE for their records. An awkward centralised online system is likely to result in duplicated effort, and risks inconsistencies in record keeping.

Response 5: Planning agreements are resource intensive

Clarity around the appropriate use of planning agreements is supported. While planning agreements are resource intensive, they provide certainty to both the developer and council as to the scope and resources necessary to deliver the public benefits. As most public benefits are linked to the commencement and completion milestones of the development, planning agreements can also ensure that the community receives the public benefit commensurate with the impact from the building development. Examples of this include the provision of open spaces and roads within significant urban renewal precincts in Waterloo, Zetland or Harold Park.

The timeliness of infrastructure is considered during the development of the planning agreement so that resourcing within council can be planned for. In doing so, the developer and council gain a clear understanding of their responsibilities under the agreement; for example, the design, review and construction of the public benefits. For all large and complex urban renewal areas, the City provides master planning services, while the developer undertakes the detailed design for the portion of the infrastructure within the precinct that they are delivering. Whilst this does require City resources, it is seen as an important part of the City's responsibility in delivering the strategic vision of the LGA.

At the smaller end of the spectrum, planning agreements are mostly standardised to reduce complexity, costs and timeframes in the planning assessment process.

Response 6: Contributions plans are complex and costly to administer

The City believes that well written, user friendly contributions plans aid in the understanding and implementation of contributions policy. The City works hard to prepare contributions plans that are not only easy to read and use but are also strategic in terms of aligning with Council's priorities while being able to withstand the rigours of legal scrutiny.

This is demonstrated through the City of Sydney Development Contributions Plan 2015 (the 2015 Plan), which applies broadly throughout the LGA (except for Central Sydney).

The 2015 Plan is a brief 10 pages, supported by 7 appendices. Operational information is in the body and supporting technical information is in the appendices. This allows users to focus on policy within the plan itself, with the rationale and supporting workings available in the appendices for those wishing to understand the plan in more detail.

The 2015 Plan is supported by an online contributions calculator which can be accessed through this link: https://apps.cityofsydney.nsw.gov.au/calculators/s711/. Innovative but simple, the online calculator allows users to estimate the development contributions payable. The calculator was highly commended in the category of service delivery initiatives in the NSW Local Government Excellence Awards 2018. City records show that the online calculator receives around 150 views per month, indicating that it is a useful resource.

Both the streamlined 2015 Plan and the supporting online calculator have resulted in significant time and cost savings for assessment staff and external stakeholders.

Response 7: Timing of payment of contributions and delivery of infrastructure does not align

The misalignment between the timing of contributions payments and the delivery of infrastructure has been a longstanding challenge for the planning system. While the City works hard to enable the timely delivery of infrastructure alongside new development, this is an ongoing challenge and relies in part on the timely payment of contributions.

The Issues Paper explains that the timing of contributions payments is a financing issue for developers, and that DPIE has received requests relating to the deferral of contributions in response to economic conditions arising due to COVID-19.

While the current economic conditions are acknowledged, it is also worth noting that in terms of access to liquidity, interest rates have never been lower and are not likely to rise for some time. It should also be noted that in instances where developers negotiate the delivery of contributions through works-in-kind, it is essential that the delivery of those works is typically aligned to the delivery of the associated development.

It is important to remember that the purpose of contributions is to fund infrastructure which is identified as being needed *as a result of the development.* It is therefore appropriate that contributions be paid at the construction certificate stage, to facilitate the delivery of infrastructure in advance of, or as close as possible to, occupation by the new population.

Deferral of contribution payments to the later occupation certificate stage of development merely transfers financing risk to local councils, potentially stifling infrastructure delivery.

The City acknowledges that, as a COVID-19 response measure, a Ministerial Direction[1] has recently come into effect which allows for the deferral of payment of contributions for certain large-scale developments where the estimated cost is $10 million or more.

