



# Review of Infrastructure Contributions in New South Wales

Submission to NSW Productivity Commission

August 2020

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## Introduction

Blacktown City Council welcomes the NSW Government's commitment to delivering a reformed infrastructure contributions system that achieves greater certainty, transparency, efficiency and fairness in infrastructure funding and delivery in New South Wales.

Council also welcomes the opportunity to provide this submission to the NSW Productivity Commission's issues paper – review of infrastructure contributions in New South Wales. We hope the contents of our submission help inform a positive review on this important matter.

Our submission discusses the 24 issues from the issues paper and provides information on other matters that we consider to be vital to this review.

We believe that this review is well overdue and that the system and governance of infrastructure contributions in New South Wales can be significantly improved. One of our main concerns has been the cumulative impacts of multiple ad-hoc policy changes to the system whereby each time attempting to fix a problem has added another layer of complexity, making it difficult to understand and impossible to plan for the future in an informed way. All stakeholders need a system that balances fairness, efficiency, certainty and transparency.

Infrastructure funding or infrastructure contributions are different to infrastructure financing. Financing is how you meet the upfront costs of building the infrastructure, funding is how you pay for it over its lifecycle. We believe that the Productivity Commission's review should acknowledge and address both.

We work hard to establish successful collaborative relationships with the development industry and the Department of Planning, Industry and Environment (DPIE), to partner in delivering much of the infrastructure for our City. Evidence of this are the 172 voluntary planning agreements that we have entered into since 2005.

We look forward to the August 2020 stakeholder roundtables and express our desire to participate.

Should interested parties have any questions in relation to Council's submission, initial enquiries should be forwarded to our [REDACTED]



## **Blacktown City**

Blacktown City is 35 kilometres from the Sydney CBD, occupying 247 square kilometres on the Cumberland Plain. Eastern Creek, South Creek, Ropes Creek and Toongabbie Creek and their tributaries provide natural corridors that buffer areas of urban development. Sydney's North West Growth Area (NWGA) precincts occupy 7,700 hectares within the northern third of the City of Blacktown.

Our City's current population of 395,000 is one of the fastest growing in Australia, and within 10 years it will be home to more than 500,000 people. By 2041, the NSW Government forecasts that Blacktown City's population will exceed 600,000 people.

This means that we need to build on our planning for new homes and jobs that are importantly supported by the full range of essential local infrastructure, delivered in the right place and at the right time.

Other statistics that describe Blacktown City include:

- economy of \$18.8 billion
- average economic growth rate 4.6%
- 138,000 jobs
- 180,000 employed
- 21,200 registered businesses.



## Executive Summary

Council has since 1982 adopted many Section 7.11 (previously termed Section 94) developer contributions plans for the provision of essential infrastructure in new residential and industrial release areas of Blacktown City. It has also adopted other developer contributions plans which apply in more established areas of Blacktown City which have significant infill development.

As a consequence of NSW Government planning policy Blacktown has experienced for over 40 years rapid sustained growth. Prior to the amalgamations of NSW councils in 2016, Blacktown had the largest population of any NSW council and we project within the next 5 years it will again have the largest population of any NSW council. In terms of population growth, in 1981 our population was 181,139 and the population is now 395,000, meaning an average increase of more than 5,000 per year over the last 4 decades.

Prior to the various reforms made to the contributions system from 2010, Council was able to fund the majority of the costs of local essential infrastructure from developer contributions. We operated like many other councils under the contribution provisions of Section 94 (now 7.11) of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*. This legislation allowed us to provide base-level (not gold plated) public amenities and services to our new communities. Many of these facilities are now essentially unfunded through an 'Essential Works List' set by the Department of Planning, Industry and Environment in 2010.

In achieving this delivery goal our key challenge was responding to rapid escalation of land values which occurs in new release areas. It was necessary for Council to frequently review and revise contribution rates to avoid Council acquiring land at a higher cost than it was levying contributions for.

Prior to 2010, the contributions plans review process could be completed relatively quickly to mitigate adverse impacts on our contributions plans from rapid price escalation. We would review a contributions plan, amend it, advertise and adopt it after considering submissions from stakeholders. Also, Council had discretion to determine (within certain parameters) the type of community infrastructure to reflect the expectations of our residents.

Our experience prior to 2010 was that developer contributions would not always fund all costs of essential local infrastructure. At times Council has needed to allocate from its own sources, supplementary funding to ensure the capacity to acquire all required lands and ensure delivery of all infrastructure works in our contributions plans. To minimise the amount of additional supplementary funding required, Council invested in robust management systems to assist with the timely review of our contributions plans.

However, the reforms progressively introduced from 2010 have in the most part had an adverse impact on Council's capacity to fund all essential infrastructure from developer contributions. In summary, this has been caused by the following changes made to the contributions system:

- the introduction of the Essentials Works List which has prohibited the use of developer contributions to fund community infrastructure including swimming pools, aquatic centres, neighbourhood/community centres and libraries
- significantly increased time for Council to review and revise contribution rates through the IPART assessment process
- a prolonged focus by IPART on reducing the value of works in a contributions plan meaning a lower standard of community and recreation facilities.

Over the years Council has needed to undertake analysis of alternative funding options for the provision of essential infrastructure in new release areas. The primary alternatives include the use of increased rates on new properties, an increased reliance on voluntary planning agreements to achieve a higher standard of community facilities and/or recreation facility embellishment and the use of value capture.

Over the last 2 years the NSW Government conducted a review of the NSW rating system which has not achieved any improved ability to include value capture in the rating system, nor a specific pathway to rely on rates as a partial funding source for essential infrastructure. Our own modelling has shown that relying on increased rates rather than developer contributions to fund essential infrastructure will over time result in a higher cost to property owners.

Council to date has negotiated over 170 voluntary planning agreements which have achieved positive benefits for the developer and Council alike, but they remain only a valid option when there are tangible benefits for the developer.

