

5 August 2020

Via email: ICReview@productivity.nsw.gov.au

Dear Mr Achterstraat AM,

Review of Infrastructure Contributions in New South Wales

The City of Canada Bay welcomes the opportunity to provide feedback on the Issues Paper prepared by the Productivity Commission on the infrastructure Contribution system in New South Wales.

Infrastructure contributions are essential to fund the delivery of open space, road improvements and community facilities needed to support our growing population.

Responses to the select questions raised in the Issues Paper are provided as Attachment A.

Please contact [REDACTED] should you have any questions in relation to this letter.

Kind regards,



Attachment A – Responses to Issues Paper – City of Canada Bay

Issue 1.1: Striking the right balance

Is a 'one size fits all' approach appropriate or do parts of the State require a bespoke solution?

- For 7.11 Development Contribution Plans, consideration should be given to the differences between rural land, greenfield locations and established suburbs.
- Established metropolitan local government areas, which are the primary focus of new development, largely focus on the embellishment of existing infrastructure to cater for future population growth. A consequence of this situation is that the essential works list combined with the \$20,000 contribution cap limit the ability of inner metropolitan councils to fund the upgrade or embellishment of existing infrastructure.
- 7.12 Plans rarely generate sufficient income to cover the costs of infrastructure and increased rates are only currently permitted in localities with job growth.
- A re-evaluation of the maximum contribution rates per dwelling should be occur for inner metropolitan Councils'.

Issue 2.1: Enable a broader revenue source for the funding of infrastructure

Are there any potential funding avenues that could be explored in addition to those in the current infrastructure funding mix?

- Infrastructure contributions are an appropriate funding mechanism as there is a direct correlation between new development by providing supporting infrastructure for dwelling and population growth based on defined areas or regions which are experiencing growth.
- The cost of the infrastructure required to support future development (residential and commercial) is a consideration by developers at construction phase, and by virtue ensures efficient use of infrastructure and does not a general tax on existing residents and communities.

- Rate pegging should be removed rather than a partial relaxation. The increased rate flexibility should not be seen as a mechanism for replacing infrastructure contributions.

Issue 2.2: Integrating land use and infrastructure planning

How can the infrastructure contributions system better support improved integration of land use planning and infrastructure delivery?

- Infrastructure needs should be identified upfront and a plan prepared to deliver the infrastructure should be in place before rezoning occurs.

Issue 3.1: Principles for planning agreements are non-binding

What is the role of planning agreements? Do they add value, or do they undermine confidence in the planning system?

- Planning Agreements play an important role in the delivery of infrastructure, particularly where construction of new infrastructure is constructed by the developer prior to the transfer of ownership.
- However, there should be clear parameters that guide the preparation of planning agreements so as to provide certainty to both applicants and the community.

Is 'value capture' an appropriate use of planning agreements?

- Value capture through a planning agreement is an important tool that enables councils to deliver the infrastructure needed to meet the demands of future populations, over and above what can be delivered through a s 7.11 or s7.12 plan, where the current Ministerial 'thresholds' limit the levying for such infrastructure.
- Value capture provides an equitable and efficient alternative for funding infrastructure – at present the only mechanism for this is Planning Agreements. In recent years many councils have been advocating for value capture mechanisms other than Planning Agreements to be developed. This is more equitable than the individual or business receiving windfall gains and private benefit from planning decisions. The practice of sharing the land value arising from rezoning 'uplift' is appropriate when founded on an equitable, transparent and evidence-based approach and can provide certainty for all stakeholders.

- It is appropriate and important for councils to have the option of including value capture in planning agreements.

Should planning agreements require a nexus with the development, as for other types of contributions?

- Yes. Contributions delivered through a Planning Agreement should not be wholly unrelated to the development or site to which the Planning Agreement relates.
- Where Planning Agreements are negotiated to capture an increment of the value uplift delivered through a planning decision, the contribution received should have a nexus with the development (i.e. funding of infrastructure that would support the needs of residents in the immediate surrounding locality).

Should State planning agreement be subject to guidelines for their use?

- Yes. Planning Agreements negotiated by the State should be subject to the same guidelines and oversight applied to all other planning agreements.