The City asserts that this measure should remain a temporary policy intervention, rather than being rolled out more broadly to other development types or on an ongoing basis. The City would be strongly opposed to any policy change which would allow the deferral of contributions payments to the occupation certificate stage. The City identifies the following risks with deferring the payment of contributions to occupation certificate stage:

Infrastructure lag

Councils have limited capacity to forward fund infrastructure and rely on the timely payment of contributions. Deferring the payment of contributions until occupation certificate stage interrupts this process and makes it inevitable that infrastructure will follow far behind development. If contributions are not received until occupation certificate stage, the only possible outcome is unmet infrastructure demand and consequential impacts on both new and existing communities. This will be an issue where councils rely on the pooling of contributions in order to fund more significant infrastructure.

Many urban renewal developments make contributions that fund the roads and footpaths that the very approval depends on. For others, impacts may be in the form of additional time spent in traffic on congested roads or an inability to access parks and sporting facilities due to an excess of demand. More significantly, risks such as flooding may not be adequately addressed – with consequential long-term impacts on the safety and property of all members of that community.

Deferring funding to occupation certificate stage will exacerbate the existing infrastructure lag problem at a time when councils are making significant efforts to use public works to stimulate economic activity generally and being actively encouraged by the State and Federal governments to do so.

Increased uncertainty for councils

Once a development has commenced, a developer can take as long as they wish to complete a development. The delay of payment until occupation certificate stage will result in significantly more uncertainty for councils as to when they will receive infrastructure contributions as they will not have insight as to when developments may be completed or authorised to be completed. This will subsequently increase uncertainty around when infrastructure can be constructed, putting at risk the delivery timeframes.

Extremely high risk of non-compliance

There is an extremely high risk of non-compliance whenever essential matters are deferred to occupation certificate stage and little remedy that will not affect incoming purchasers. Allowing the deferral of contributions to occupation certificate stage gives rise to the very real risk that a private certifier will allow occupation via a partial occupation certificate without the contribution being made at which point it will become a practical impossibility for council to recover. There will be excessive pressure once a building is

[1] Environmental Planning and Assessment (Local Infrastructure Contributions – Timing of Payments) Direction 2020

constructed to allow an occupation certificate to be released with or without evidence of payment.

The City is faced with a number of disputes with developers arising from their failure to deliver approval consent requirements during the construction process. It would be very unfortunate if councils were to be put in a position where they were required to be chasing or litigating for contributions either prior to allowing a building to be occupied or after a building has been occupied following the inappropriate issue of an occupation certificate by a private certifier.

The ongoing problems with the private certification system are so endemic that several pieces of legislation have recently come into force which seek to address them. It is unclear to what extent the failings of the system will be resolved by these legislative changes, and this will only be known with time. It is not considered appropriate to potentially risk millions of dollars in infrastructure contributions by relying on this exposed and weak system.

The recently issued *Environmental Planning and Assessment Amendment (Occupation Certificates) Regulation 2020* ("the Regulation") attempts to mitigate the risk associated with deferring payment to occupation certificate stage by requiring councils to provide written certification that contributions have been paid before a private certifier can issue an occupation certificate. While this may go some way to addressing the risk, at the moment it only applies to developments with a proposed cost of $10 million plus, and more critically, again relies upon private certifiers to comply with the new requirements, and the risk remains that they don't comply. This new process also places an additional administrative burden on councils.

Modelling

If this policy is pursued, it is imperative that modelling be undertaken to assess the full, long-term impacts as what might be beneficial to developers in the short term may be detrimental to the wider community through poor or delayed infrastructure provision. A cost benefit analysis is also recommended which shows how much development is likely to be incentivised specifically as a result of deferring contributions payments versus the impacts on infrastructure delivery for councils and the lost or delayed economic benefits of those projects.

Response 8: Infrastructure costs and contributions rates are rising

Contributions capping

It is the City's experience that while the costs of providing infrastructure continue to rise, the ability to collect contributions which respond to these rising costs remains significantly impaired by the ongoing existence of the $20,000 threshold per residential lot/dwelling.

The City acknowledges that the $20,000 threshold is a trigger for when a s7.11 contributions plan is to go through the Independent Pricing and Regulatory Tribunal (IPART) review process. However, in practice, the $20,000 threshold per residential lot/dwelling still serves as a maximum cap on development contributions in the City.