Council's position is that as a consequence of the Productivity Commission's review the following shortcomings of the contributions system should be addressed.

**1. The Essential Works List fails to meet community expectations for infrastructure, particularly in regard to open space provision and community facilities.**

Blacktown City is experienced with its new release areas and increased population density. When the NGWA was first released in 2008 for development, it was generally on the basis of around 15 lots per hectare and developers needed to meet minimum density requirements. In practice (and in the absence of density caps), developers were able to easily meet these minimum requirements, meaning that yields increased to around 25-30 lots per hectare. This means that much higher than originally anticipated planned population levels are being realised, whilst open space provision only matches the planned minimum population. We currently estimate a deficit of around 300 hectares of open space provision in Blacktown's NWGA precincts.

Compounded by this issue, the essential works list prohibits the funding of community facilities such as libraries, indoor aquatic centres and community centres, which prior to the 2010 reforms were a key element of most of our contributions plans. The inability to fund these items represents a cost to Council in excess of \$500 million which Council does not have the capacity to fund.

## **2. The review process time for developer contributions plans must be reduced**

Prior to the implementation of reforms in 2010, Council could review a contributions plan, publicly exhibited it for 28 days before adoption and the entire review could be completed within around 3-4 months. Our experience having undergone a number of recent reviews is the time taken to complete a contributions plan review now averages around 18 months and has been as long as 24 months. In an economic environment where land prices can escalate as much as 30 % per annum while the applicable CPI rate permitted to use in indexing contributions averages around 2.5% per annum, the significant review time has a considerable negative impact on a contributions plan's long-term position.

## **3. Actual cost increases need to be automatically incorporated in contribution rates without a full plan review**

As noted above, increases in costs above movements in contribution rates has a significantly adverse impact on an overall contributions plan ability to fund all required works and land. By having the contribution rate automatically move in line with actual cost increases (without a full formal review) would overcome this problem.

## **4. The current NSW rating system does not easily facilitate the funding of essential infrastructure within new release areas**

To facilitate the timely development in new release areas it is critical that Council acquires land and provides essential water and traffic management infrastructure in advance of development occurring or as early as possible. It is difficult for a council to implement a rating system that both provides sufficient funding to do this on a timely basis. Modelling has shown recovering interest costs as external borrowings as an essential element in this funding approach means a rating increase needs to operate for many years. The NSW rate pegging system also requires considerable investment of time and resources in gaining the approval for a Special Rate Variation. Most other States do not enforce the same standards on their councils.

## **5. Rate pegging does not allow councils to adequately maintain and renew Section 7.11 infrastructure**

Our analysis has shown that as a consequence of the application of rate pegging in NSW since 1977, average NSW council rates have increased by a lower amount than that for other States.





As an example, over the period 1995/96 to 2003/04 the rate pegging limit for NSW was a cumulative increase of 29.2%. Over the same period the cumulative increase in rates for Queensland councils was 55.6%, Western Australian councils was 64.8% and Victorian councils 66.1%. In 2016, the average residential council rate for a Victorian council was 45% higher than for New South Wales councils. For a Western Australian council, it was 48% higher and for a South Australian council it was 56% higher.

The impact of these lower increases has meant that there is a significant funding shortfall of NSW councils for the maintenance and renewal of infrastructure. In Blacktown's case, this situation is further exaggerated by the rapid expansion of our infrastructure base to accommodate our City's vast development activity. Whilst councils can apply for a Special Rate Variation this process is costly and time consuming and generally lags behind general cost increases.

#### **6. The dedication of public roads by developers is not enabled through Section 7.11 of the EP&A Act**

A major issue for Blacktown and local government is not being able to legally require developers to build, construct and dedicate local roads, other than through the mechanism of a Section 7.11 contributions plan, when that local road is not funded in a contributions plan.

As a result, there is an urgent need for Section 7.11 of the *Environmental Planning and Assessment Act 1979* to be amended, to rectify the potentially financially prohibitive problem for local government generally. The Act prescribes that only roads that are identified in a contributions plan can be required to be dedicated free of cost.

## Issue 1.1: Striking the right balance

*There can be difficulty in reconciling the competing principles of efficiency, equity, certainty, and simplicity. Failure to strike the right balance can undermine confidence in the planning system.*

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

There is no one size fits all approach to funding infrastructure. Growth areas, infill areas, rural, coastal and regional areas have different issues and solutions. A one size fits all approach risks imposing excessive contributions on some developments and insufficient on others. This may lead to smaller less intensive development being made unprofitable while more infrastructure intensive development may be profitable due to the relatively lower contributions – therefore also imposing excessive costs onto NSW councils.

Some options may be more appropriate for certain projects and sectors than others. There are also a host of political considerations that may lead to some options being preferred<sup>1</sup>.

Whilst a one size fits all approach may achieve a less complicated system and a higher level of certainty to stakeholders, it is not flexible enough to address the many nuances of the planning system and of the infrastructure needs of different new communities.

A one size fits all solution is unlikely to be the best solution. In the case of Blacktown City, it would be almost impossible to have a simplified system when Blacktown with its scale, high growth and infill characteristics has different challenges to most councils in NSW. We believe that different parts of the State or even Sydney require bespoke flexible solutions. Growth areas, non-growth areas, greenfield and infill development all have their challenges in the planning system.