Issue 3.2: Transparency and accountability for planning agreements are low

What could be done to improve the transparency and accountability of planning agreements, without placing an undue burden on councils or the State?

- An agreed methodology and approach should be used for the preparation of all Planning Agreements. This may include templates and model clauses in relation to security, how public benefits are defined and how value sharing is calculated.

Should councils and State government be required to maintain online planning agreement registers in a centralised system? What barriers might there be to this?

- Yes. Executed Planning Agreements should be made available on the NSW Planning Portal.

Issue 3.3: Planning agreements are resource intensive

Should the practice note make clear when planning agreements are (and are not) an appropriate mechanism?

- Yes. There is further scope to make clear when planning agreements should be used. However, it is important innovative and unique outcome are not unduly restricted.
- A circumstance where a Planning Agreement may not be appropriate is when they accompany a clause 4.6 variation as part of a Development Application. This would remove the likelihood that the Planning Agreement is viewed as influencing departures to development standards that are more appropriately addressed through a change to the relevant environmental planning instrument.

Issue 3.4: Contributions plans are complex and costly to administer

How could the complexity of s7.11 contributions planning be reduced?

- The review and preparation of 7.11 contribution plans is resource intensive and requires a substantial amount of research and background studies, so as to form the evidence base necessary to justify contribution rates. The consequence of this complexity is that plans are only intermittently updated and can easily become out of date.
- To simplify the format and process associated with the preparation and implementation of a 7.11 Plan, consideration should be given to creating benchmarks that relate to open space provision, road delivery and community infrastructure that can be used by rural, greenfield and metropolitan Councils. This approach would provide simple metrics, such as the amount of open space needed per person/dwelling and an associated cost. The rates could then be applied generally by planning authorities for all development.

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

What are the risks or benefits of deferring payment of infrastructure contributions until prior to the issuing of the occupation certificate, compared the issuing of a construction certificate? Are there options for deferring payment for subdivision?

- The provision of infrastructure prior to development is fundamental to best practice planning.

- It is not possible for Council to meet the immediate infrastructure needs of growing communities when contributions are paid so late in the development pipeline.
- High infrastructure contributions are not “passed on” to the final dwelling price. When clearly signalled, they are factored into the development equation and work to suppress land values.
- Deferring payment of infrastructure contributions until prior to the issuing of the occupation certificate just kicks the can down the road, helping neither, the applicant, Council or the community.

Would alternatives to financial securities, such as recording the contributions requirement on property title, make deferred payment more viable?

- A development contribution should remain linked to the release of the construction certificate.
- The idea that secondary dwellings and other minor development will be able to be constructed up to the point of occupation certificates without a contribution being paid will lead to significant resource and cost recovery implications for local government.
- Most importantly, funding to provide infrastructure for the forthcoming development should be contributed at a time which enable expenditure to provide for the incoming population growth.

Would support to access borrowing assist councils with delivering infrastructure? What could be done to facilitate this? Are there barriers to councils to accessing the Low Cost Loans Initiative?

- Yes, low cost loans are an important part of the infrastructure funding mix.
- However, the loans are often subject to conditions associated with unlocking barriers future development as opposed to simply funding infrastructure associated with planned growth. As growth in the City of Canada Bay is often planned, it is often difficult to justify eligibility for the low cost loans.

What else could be done to ensure infrastructure is delivered in a timely manner and contributions balances are spent?

- Keeping contributions payments ahead of construction of the subject development.
- A degree of flexibility is required to enable Councils to pool funds for larger projects.
- Perhaps an annual report with a reconciliation of works delivered and funds expended against items may assist in monitoring the implementation of s7.11 and s7.12 contributions plans.

Issue 3.6: Infrastructure costs and contributions rates are rising

Should the essential works list be maintained? If it were to be expanded to include more items, what might be done to ensure that infrastructure contributions do not increase unreasonably?

- Ideally, the Essential Works list should be discontinued as it does not adequately respond to the broad range of needs of the diverse range of local government areas across the State, in particular the needs of inner metropolitan councils.
- This Essential Works list does not include community facility buildings, only the land component of these facilities. Councils aim to create healthy and thriving communities by funding local facilities such as community and neighbourhood centres, halls, libraries, youth and childcare facilities.
- As community facility buildings are not included on the current essential works list, local government faces significant funding shortfalls for providing community facilities. This situation is not sustainable for councils and not in the public interest. It is recommended that the “essential works list” be reviewed and amended to include the capital costs of providing community facility buildings.