Since its introduction around 10 years ago, the $20,000 cap on contributions has significantly and increasingly constrained the City's ability to recoup the full costs associated with delivering the infrastructure required by new development. The City has previously estimated that the cap will create a $67 million gap between the cost of the works in the 2015 Plan and its projected contributions income between 2015 and 2030.

The ongoing existence of the $20,000 threshold has the effect of sending inaccurate signals to the market about project viability. The absence of any indexation since the introduction of the cap has also meant that its value has fallen in real terms over the past decade. Furthermore, as councils are required to fill the funding gap through other sources, it represents an increasingly inequitable subsidy of new development.

In its submission to DPIE on its contributions reforms package (exhibited May-June 2020), the City argued that the $20,000 threshold is in urgent need of updating and of all the proposals in the package, this should be the top priority for DPIE. Only higher rate contribution plans which require greater scrutiny should be subject to the IPART review process, not those whose rates proposed to be indexed to retain the same value over the past 10 years.

IPART review process and the essential works list

The City's 2015 Plan was not subject to the IPART review process. This has allowed the 2015 Plan to accommodate the City's diverse infrastructure needs and align with the committed long-term capital works program.

As noted in the Issues Paper, all IPART reviewed plans are limited to the infrastructure types specified on DPIE's essential works list, and this is more easily applied to greenfield land than infill areas. At the time of preparing the 2015 Plan, the City considers the essential works list as too restrictive to respond to the varied and complex infrastructure needs of the City.

If the essential works list were to be expanded to include more items, this should involve consideration of infrastructure items that may be deemed necessary in urban infill areas, such as upgrading and improving facilities in existing open space. The Covid-19 pandemic has highlighted how important open space provision is in densely populated areas, with many people opting to use them for exercise and recreation. For infill areas where land acquisition can be prohibitive, it would be reasonable for the essential works list to include upgrades and improvements to existing infrastructure.

The Issues Paper questions whether there is a role for an independent review of infrastructure plans at an earlier point in the process to consider options for infrastructure design and selection. While supportive of early intervention and cross-government collaboration to determine an area's, infrastructure needs and how these can best be delivered, the City cautions against requiring infrastructure plans to be subject to an early independent review, resulting in more complexity in the plan making process.

Rates and increasing infrastructure costs

Consideration should be given to an approach to provide councils with appropriate funding to maintain infrastructure over time. It may be assumed that councils will derive adequate ongoing growth through rates revenue to maintain its infrastructure. However, this is not accurate.

Growth in rates revenue is currently calculated based on each council's individual rating structure and has no correlation to the population growth or cost of maintaining infrastructure. In fact, it rarely meets the cost of providing the additional services needed by the increased population. This has been identified as a downfall of the current rating system being based on unimproved land values, making it nearly impossible to achieve rates growth for vertical developments.

Even more damning is the fact that redevelopment of industrial or commercial land often leads to a reduction in rates payable from each site because business rates are typically set by councils at a higher rate than for residential properties. In the City, the 2020-21 business rate is 3.2 times the residential rate, or 6.3 times in the CBD. There may be some offset to the revenue loss through the levying of minimum rates, but these are, by their nature, of a minimum amount and insufficient.

While land values of redeveloped areas may increase over time, those increased values are provided to councils in the three-yearly valuation cycles and merely result in a redistribution of the existing rates yield. Land values increased in general revaluations do not increase a council's permissible rate income. Therefore, a completely new approach to calculating adequate rates growth should be considered.

An additional consideration should be the issue of rate exemptions for public benevolent institutions and charities. Some exemptions may be considered a barrier for councils to obtain any ongoing funding for infrastructure maintenance or any other provision of services or facilities.

Response 9: The maximum section 7.12 rate is low but balanced with low need for nexus

Section 7.12 fixed development consent levies are a useful and efficient mechanism for contributions funding in well established, mixed use urban areas. They are also transparent easy for councils to administer and provide developers with certainty as to expected contribution costs. These features should not be overlooked in this review process which is seeking to increase efficiency and certainty in the contributions system.