The principles for consideration in a reformed contributions system, as set-out under the 4 headings of efficiency, equity, certainty and simplicity, are helpful but there are other matters which particularly deal with the span of infrastructure to be funded which needs to be addressed. The consideration of a new funding model needs to start with a policy on what is to be funded, then the principles for a split of that funding between the State (from taxation revenue) and contributions imposed on development (which flow back to residual land value) and then the principles for mechanisms for cost recovery. Ahead of all this, however, there needs to be a clear understanding of the way the development industry prepares its feasibility

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<sup>1</sup> <https://www.instituteforgovernment.org.uk/explainers/funding-infrastructure#:~:text=The%20most%20common%20ways%20of,National%20Insurance%20contributions%20and%20VAT.>

models and how they impact on en globo land value. There also needs to be a clear temporal understanding of anticipatory actions in the marketplace where land values can escalate well ahead of rezoning in anticipation of the delivery of infrastructure and anticipate financial returns.

### **Competing principles of efficiency and equity**

Efficiency:

The heading in table 1.1 refers to allocating resources to their best use and directing development to occur in areas where it is most viable. We note that the residual land value model has an impact on en globo land values for undeveloped land. Because developers work on a minimum margin model, as set out in their feasibility models, whether development charges go up or down, does not direct developer activity.

Rather, developers will secure en globo land to carry out their development driven by delivery of profit as a percentage development margin or as expressed as a minimum acceptable international rate of return. Both of these 'hurdles' drive developers' attention and mean that a development opportunity in a high infrastructure cost area is as attractive as development in a low infrastructure cost area. That is to say, broadly, the increase in development costs in one precinct over another does not drive developer attention. It may impact on the propensity of en globo land values to sell to developers, however this needs testing.

So, to whom is the price signal set? The impact of increasing development contributions does not flow through to the price of the developer's end product. The land market works on relativity. That is to say, the value of a subdivided parcel of land at the fringe of a release area is inexorably linked to the value of the house and land market which exists in the adjoining area.

Just because one part of a release area is more expensive to develop than another part of the release area does not mean that the price of subdivided land changes. The market looks at that land as the site for a dwelling and determines, relative to the value of houses and land in surrounding areas, the relative value of the subdivided product. A useful analogy is to consider the international market for an international traded commodity. In this regard, the price of a tonne of iron ore is determined by the international price for supply from a number of suppliers.

Each of those suppliers will have a differing cost base. Those costs will relate to distance from mine to port, shipping distance from port to consumer, the degree of computerisation within the mines, the cost of financing of the mines and a myriad of other cost factors. The fact is that a cost impost such as a developer contribution (say the land for the construction of a railway from a mine to a port) may not affect the international price of the product. And so, it is with residential land. Although not an internationally traded commodity, it is a broadly traded commodity. The market of raw land in new subdivisions totals between 1% and 2% of the total

residential market in a capital city. The value of house and land and completed apartments trading from one seller to buyer drives value for new subdivided land.

So, returning to the heading of 'efficiency' in table 1.1, we would argue that infrastructure costs, in the main, will not create a price signal to direct development to occur in a particular area.

The second bullet point under the heading of 'advantages' states by supporting an economic efficient outcome, we ensure levels of service reflect what future users want and/or need no more". Given our comments forgoing, we question whether this is actually the case. What changes in infrastructure costs do is change the residual land value that developers are prepared to pay for a parcel of land and therefore the propensity of an en globo land owner to sell that parcel of land. They do not drive developers to develop in one location rather than another.

Under the sub-heading of 'challenges', table 1.1 notes there is a difficulty in measuring demand and apportioning costs. In the Sydney metropolitan market this has been exacerbated by the deliberate decision of the NSW Government to cease funding of the metropolitan development program (MDP). The MDP was a source of useful market information provided by the development industry and used by government agencies in service planning delivery, and by the development industry. We submit that an MDP is essential to be reinstated as part of a review to the development contributions system to aid in the assessment of production demand. In this regard, in the current world of linked data bases, it should be possible to create an open source 'live' MDP which shows the rate of production (receipt of development consents, receipt of sub-division certificates and registration of lots).

Equity:

Under the heading 'Equity', table 1.1 states 'service delivery and cost apportionment should be treated consistently across service types, locations and levels of government'.

We refer to our earlier comments which set out the items which need to be considered in the contribution framework and particularly item 1, wherein we state that we need to start with an assessment of what is to be funded. Given the traffic model of Transport for NSW, it would be possible to calculate the proportionate share of the capital and maintenance cost for say for the new Northern Beaches motorway, apportion that on a population basis to the residents of say the Marsden Park precinct in the NWGA, and seek a contribution for that. So before considering equity we need to consider what is to be funded.

Under the sub heading 'advantages', we question whether the contributions system should be considered as 'part of the planning system'. The planning system should balance the needs of communities, the environment and other factors in order to enable where development activity takes place.

The contributions system is different altogether. It considers the share of infrastructure which is to be funded and the mechanism for that funding. Considering the 2 separately will aid clarity in structuring the new developer contribution system. Under the sub heading of 'challenges', table 1.1 notes that the principle of equity does not consider capacity to pay. In this regard, the cost of housing in NSW is such that a vast section of the community is priced out of the market. Capacity to pay, from a purchaser perspective, is already financially tested by the marketplace.

#### Equity and Nexus:

Nexus establishes a link between the proposed development and the charge levied. However, under the current system the infrastructure that can be funded is limited, despite the demand created.

For example, the NWGA will deliver a population of 200,000 extra people to Blacktown City and a suite of local assets (\$3.5 billion). That is the size, and in some cases exceeds the size, of many existing councils in the Sydney basin.

This will place significant pressure on Blacktown City Council specifically to deliver services across the new North West part of the City from existing works depots that are not strategically placed or substantially equipped to deal with the level of growth occurring and forecast still to occur.

There is an argument that, in a new contributions system, the capital items required by councils to fully service new development should be fully funded. This includes the establishment of new works depots and providing sufficient plant and equipment to cater for the increased servicing.

Failure to plan and deliver this essential service will reduce serviceability due to:

- additional travel times to reach sites in the new growth area which will reduce response times and productivity
- delays due to access to stores and supplies
- increased travel costs through fuel usage
- reduced effective utilisation of plant
- reduced access to mechanical repairs for plant.