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

Given that the rationale for these low rates reflects the lower nexus to infrastructure requirements, what issues might arise if the maximum percentages were to be increased?

- The only issue relates to whether the charge is reasonable and has a relationship with the scale and intensity of the development.

- For development with a cost of works over \$200,000, the 1% 7.12 levy does not generate a significant income stream and there is considered to be further scope to increase the percentage for development with a cost over \$500,000 or for development that intensifies a land use.

What would be a reasonable rate for s7.12 development consent levies?

- The answer to this question depends on the type and scale of a development and the capacity of proponents to pay. For example, an extension to a dwelling house should be treated differently to commercial buildings or new residential flat buildings.
- Where land use intensification occurs, the 7.12 rate should be permitted to be same or comparable with the 7.11 rate. This would simplify the contribution system for all users.

Issue 3.8: Limited effectiveness of special infrastructure contributions

Is it appropriate that special infrastructure contributions are used to permit out-of-sequence rezoning?

- No, special infrastructure contributions should not be used to permit out-of-sequence rezonings.
- Planned Precincts and Corridor wide strategies are complex and the delivery of infrastructure is only one of many outcomes that need to be addressed before the rezoning of land should proceed. This includes the finalisation of flood studies, traffic studies and the preparation of detailed development controls to ensure coordinated planning outcomes are achieved.
- There have been instances where Special Infrastructure Contribution Areas were mooted but never finalised. This has led to development being subject to “satisfactory arrangements” clauses being imposed in Local Environmental Plans that require contribution to be provided towards infrastructure delivery before development consent is issued. With no SIC being finalised, this approach has resulted in landowners and developers having to negotiate with the Department of Planning, Industry and Environment for an unknown monetary contribution for an unknown infrastructure item. This is clearly an undesirable outcome.

Should special infrastructure contributions be applied more broadly to fund infrastructure?

- SICs should only be used for renewal precincts and growth corridors.
- IPART has imposed a \$20,000 threshold for local government before approval of a contribution plan is needed, yet at the same, SICs are prepared that double these costs for proponents.

Should they be aligned to District Plans or other land use planning strategies?

- Yes.

Issue 3.10: Affordable housing

Is provision of affordable housing through the contributions system an effective part of the solution to the housing affordability issue? Is the recommended target of 5-10 per cent of new residential floorspace appropriate?

- Yes, affordable housing contributions are an important measure to address housing affordability.
- Council strongly support the target of 5-10% contained within strategies prepared by the Greater Sydney Commission and the substantial evidence base that has underpinned the implementation of these measures.

Do affordable housing contributions impact the ability of the planning system to increase housing supply in general?

- No. Affordable housing contributes to housing supply and diversifies the range of housing available. This outcome is particularly important for localities experiencing high levels of housing stress.
- Subject to the feasibility test being applied, affordable housing contributions do not impact the delivery of housing supply in general.
- Dwelling needs (social, affordable and market housing) should be considered in addition to dwelling supply.

Issue 4.1: Sharing land value uplift

Where land values are lifted as a result of public investment, should taxpayers share in the benefits by broadening value capture mechanisms? What would be the best way to do this?

- Yes, the tax system should capture value from both land rezoning AND public investments. This will ensure that the public as well as private landowners benefit from government decisions.
- Betterment levies on rezoned land could be applied on the increase in land value when it is rezoned for more lucrative use or benefits from new public infrastructure, such as a metro train line or airport.
- The ACT model comprising a 75% betterment levy could be simply applied in NSW.

Issue 4.2: Land values that consider a future infrastructure charge

Should an “infrastructure development charge” be attached to the land title?

- Yes, there is merit in capturing a percentage of the value uplift experienced when a land use planning strategy is approved or rezoning occurs.
- A consistent and transparent methodology should be applied to determine any such charge and contributions delivered through this mechanism should be allocated to local government, who are primarily responsible for delivering the infrastructure needs of existing and future residents and businesses.