While it is acknowledged that the standard 1% levy has been set low because there is no requirement for nexus to be demonstrated, it remains that 1% is a low level for urban areas where land and capital infrastructure costs are high. It may be appropriate to increase the standard percentage beyond 1% in urban areas to reflect the high costs of infrastructure delivery in those settings. It is possible to increase the standard percentage whilst still reflecting the lower nexus requirements.

With regard to councils' requests for higher s7.12 fixed levies, the City supports DPIE's proposal in its contributions reforms package (exhibited May-June 2020) to introduce principles and criteria against which such requests can be assessed. This proposal is useful to councils as it guides them as to the circumstances in which higher maximum percentage levies may be allowed. It also increases transparency around why levies are set at the level that they are. The City considers that this proposal is an appropriate response to allowing higher rate maximum levies.

Response 10: Limited effectiveness of special infrastructure contributions

Special Infrastructure Contributions (SICs) may have merit to align development and growth with supporting infrastructure. However, their implementation to date has been inconsistent and opaque. Communities, councils and developers are presently provided with little certainty and transparency regarding how SIC funding is applied and allocated and how that relates to their needs.

Given the significant challenges faced by councils around funding infrastructure, the City supports the appropriate use of innovative planning mechanisms to fund infrastructure to support our growing community in line with Priority I2 and Action I2.6 of our Local Strategic Planning Statement.

Recent draft guidelines around SICs published by DPIE provide a level of additional certainty to the community, industry and councils as to the purpose, the principles of implementation, the method and the process of determining and allocating SIC revenue once a SIC has been determined.

The draft guidelines however require additional detail on the minimum collaborative arrangements required to be established between DPIE and local councils before a SIC can be introduced. This would be in line with DPIE's new approach to precinct planning, ensuring SICs are appropriately integrated with local council's existing planning and contribution frameworks and deliver tailored place outcomes for the unique and varied growth and urban renewal areas across NSW.

Importantly, the guideline needs to make it clear that SICs are a potential planning mechanism to fund infrastructure. They are not the reason to undertake precinct planning and precinct planning should never be positioned in such a way as to ensure a SIC can be achieved.

Minimum collaborative arrangements

The draft DPIE guidelines state *"Local knowledge and expertise will be used to define a vision for places and communities and will guide planning decisions and infrastructure investment"*. The City agrees with this statement and recommends that the draft guidelines should be improved by describing the process and steps in which council and community expertise will be captured to inform the development and implementation of prospective SICs.

Because SICs will be tied so closely to growth in the form of planned precincts, the guideline should make it clear to councils and the public the process DPIE will go through in investigating and drafting a SIC. This process should be described with references to DPIE's new approach for planned precincts and detail the involvement of and opportunities for councils and the community to contribute to the formation of a SIC.

As described in both DPIE's new approach to planned precincts and the draft guideline, local councils know their places, communities and planning and contribution frameworks best. A commitment to early and ongoing engagement with councils in the guideline will provide more certainty that SICs can be used as a collaborative tool between State and local governments to deliver the place outcomes required in their growing local communities.

Local planning and contribution framework erosion

With general revenue subject to rates pegging and local contributions capped, the City has always sought to develop innovative planning mechanisms to fund infrastructure such as community infrastructure plans. These include the Green Square Town Centre infrastructure strategy, Green Square Community Infrastructure Scheme and our various affordable housing programs.

When determining SIC feasibility, the draft DPIE guideline states:
"It will be assumed that local developer contributions will be imposed on development to which a SIC applies. The higher of the adopted local contributions charge or the rate cap will be used. Advice is sought from councils on any proposed updates to local contributions plans at the time of the SIC feasibility study."

The draft guideline should make it clear that any proposed updates to local contribution plans (including affordable housing programs) remains at the discretion of councils and not at the direction or discretion of DPIE, to improve SIC feasibility.

Early and ongoing engagement will provide councils with the opportunity to appropriately coordinate any review of local contribution plans to determine if a SIC complements their existing planning and contribution frameworks. In some instances, it may be appropriate to augment an existing framework to accommodate a SIC, but this should be at the discretion of councils.