In order to ensure that equitable and efficient levels of service are delivered across the whole of Blacktown City, it is proposed that a new multi-service depot be created. Whilst responsible for providing facilities to undertake Council services, Blacktown City Council is also responsible for providing the capital cost for establishing facilities for emergency services in the form of the State Emergency Services (SES).

Consequently, the following project is required to service the new communities in the NWGA:

- new works depot (including mechanical and office fit outs)
- new SES facility (including fit out)
- all plant (tractors, mowers, trucks, eductor trucks, street sweepers, cherry pickers, garbage trucks, power and hand tools, etc. required to provide the essential services).

The total cost to establish a depot in the NWGA with plant and equipment is in the order of \$31 million.

However, despite the need for these facilities being directly attributed to new development, they currently cannot be funded by developer contributions as they are not a public amenity or service and are not included on the DPIE's EWL.

***What are the advantages and disadvantages of a site-specific calculation based on demand generated, compared with a broader average rate?***

Site specific calculations materially advantage those who do not contribute to the site or area. However, they are also exposed to site-specific risk. For example, developments in the NWGA of Sydney are levied contributions and provided with infrastructure as they create the demand for and benefit from the infrastructure delivered for that site-specific area. However, residents and developers in Sydney's northern beaches are unlikely to benefit from this infrastructure nor do they create the demand for it.

Infrastructure in a growth area (greenfield development) is costly and risky and those costs can be a disincentive to investors to provide the housing product that Sydney needs. A broader average rate across a larger catchment would advantage those in site specific areas and spread the risk across a greater catchment, as essentially the site-specific area is subsidised by the larger catchment.

The advantage of a site-specific charge is that it is specific to the development and the infrastructure needs, i.e. no-one pays more or less than required from a demand perspective.

***Do other jurisdictions have a better approach to infrastructure funding we should explore?***

It is difficult to assess. All NSW stakeholders understand the challenges and complexities of the current NSW system. This generally stems from the stakeholder's experience (good or bad). Other jurisdictions' approaches to infrastructure funding should be explored by the Commissioner, and surveys undertaken by stakeholders in those jurisdictions to assess the system's suitability. This shouldn't be limited to other Australian states and New Zealand as stated in the issues paper. The use, history and effect of decades of rate-pegging in Australian states should be researched when used as a comparator. In terms of examining international



systems, the United Kingdom, for example, has a system of funding of infrastructure that needs examination, particularly in an infill context.

***How can a reformed contributions system deliver on certainty for infrastructure contributions while providing flexibility to respond quickly to changing economic circumstances?***

This is the challenge. Stakeholders will want both at some stage. Councils require certainty through a taxation system that they have no control over as rate revenue and developer contributions are controlled/regulated by the State government. The real certainty councils require is that there will be 100% cost recovery for what is planned and maintained. Councils cannot continue to endure funding shortages that are more about poor planning and regulation rather than its own management.

## **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?*

As mentioned in the introduction to this submission, Blacktown City Council has the responsibility of delivering over \$5.2 billion in local infrastructure for **Sydney's** NWGA and its infill areas as one of the means of addressing Sydney's shortage of housing stock.

The recovery of the cost of this infrastructure is currently 100% from the development that creates the need for the infrastructure (the user pays system). In a greenfield context, this can mean an average of \$80,000 per lot (or more) to fund the infrastructure.

The higher costs arguably act as a disincentive to development and contribute to the cost of a house in Sydney's North West, as these costs are ultimately passed on by the developer to the purchaser. A broader revenue source across Sydney would subsidise these costs and could potentially lead to an increase in housing stock.

Also, the Commissioner should explore the use of a **rezoning charge** / levy / fee / tax, i.e. a betterment tax, paid as early in the process as possible, potentially restricting sale or development approval until the charge is paid.

**Stamp duty** should be explored as a potential means of providing start-up funding for infrastructure to enable development.



## Issue 2.2: Integrating land use and infrastructure planning

*The Greater Sydney Region Plan provides the overarching vision and infrastructure needs, which is translated into separate District Plans and Local Strategic Planning Statements. These are used by councils for land use and infrastructure planning.*

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

#### **IP&R Framework**

Councils must comply with the 'Integrated Planning and Reporting Guidelines for local government in NSW - Planning a Sustainable Future<sup>2</sup>'. As part of this reporting, there are various strategic plans that councils must produce and publish. What is missing is an 'Infrastructure Delivery Plan', which would support the improved integration of land use planning and infrastructure delivery.

There also needs to be better infrastructure co-ordination and planning at the State and Local levels. For example, in the NWGA, having 7 precincts rezoned within one local government area (Blacktown) and within only a few years, is not a feasible outcome and exposes bad planning.

The planning outcomes must be aligned with infrastructure delivery plans supported by funding strategies. The phased release of precincts would be an improvement.

#### **Central River City and Western Parkland City**

It is difficult to co-ordinate and justify specific contributions (that we know will come from the growth) into a coherent, catchment wide plan to meet the government's vision for the Central River City and Western Parkland City. Key infrastructure is at risk of not being funded. For example, the current thresholds for infrastructure contributions plans can fund 'business as usual' stormwater management, but the measures around minimising runoff or treating and recycling stormwater needed to meet the community's regional objectives are unlikely to be funded. Many councils have not applied to increase the threshold to send contributions plans to IPART as a result of the onerous requirements and time-consuming nature of the IPART assessment process.

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<sup>2</sup> <https://www.olg.nsw.gov.au/wp-content/uploads/Integrated-Planning-and-Reporting-Guidelines-March-2013.pdf>



The Commissioner is encouraged to consider how developer contributions can be better coordinated to deliver blue green infrastructure and open space for improved environmental and community outcomes.