Issue 4.3: Land acquisition for public infrastructure purposes

If supported, how could direct dedication be implemented? How could this be done for development areas with fragmented land ownership?

- Land should be identified in plan for dedication. Ideally, dedication would occur at the time of development consent being issued.
- In appropriate circumstances, where floor space can be transferred from the dedicated land to an adjoining development, there will be limited costs associated with the delivery of land. Only in circumstances where no development value is ascribed to the land would the acquisition authority need to compensate the landowner for the dedication.

Could earlier land acquisition be funded by pooling of contributions, or borrowings?

- Yes, however there are often competing demands for infrastructure that need to meet the needs of recently approved development and funding the acquisition of land for new communities that are yet to be established is rarely an immediate priority.
- All land zoned for recreation (public and private) in the Sydney metro area should be prevented from rezoning. New open space is difficult to deliver and Sydney's population will only continue to grow. A simple way to assist in easing the need for land acquisition for open space in particular, is to protect existing areas of open space for the public.

Issue 4.4: Keeping up with property escalation

What approaches would most effectively account for property acquisition costs?

- For renewal precincts, the land valuation process should not account for speculative purchases by developers but only refer to the capacity of the land as defined by the relevant environmental planning instruments.

Issue 4.5: Corridor protection

What options would assist to strike a balance in strategic corridor planning and infrastructure delivery?

- Strategic Corridor planning should not be made public until such time as an infrastructure strategy has been prepared. The infrastructure strategy should address the infrastructure needed to support growth, the cost of the infrastructure and the mechanism that be used to deliver the infrastructure.
- The infrastructure strategy should be exhibited concurrently with the strategic planning documents.
- Implementation of the strategy would need to be accompanied a broad based SIC/levy/betterment tax to ensure that the infrastructure is funded equitably across the precinct.

Issue 4.6: Open space

How can performance criteria assist to contain the costs of open space?

- Many established local government areas in the inner ring of Sydney will be unable to meet even the most conservative performance standards in relation to new open space.

Should the government mandate open space requirements, or should councils be allowed to decide how much open space will be included, based on demand?

- The government should mandate minimum open space requirements (per person) with enforceable parameters. I.e. Minimum for local parks size (i.e. set m² per person) and locational requirements (i.e. access within 400m of dwellings), regional parks, passive open space, sports fields etc. These benchmarks should be based on the needs of people to having reasonable access to these facilities. The Greater Sydney Commission and the Government Architects Office have already released guidelines in relation to open space provision.
- However, there should be an opportunity to provide additional open space, particularly in circumstances where the open space responds to a natural asset. I.e. Riverbank next to a watercourse, foreshore, national park, golf courses etc. where not all LGA's have the opportunity to gather this luxury space though it should not be counted as contributing to the minimum open space requirement as in many circumstances these spaces are not available to all.

Are infrastructure contributions an appropriate way to fund open public space?

- Yes. However in most circumstances (particularly Sydney councils) the cost to acquire new land to deliver public open space is not feasible.

Issue 4.9: Shortage of expertise and insufficient scale

What can be done to address this issue?

- Grant funding for Council's to review and update their local contribution plans is a valuable tool to modernise many outdated contribution plans.

Should the contributions system be simplified to reduce the resourcing requirement? If so, how would that system be designed?

- Increasing the contribution cap for established metropolitan local government areas, so as to avoid the need to seek IPART approval would simplify the system for many Councils.

Issue 4.11: Works-in-kind agreements and special infrastructure contributions

Should developers be able to provide works-in-kind, or land, in lieu of infrastructure contributions?

- Yes. However it is important that a works are delivered to the standard required by Council. Ultimately, the timing of delivery the proposed works represents the best outcome for the community. I.e. ensuring it is not drawing away expected funds from an imminent project.

Developers may accrue works-in-kind credits that exceed their monetary contribution. Should works-in-kind credits be tradeable? What would be pros and cons of credits trading scheme?

- No. works-in-kind credits should not be tradeable. Trading credits is complex and creates an administrative burden for Council. An alternative approach being a reduction in contribution, refund of money paid or reduction in the scope of works is preferred.