Failing to engage early and in an ongoing manner risks impacting the feasibility of existing planning and contribution frameworks, which would stifle development and impede the realisation of carefully planned place outcomes and infrastructure for our growing communities.

Local infrastructure

The draft DPIE guideline limits the infrastructure that can be funded by a SIC to State and regional infrastructure including:

- Transport – State and regional roads only – including bus infrastructure and active transport
- Open space and green infrastructure – land acquisition and/or works for regional open space (including regional recreation facilities and tree planting)
- Education facilities – land acquisition and/or works
- Health facilities – land acquisition and/or works
- Justice and emergency service facilities – land acquisition and/or works
- Regionally significant public space, community and cultural facilities – land acquisition and/or works
- Planning and delivery – a contribution towards the strategic land use and infrastructure planning costs, and the cost of preparing, administering and monitoring the SIC system

The draft guideline must make it clear that any contributions captured as part of a SIC must be spent in the related precinct, and not outside the precinct on wider State expenditure.

The SIC infrastructure list should be extended to include enabling public infrastructure such as drainage, flood management, electricity and telecommunications. For the Green Square Urban Renewal Area, of the $1.3 billion (2015 prices) capital public infrastructure costs (not including transport, schools and affordable housing), $126 million relates to trunk drainage and $394 million to roads and utilities, of which the City's contribution totalled $253 million.

The SIC infrastructure list should also not exclude contributions towards some local infrastructure. For known urban renewal projects like Green Square Urban Renewal Area and future potential urban renewal area such as Pyrmont, the line between State, regional and local infrastructure is blurred. This is particularly the case where both the State and councils are so invested in achieving improved place outcomes, and sometimes these places outcomes relate to the improvement of local streets, new local parks or plazas and new local community facilities. Roads are prime example where in many instances the length of a road can have both State and local council ownership.

DPIE's contributions reforms package (exhibited May-June 2020) outlines a movement away from proven successful planning mechanisms such as community infrastructure schemes and restricting local infrastructure from access to SIC funding. This further restricts councils from providing the local infrastructure required to support our growing communities. This is at odds with Planning Priority E1 of the Eastern City District Plan, which doesn't discriminate between State, regional and local infrastructure. It places the responsibility to sequence infrastructure provision using a place-based approach equally across councils, State agencies and State-owned corporations.

Response 11: Affordable housing

Housing supply

Increasing housing supply is essential to accommodate growth and keep downward pressure on prices. However, housing will not become 'affordable' for very low to moderate income households simply by increasing supply, particularly in high demand investor markets found in Australia's major cities. Supply-side measures alone are not affecting affordability in high demand markets. The 2016 census revealed a 16 per cent increase in total dwellings between 2011 and 2016, adding over 15,000 homes, yet in that period Sydney has experienced the sharpest increases in median dwelling price compared to the proceeding 15 years.

It is apparent that record housing supply has failed to dampen prices to keep housing affordable. The structure of the housing market, formed by tax incentives which encourage speculation, multiple investments and preference housing over other assets, has resulted in a mismatch between housing supply and the markets needs at particular price points, a factor of income levels.

This market failure drives the need for increased supply of non-market social and affordable housing to enable low to moderate income earners to live in the city, or close to job centres, including essential key workers. This is further exacerbated in today's COVID-19 environment.

A 2016 analysis by the City Futures Research Centre at the University of NSW argues that it is not scarcity or the planning system that is driving up the price of housing but the “perverse effects” of Australia’s housing taxation and subsidy system as well as the absence of a national housing policy framework to support new affordable housing supply.

This outcome increases spatial inequality in major cities, driving unaffordability in well-connected and serviced parts of the city - housing supply is being increasingly driven by a property investment market than by the needs of the community.

Affordable rental housing

While housing supply is increasing in our cities, the supply of social and affordable rental housing is decreasing. Increasing housing supply alone will not address the critical issue of declining housing affordability across Australia’s major cities, where demand drivers are pushing prices well beyond the reach of lower income earners.