### **Issue 3.1: Principles for planning agreements are non-binding**

*The Planning Agreements Practice Note is currently non-binding on councils, although the Ministerial Direction exhibited by the Department aims to change this. There are no equivalent guidelines for use when negotiating planning agreements with the State. Additionally, there is little agreement between stakeholders on what the principles should be for either local or State planning agreements and there is no consensus on the appropriateness of value capture through planning agreements.*

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

Blacktown City Council believes that voluntary planning agreements (VPAs) add value to the planning system and are one of its essential components. Since 2005 we have negotiated 172 VPAs, many at suburb or precinct level, and others more site specific.

We believe that it is essential that the current flexibility of VPAs is retained. In a system which aims to facilitate innovation, codification of the types of benefits which can and can't be provided will inevitably lead to future tinkering and tampering to accommodate the next, unforeseen innovation.

We note that the voluntary planning provisions within Section 7.4 of the *Environmental Planning and Assessment Act 1979* were initiated by the development industry, especially the UDIA. Developers, who were seeking marketing advantage, sought a way to provide 'over and above' benefit to councils as a result of their development. In the absence of the VPA provisions, there was significant uncertainty as to whether contracted arrangements between individual developers and individual councils, in the absence of an enabling provision, could be enforced over time.

At the same time that this public policy was being prosecuted, the State was seeking to extract contributions from the Australian Defence Industries (ADI)/Lend Lease arising from the impacts of the development of the ADI St Mary's site (Ropes Crossing/Jordan Springs). Once again, in the absence of enabling provisions, the 'developer agreement' which was put in place before Section 7.4 was made, to facilitate development of the site and paid to the State contributions for infrastructure upgrades, had no existing legal framework.

The current statutory framework under Section 7.4 of the Act now addresses any hint of illegality and provides a transparent process for stakeholders. That is not to say that it couldn't be improved.

If a new contribution system limits the use of VPAs, the Commissioner should consider how the development industry will seek to get around such provisions in their absence or in their limitation. Councils, as bodies corporate, are entitled to contract with parties for the provision of



work services (perhaps to the constraints of Section 55 of the Local Government Act). If VPAs are limited, there may be 'work arounds' which the new system needs to contemplate.

### **VPAs and Water Sensitive Urban Design (WSUD)**

Due to their flexibility, VPAs can provide a unique funding source for stormwater and open space infrastructure, that councils may otherwise struggle to fund.

Blacktown City Council uses VPAs as an alternative (voluntary) mechanism for developers to pay a cash contribution to comply with Part J of its Development Control Plan in relation to water quality. Developments are required to achieve certain minimum percentages of reduction of the post development average annual load of pollutants. All developments where a Section 7.11 contributions plan applies meet the water quality requirements through the provision of contributions in accordance with the relevant contributions plan adopted by Council. This provision does not apply to business and industrial developments greater than 4 hectares.

However, as an alternative, development proponents that are outside of our contributions plans areas may enter into a simple 'template VPA' with Council to offset their on-site water quality requirements by paying a cash contribution towards regional WSUD infrastructure off-site. We understand that this is approximately 1/3 cheaper than delivery by developers on a site by site basis. The use of this mechanism is a great example of the flexibility of VPAs and is very popular with developers in Blacktown.

### **Funding at a sub-regional scale**

Many VPA policies provide examples of what a 'public benefit' is, rather than providing clear definitions in the Department's Secretary's Practice Note, Planning Circular and Ministerial Direction. Assurance and guidance should be provided through the Secretary's Practice Note and the Planning Proposal phase for VPAs through a supported policy decision at a catchment level for:

- increased land dedication to Councils for waterway improvement outcomes
- direct funding for water sensitive urban design (WSUD) infrastructure
- riparian enhancement.

VPAs provide a unique mechanism that can harness funding at the sub-regional scale, operating between more than one authority. This recognises that public benefit and costs from large scale projects occur beyond individual council borders and the Commissioner should consider that the importance of this feature for funding blue-green infrastructure is recognised, as has been reflected in the Parramatta River Masterplan, DPIE's place making initiatives and the GSC's vision for a greener Greater Sydney through a blue green grid.

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

Value capture (or value sharing) is not a new concept. In its broadest terms, value capture in relation to urban land development involves a planning authority, such as a local council in New South Wales, receiving increased revenue that can be allocated to property values as a consequence from planning activities of the authority which increase the development potential of the land and hence its value.

One question to ask is how much value uplift is there and who is entitled to it. The Commonwealth has advocated that it is entitled to uplift as a result of partial funding of infrastructure (e.g. St Marys – Badgerys Creek metro). The State has indicated that it wants to achieve value sharing arising from its gift of rezoning to global land owners. Councils want a source of funding for infrastructure that supports growth and an uplift.

Value capture is used extensively in the United States as a legitimate and effective form of taxation. The use of value capture through VPAs has gained popularity with NSW councils as they attempt to 'clawback' a share of the value enjoyed by developers and landowners to fund infrastructure, because there are insufficient alternative tools to fund community need.

To date, Blacktown City Council has not adopted a position on the use VPAs as a mechanism to capture value. We have relied on the established methods for raising revenue to provide infrastructure.

We note that the latest 2020 VPA Practice Note appears to show the NSW Government's position in this regard. The Practice Note states in section 2.1 that 'value capture should not be the primary purpose of a planning agreement and in section 2.4, that 'planning agreements should not be used explicitly for value capture in connection with the making of planning decisions.'

Although the phrasing in the Practice Note does not rule out the use of value capture in VPAs completely, it appears to make clear the DPIE's position on the matter.

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

Using nexus in VPAs will diminish their flexibility. It could be argued that nexus in VPAs will make them fairer but at what expense? Nexus is subjective. It is well understood that the principle of nexus in the context of developer contributions is the link between the development and the amenities or services for which the contribution is sought.