Increasing housing supply is only part of the solution to improve housing affordability. Housing affordability is not just about buying a home. The availability of affordable rental housing, particularly in Australia’s global cities is of major concern. Housing policy should place specific emphasis on increasing the supply of affordable rental housing, particularly in inner city locations which are unaffordable key workers who support the productivity of the city.

Local government, in its role as land-use regulator, plays an important role in the delivery, facilitation and protection of affordable rental housing. However, there are few planning mechanisms currently available to achieve this end. Added to this is a high level of uncertainty around state government support for approaches such as levies, differential floor space schemes, deferred rezoning, and planning agreements.

In the City, an affordable housing levy has been applied since 1994 in certain areas. There are now about 763 affordable rental housing dwellings built and 234 in pipeline as a direct result of the contribution schemes. This amount delivered far outweighs what has been achieved in other LGAs through VPAs and the Affordable Housing SEPP.

The application of affordable housing levies is not about fixing housing affordability. Rather, the levies allow for the facilitation of affordable rental housing for lower income households who will simply never ever find housing in Sydney that is affordable.

Inclusionary zoning resulting in affordable housing levies provide certainty to the market and are the only reliable mechanism we currently have in the planning system to facilitate the delivery of affordable housing through the development process.

To assist in increasing the diversity and number of affordable rental homes for lower income households, the City’s Local Strategic Planning Statement requires NSW Government sites to deliver a minimum 25 per cent of floor space as affordable rental housing in perpetuity. This is seen as an appropriate use of public land.

Tax reform

While the overall demand for housing is increased by favourable tax and transfer provisions, the sharp deterioration in affordability means that serious consideration needs to be given to recalibrating tax and transfer systems to make housing markets fair and efficient. It is imperative that the Australian government rebalances the tax environment for housing to dampen speculative investor demand and substitute that demand with existing demand from first home buyers. Taxation reforms are needed to address investor-driven house asset class inflation, transferable tax credits for low income housing, negative gearing, capital gains tax, stamp duty and land tax.

Furthermore, existing tax incentives don't recognise the particular issues faced by global cities such as Sydney, which are different to the remainder of the country, and may have a negative impact. Tax reform must consider nuance of the capital city housing markets, and the impacts that result from the concentration of high Australia's economic activity.

Response 12: Sharing land value uplift

All levels of government in Australia are involved in the management of land based fiscal tools such as land tax, property tax, stamp duty, business and residential rates. Therefore, it is important that all levels of government collaborate on potential value capture mechanisms, and how they might be implemented in each city.

Value sharing mechanisms can fund infrastructure by allocating optional land-value uplift resulting from rezonings and large infrastructure improvements. Optional value sharing (contributions charge in exchange for the option of taking up a rezoning) can be potentially applied by all levels of government to raise the necessary funds to invest in infrastructure.

It is effective in delivering equitable social outcomes because it enables the value created by urban renewal to be shared between government and the private sector. Value sharing mechanisms ensure that planning gain resulting from a change to planning controls is equitably allocated between the private landowner and the public provider of infrastructure improving the feasibility of delivery of a project, which in itself, may be a societal benefit.

Development industry stakeholders raise concern with value sharing for rezonings citing increased costs and even impacts on housing affordability and that money for infrastructure should come from raised taxes or special rates. The City's approach is to secure only a portion of the land value increase in value resulting from an optional rezoning. This preserves the construction profit for development projects to ensure they remain viable. Developers price in any levy into what they pay for the land component reducing the windfall profit to the unimproved land owner.

This thinking underpins transparent community infrastructure contributions in Green Square within the City's LGA and is being used to deliver affordable housing in two investigation areas in the City's Southern Employment Lands. It is within this framework that 2,555 new dwellings were completed and 3,353 dwellings approved in the 2016/2017 financial year alone. This approach provides certainty and clarity for both developers in costing their projects and the community.

Successful implementation of value sharing systems in Australia will require the coordination and cooperation of all three tiers of government. The City Deals program initiated by the Federal Government involves agreements between the three tiers of government to achieve specific outcomes, and it is expected that most City Deals would include a value share component.

The City strongly supports the following recommendations made by the Australian Government's House of Representatives Standing Committee on Infrastructure, Transport and Cities in 2016:

"The Department of Infrastructure and Regional Development, in conjunction with state and territory governments, develop a toolkit of value capture mechanisms that can be applied by all levels of government, taking into account the different conditions in the various states, territories and local council areas. The use of the mechanisms in the toolkit should be a requirement in cases where the federal government is to contribute funding towards major infrastructure projects that will generate an uplift in property values or increased economic activity."

"The Australian Government seek a memorandum of understanding to establish value capture mechanisms for individual transport infrastructure projects as a condition of federal funding which applies to property value uplift that results from a combination of rezoning and new transport infrastructure. In doing so, the Government should:

- *define specific geographic areas nearby to new transport infrastructure where this mechanism will apply to properties;*
- *set a threshold of value uplift for property which will incur the new value capture mechanism;*
- *establish an offset mechanism, whereby commercial properties whose value uplift is partially captured by this mechanism can be offset against their capital gains tax liability; and*
- *hypothecate any revenue that results from this mechanism into a dedicated infrastructure fund."*

Response 13: Land values that consider a future infrastructure charge

Good urban renewal requires appropriate funding. Enabling public infrastructure such as public transport, drainage and electricity supply is very costly, and much of it is required upfront. In a development environment of high land values, scarcity of available land, and caps on development contributions, innovative sources of funding for councils needs support across all levels of government.

Almost a third of Green Square's $1.3 billion capital works will be delivered via community infrastructure contributions secured by planning agreements. Despite these funding mechanisms, a 15-20 per cent gap is needed to be covered by local government. Without the additional contribution of the City, the land could not have been made suitable for development and necessary community infrastructure wouldn't have been provided, risking housing supply and good community outcomes.

Contributions were defined up front. The 'deferral model' for the Green Square Town Centre held an amending LEP in abeyance until an infrastructure contribution was secured in accordance with an infrastructure plan. In the wider Green Square area, a community infrastructure contribution is payable in accordance with an infrastructure plan if a proponent opts in to the choice of additional floor space. Both of these mechanisms require the planning agreement to be attached to the title of the land.

These mechanisms are proven mechanism that should encouraged and supported as best practice planning for aligning infrastructure with growth.

Response 14: Land acquisition for public infrastructure purposes

The deferral model for the Green Square Town Centre and the wider Green Square community infrastructure scheme are proven successful examples of facilitating direct dedications, embellishment and offsetting required community infrastructure contributions. These systems have successfully dealt with the issue of fragmented land ownership.

Critical to the Green Square community infrastructure scheme is the ability for community infrastructure contributions to be pooled across the Green Square Redevelopment Area to assist in the timely delivery of community infrastructure.

Limiting contributions captured through value capture to the development site in question is an inflexible approach that does not provide for the efficient delivery of community infrastructure or value for money for land owners, councils or the community.

Land value increase is measurable, transparent and easily verifiable. Assessment of land value before and after a change to planning controls can be independently verified through land valuation by examining market evidence and does not rely on commercially sensitive information. Where this is understood, it is factored into the price paid for land. Therefore, it does not encourage speculative land purchases and does not impact on developers profit or the viability of projects.

Response 15: Open space

Public open space, especially green spaces, are important contributors to liveable, healthy and productive cities. As identified in the City's Community Wellbeing Indicators 2019 report, a healthy population is better able to participate in employment, education, social and community activities, and reduces costs incurred for health-related services.

Our findings reflect the evidence, including World Health Organisation (WHO) research, regarding the positive physical and mental health outcomes of green spaces. This is especially significant given the Productivity Commission report in October 2019, which states that mental health and suicide is costing Australia up to $180 billion annually.

Green space is also important for mitigating climate change impacts such as increased heat-island effects. As outlined in the Lancet Countdown 2019 report, a changing climate has profound implications for human health, including more frequent heatwaves and extreme weather events, which has the potential to result in significant impacts to productivity.