Add to that another 3 dimensions to that principle:

- 'casual' nexus between the development and the contributions sought. That is, the development should in some way **cause** or contribute to the need of the amenity or service
- 'spatial' nexus between the **location** of the development and the provision of the amenity or service
- 'temporal' nexus that the amenities or services are to be provided in a **timely** way.

Fettering planning agreements to the nexus principle undermines their ability to deliver flexible planning outcomes that ordinarily can't be achieved and sometimes can only be achieved through a negotiated outcome between 2 or more parties.

***Should State planning agreements be subject to guidelines for their use?***

It is our view that all planning agreements should be subject to guidelines, transparency and good governance. Guidelines for state and local planning agreements could be prescribed in the same guidance document, but that document could reference different treatment of State and local matters if warranted.

Also, State planning agreements that will deliver infrastructure that councils will be responsible to maintain should include guidelines for council assessment and approval of final infrastructure designs.

### **Issue 3.2: Transparency and accountability for planning agreements are low**

*Reporting and accounting requirements for planning agreements are low, although proposed changes to the Regulation may improve this. Differing practices between councils and the State in maintaining separate planning agreement registers and public notice systems is confusing and reduces transparency and accountability.*

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

We agree that developers and the public in general should have confidence that contributions collected by councils and the State Government's SIC are spent on the purposes they are collected for and correctly accounted for.

However, our view is that processes are already in place and do not need further consideration at this time. VPA contributions should be held in an internally restricted reserve, and their expenditure subject to annual external review by a council's auditors.

By attempting to provide more transparency, the administration of local government systems is further stretched in the short-term, for very little benefit. Councils are already subject to auditing of its contributions through annual statutory financial audits, internal audits and random performance audits by the Auditor General.

This level of scrutiny should be sufficient, to provide confidence that contributions are being correctly accounted for.

To be clear, Blacktown City Council supports the principle of improved transparency, for works-in-kind and VPA contributions/dedications etc.

However, if changes are approved, a further change should be introduced that allows councils to recover the cost of the increased administration burden, by addressing an administration levy.

Also, any changes for councils should be mirrored in requirements for the SIC that the State Government administers. This would ensure that the whole system is regulated, not just the part of it that relates to local infrastructure contributions.

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

Apart from the cost of setting up the system, the only barrier would be that councils and the State Government use different systems for their respective planning agreement registers. Blacktown City Council would have no objection to an expansion of the DPIE's Planning Portal for this purpose.

### **Issue 3.3: Planning agreements are resource intensive**

*Planning agreements are a resource intensive mechanism but have potential to deliver unique and innovative outcomes.*

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

Again, this would undermine a planning agreement's ability to deliver flexible planning outcomes that ordinarily can't be achieved and sometimes can only be achieved through a negotiated outcome between 2 or more parties.

Issuing a Practice Note to define when an agreement could / would not be appropriate, would restrict their use and possibly reduces innovation.



### **Issue 3.4: Contributions plans are complex and costly to administer**

*Contributions plans can be opaque, making it hard for developers to calculate a potential contribution liability and the community to know what infrastructure it can expect and when.*

*Many plans are not updated in a timely manner, leading to issues with cost escalation, outdated assumptions, and difficulty meeting community infrastructure needs. Some councils have significant contributions balances, indicating there may be barriers to timely expenditure.*

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

All stakeholders would agree that contributions planning is complex. Councils currently prepare contributions plans in accordance with (but not limited to) the requirements of:

- the Environmental Planning Assessment Act 1979
- the Environmental Planning and Assessment Regulation
- relevant State Environmental Planning Policies
- relevant Development Control Plans
- DPIE Practice Notes.

Although councils generally follow these requirements, they can be very different across 128 individual councils in NSW. They are generally not user-friendly documents nor written in plain English as they need to follow legal requirements and principles.

The contributions planning framework requires a consistent and transparent approach to seeking development contributions according to the 4 well known key principles understood by most stakeholders of:

- nexus
- fair apportionment
- reasonableness
- accountability.

As mentioned in 3.1 above, **Nexus** is subjective. It is the link between the development and the amenities or services for which the contribution is sought.

Add to that another 3 dimensions to that principle:

- 'casual' nexus between the development and the contributions sought. That is, the development should, in some way, **cause** or contribute to the need of the amenity or service
- 'spatial' nexus between the **location** of the development and the provision of the amenity or service

- 'temporal' nexus that the amenities or services are provided in a **timely** way.

If contributions planning is to be made less complex, the principle of nexus needs to be either removed or re-examined.

**Fair apportionment** means that the cost of infrastructure and the contributions levied on developers must be fair and consistently applied (shared).

The principle of **reasonableness** requires that contributions are 'reasonable'. The subjectivity of this term is often determined by a judge in the NSW Land & Environment Court or considered by the Independent Pricing and Regulatory Tribunal. One party's view of what is reasonable often differs to another's.

**Accountability** is achieved by the operation of a consistent contributions plan, although this is difficult to achieve across 128 councils.

As demonstrated above, contributions planning is complex. If a level of complexity is to be removed from contributions planning, then the complexity of the principles that underpin contributions plans as a long-range planning tool need to be removed in parallel.

### **An alternative?**

To reduce the complexity of s7.11 contributions planning, new approaches need to be examined and explored.

One example of this would be that an infrastructure charge could be imposed on any land that benefits from a rezoning to a significantly higher use or benefit and requires infrastructure to support development of that land.

This could be done as a State SIC Levy and applied as a rate per hectare. The intended uses are the development of substantial residential areas from rural land, or broad redevelopment areas from low density to high density.

The levy could be applied to fund:

1. Any state significant infrastructure made necessary to support the development, including road, rail and utilities corridors.
2. Acquisition and construction of all drainage infrastructure to ensure flood free development and stormwater quality is adequate, and flood evacuation routes are defined and constructed.
3. Potentially, regional open space land.