The City's Open Space, Sport and Recreation Needs Study 2016 and Local Strategic Planning Statement outline many of the challenges the City is facing in providing quality open space in existing high-density environments. The City is working to address these challenges in a number of ways including increasing the efficiency of land by making places and spaces more multifunctional, advocating for greater sharing of land and facilities with NSW Government agencies and educational institutions, and the establishment of district-wide approaches for sports field planning.

Although making the City's land and assets works harder, covering the costs of supplying and maintaining open space and recreation facilities will determine whether these spaces can function well into the future. A range of funding mechanisms are being used, or supported by the City, including developer contributions (which are not currently sufficient on their own to cover the ongoing costs), community infrastructure plans (used for Green Square) and the Place-based Infrastructure Compact model being piloted by the Greater Sydney Commission.

Open space is important social infrastructure for creating and sustaining inclusive, engaging and productive communities. As has been evident during the Covid-19 pandemic, open, green spaces are highly valued by our communities. Access to them should not be put at risk through the creation of barriers to participation such as user pays systems.

Response 16: Improving transparency and accountability

The City collects data on the public benefits intended to be and delivered under planning agreements and intending on providing commentary on this information in the City's Annual Report. Information reported on an annual basis could include monetary contributions, land and community infrastructure received, its value and location, and what other public benefits have been delivered through the monies collected. While the City could also report on projected public benefits, as the delivery is linked to the progress of the development, it may not be a reliable indicator to include such projections when the development may not proceed at all.

Regarding the delivery of works, the City already reports extensively on the progress of its capital works program, in quarterly updates to Council, which are publicly available. In the City's case, contributions typically fund only part of most works, and projects are undertaken and completed in a manner that is appropriate to strategic needs and reflective of the City's operating environment. Reporting expenditure of contributions removed from this wider context risks misrepresenting the City's wider infrastructure delivery performance.

In considering the possibility of reporting 'how much has been collected by contributions plan and other mechanisms', this too is a matter of context. For example, the City of Sydney Development Contributions Plan 2015, superseded a 2006 contributions plan. However, development consents granted under the 2006 plan continue to be commenced into 2020, meaning that contributions are levied on the basis of the 2006 plan for those developments, yet contribute to the pooling of contributions under the 2015 plan.

Whilst time-based reporting could report contributions received through section 7.11, this information is already reported annually through the City's financial statements.
Whilst there is scope for improved reporting on contributions, the requirements for content and formatting of reporting should be clear, whilst reflecting the inherent complexities of developer contributions.

Following the recommendations of the Audit Office of New South Wales, the City is intending to develop online access to its planning agreements register.

Response 17: Current issues with exemptions

The City agrees that current exemptions policy is in need of review. The current approach, with exemptions scattered through various legislative and policy documents and requiring discretion in their implementation, results in a lack of efficiency and certainty.

The City is concerned about certain development types which routinely rely on existing provisions to seek exemptions from contributions, despite there being significant population increases which will directly increase demand for local infrastructure and services.

In recent years, many State Significant Development (SSD) applications for large scale developments on university campuses have sought exemptions from contributions under various pieces of legislation relevant to crown development. The City has consistently argued that when local contributions plans apply to these university developments, contributions should be levied in accordance with those plans.

In many of these cases, contributions exemptions have been supported as part of the SSD determination. The community loses out on the contributions revenue and must rely on alternative funding sources to deliver local infrastructure to support the university populations.

The City considers that a review of the existing exemptions arrangements is justified. This review should seek to rationalise exemptions down to only those which meet a high threshold for public benefit (e.g. emergency services, government schools), and then consolidate the simplified list into one source document.

Response 18: Works-in-kind agreements and special infrastructure contributions

Where the development of land provides for infrastructure on the property that has been clearly identified in a contributions plan on their site, then it is reasonable to utilise mechanisms such as works-in-kind agreements. At the City, planning agreements are used as the vehicle for in-kind delivery, providing transparency to the public through the exhibition of the agreement.

A system of tradeable works-in-kind credits risks introducing an additional commercial aspect to agreement negotiations. Whilst there may be instances of mutual benefit, there also is the potential for aggressive and uneven negotiations between the parties. Additionally, agreements that result in large contributions credits may have significant impact on councils' strategic infrastructure planning over the long term.