These items are large scale and can be adequately catered for by an area-based contribution, that is applied uniformly to all land that is granted development potential.

The objective is to impose the charge as early in the development process as possible in order to impact the sale price of raw/vacant land into the development process. This is effectively **value capture** at the front end, and allow funds to progress works early.

The charge will need to be paid **before a consent for any development can be determined**. In other words, the zone is only effective once the charge has been paid.

The remaining infrastructure required would be population based and the subject of a simplified contributions plan that used **standardised provision rates and construction costs** to develop a rate per head of population. The contributions plan could cater for: -

1. Road and traffic facilities - precinct based and a unique rate per head.
2. Open space land @ 28.3 sqm/head - use average \$/SqM to define a rate - add a % to cater for Community facilities land.
3. Recreation facilities – standard provision rate and construction costs, generic \$/head.
4. Community facilities - standard provision rate and construction costs, generic \$/head.

This contribution would be applied at Subdivision / Occupation Certificate.

For contributions to be paid at Occupation Certificate, the development must be for house and land or apartment developments and will actually be required within 6 months of the Subdivision or Strata Certificate or prior to issue of an Occupation Certificate. This imposes an administrative burden on councils to keep track of the time period, but is easier to track than to be chasing the contributions from the purchaser.

### ***What are the trade-offs for, and potential consequences of, reducing complexity?***

If a level of complexity is to be removed from contributions planning, and the level of principles that underpin contributions plans as a long-range planning tool are removed, stakeholders would be trading off a level of **confidence and certainty** in the system that was based on these principles. This could also potentially mean less contributions revenue as the system will not recover all cost increases.

### ***How can certainty be increased for the development industry and for the community?***

This could be achieved by a simplified system that is not only understood by developers but also understood by the community in general.

In 2004 the *Section 94 Contributions and Development Levies Taskforce* examined alternatives to levying under Section 94 of the *Environmental Planning and Assessment Act, 1979* (such as flat rate levies and developer agreements). The taskforce identified their strengths and weaknesses, reported on the feasibility of using different systems for metropolitan development



areas and other areas, and examined the appropriateness of the nexus and whether other arrangements were more appropriate.

The result was 2 new mechanisms, a Section 94A fixed percentage levy and planning agreements. Both mechanisms **deleted the nexus requirement** under Section 94 and, in doing so, created certainty in simplified alternatives. Developers could easily calculate future contributions irrespective of whether their contributions were as fair as Section 94 contributions.

This type of consideration should be examined by the Commissioner.

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

*Developers want to delay the payment of contributions to the occupation certificate stage to support project financing arrangements. This would delay receipt of funds to councils and, in the absence of borrowing funds, may delay infrastructure delivery.*

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

Blacktown City Council is not fundamentally opposed to delaying up-front payment of contributions until prior to the issuing of the Occupation Certificate, compared to the issuing of a Construction Certificate. This is currently in effect during the COVID19 pandemic. We recognise that some developments may not proceed because of the cost of financing the up-front payment of developer contributions.

However, we have concerns on a couple of fronts:

- the risk to councils if a private certifier allows the issue of interim or full Occupation Certificates without the contributions being paid
- the additional administration (cost) that this may bring to councils
- councils need contributions as early as possible to fund infrastructure. Delaying payment to later stages prevents a council's ability to deliver this infrastructure to a degree.

If delaying contributions proceeds, councils will need legislative change, and whatever means the Minister for Planning has, to provide iron-clad protection for councils particularly where private certifiers are involved.

Purely from a council's perspective, the only benefit of deferring payment to the Occupation Certificate is an improvement in developer margin and profitability. There are risks that:

- payments are not made and must be 'chased'
- payments are passed onto buyers as part of the purchase disbursements – politically the charge is then a tax on home ownership and no longer a cost of development infrastructure
- recording contributions payable on property title will almost guarantee that councils are left to chase the payment from the purchaser.

Infrastructure can only be delivered as funds are available. If infrastructure is to be delivered early then funding needs to be delivered earlier, not delayed till later.

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

It may make the deferred contribution more viable, but there are at least 2 downsides.

1. The administration of contributions being placed on and removed from property titles. This is already administratively complex with VPAs and is not really practical. It also raises the question of who pays and when?
2. The certainty of the timing of payments used to predict cash flow to fund projects.

***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?***

Support to access borrowing would assist councils with delivering infrastructure and is supported.

The current contributions scheme for councils make it difficult to forward fund infrastructure from day one. Councils really need to be able to forward fund infrastructure so that infrastructure such as drainage and roads can be introduced early to stimulate and facilitate development. The earliest requirement for this funding is the acquisition of land. This is followed by design work and then construction.

If councils borrow money to acquire land and design works, and put the full recovery of borrowing into their contributions plans, this cannot then be assessed by IPART upon assessment of a contributions plan as an unreasonable cost as the funds will have already been borrowed and spent.

**Borrowing challenges for councils**

Councils are required to limit debt service levels in accordance with what is termed the Debt Coverage Ratio. The Debt Coverage Ratio is calculated by dividing the operating result less interest and depreciation – EBITDA (the numerator) by the total debt servicing costs (both principal and interest payments). The target for this ratio is >2, that is the amount of EBITDA is at least twice the annual debt service cost.

The problem with this ratio is that the numerator excludes all Section 7.11 related revenue, but the denominator includes all debt servicing costs. Therefore, if a council was to externally borrow for part of the costs for its Section 7.11 program, the ratio would be impacted by this such that its ability to borrow for other works funded by general fund would be limited. Blacktown City Council has a theoretical borrowing capacity based on the debt coverage ratio for 2019/20 of \$245 million. By way of comparison, if Council was to borrow within the limit of the debt coverage ratio it could fund around 1 year of its Section 7.11 program. But by doing so



it would have no remaining capacity for any other borrowings to be funded from general fund for works to be undertaken in the established areas of the city.

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

Delivery of infrastructure in a timely manner is resource intensive. Blacktown City Council has continued to employ more staff to deal with delivering infrastructure in response to growth. We do this by funding some staff members and contractors via Section 7.11 projects and others through the Section 7.11 administration levy which is assessed by IPART. These officers only work on Section 7.11 projects or work.

### **Issue 3.6: Infrastructure costs and contributions rates are rising**

*Infrastructure costs are rising - particularly for land acquisition - as are contribution rates. Caps and thresholds introduced to encourage sector activity have, however undermined important market signals for development efficiency and are now likely to be reflected in higher land values.*

*The application of the essential works list can put councils' finances under pressure given their current inability to expand their rate base in line with population growth.*

***Currently IPART reviews contributions plans based on 'reasonable costs', while some assert the review should be based on 'efficient costs'. What are the risks or benefits of reframing the review in this way?***

We believe that the capital works in a contributions plan should reflect the standard required to **service the community**. There should be clear guidance on minimum standards and what they are, and all items should be included on the essential works list. Reasonable cost makes more sense for works in a contributions plan. The efficiency issue should be considered in the timing of planning (rezoning) and associated infrastructure plans.

Unfortunately, the reasonable cost approach is really just the lowest cost that can be applied, and may not be applicable to the circumstances of the actual works. The most efficient cost should be making allowances for the practical reality of the works. The reasonable approach is an extension of the one size fits all, while the efficient approach is trying to account for over / under costs. The risk is that costs will increase.

***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?***

A modified version of the EWL could be maintained, but the existing list has created one of the largest funding problems for councils in NSW. Below is background on the EWL and its inception. The next section of this submission discusses what 'caps' and the EWL has meant for community facility buildings and open space embellishment across Blacktown City.

#### **DPIE's Essential Works List - background**

In 2010, the NSW Government introduced a number of policy changes to the developer contributions system in NSW. Arguably, the most contentious component was its introduction of an 'Essential Works List'<sup>3</sup> (EWL) for contributions plans assessed by IPART that proposed to

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<sup>3</sup> Secretary's Practice Note: Local Infrastructure Contributions | January 2019 – page 14



exceed the Section 7.11 caps of \$20,000 per lot/dwelling (infill development) or \$30,000 per lot/dwelling (greenfield development).

The EWL is used if councils seek:

- funding from the Priority Infrastructure Fund (now Local Infrastructure Growth Scheme), which is administered by the DPIE, with IPART assessing contributions plans against the EWL to determine the ‘true levy’; or
- a special rate variation, which will be assessed through IPART.

Under this new regime, IPART is involved for the first time in the NSW development contributions system.

IPART’s role was to review:

- new contributions plans above the relevant cap
- development contributions plans above the relevant cap for those councils that are seeking priority infrastructure funding, and
- development contributions plans above the relevant cap for those councils that are seeking a special rate variation.

In addition, IPART was given responsibility for developing and calculating annually a Local Government Cost Index and a productivity factor for council rates and reviewing councils’ applications for special variations under the Local Government Act 1993.

The EWL, as set by the DPIE, defines essential works as:

- land for open space (for example, parks and sporting facilities) and base level embellishment
- land for community services (for example, childcare centres and libraries)
- land and facilities for transport (for example, road works, traffic management and pedestrian and cyclist facilities), but not including carparking
- land and facilities for stormwater management
- the costs of plan preparation and administration.

The EWL is relevant only to those contributions plans that propose a contribution level above the relevant cap (unless otherwise directed by the Minister for Planning).

The EWL does not apply to contributions plans currently below the relevant cap or to those contributions plans that are exempted from the relevant cap.

### **Base level embellishment**

Base level embellishment of open space is considered to be those works required to bring the open space up to a level where the site is secure and suitable for passive or active recreation. This may include:

- site regrading
- utilities servicing
- basic landscaping (turfing, asphalt\* and other synthetic playing surfaces, planting, paths)
- drainage and irrigation
- basic park structures and equipment (park furniture, toilet facilities and change rooms, shade structures and play equipment)
- security lighting and local sports field floodlighting
- sports fields, tennis courts, netball courts, basketball courts (outdoor only), but does not include skate parks, BMX tracks and the like.

\*Note: 'asphalt' (under 'basic landscaping') includes at-grade carparks to the extent that they service the recreation area only and does not include multi-storey carparks.

### **Community services**

For the purposes of the DPIE's Practice Notes, 'community services' means a building or place:

- owned or controlled by a public authority or non-profit community organisation
- and used for the physical, social, cultural or intellectual development or welfare of the community
- but does not include an educational establishment, hospital, retail premises, place of public worship or residential accommodation.

These may include (but are not limited to):

- community centres/halls
- libraries
- neighbourhood centres
- youth centres
- aged persons facilities (Senior Citizens centres, Home and Community Care centres)
- childcare facilities
- public art gallery
- performing arts centres.
- plan administration.

Plan administration costs are those costs directly associated with the preparation and administration of the contributions plan. These costs represent the costs to a council of project managing the plan in much the same way as the project management costs that are incorporated into the cost estimates for individual infrastructure items within a plan.

Plan administration costs may include:

- background studies, concept plans and cost estimates that are required to prepare the plan
- project management costs for preparing and implementing the plan (e.g. the employment of someone to co-ordinate and deliver the plan).

Note: Plan administration costs include only those costs that relate directly and solely to the preparation and implementation of the plan and do not include costs that would otherwise be considered part of council's key responsibilities, such as core strategic planning responsibilities.

### **Environmental works**

The acquisition of land and the undertaking of works for environmental purposes e.g. bushland regeneration or riparian corridors are **not** defined as essential works for the purposes of this Practice Note. The only exception to this is where it can be demonstrated that the land and/or works in question serve a dual purpose with one or more of the categories of works that meet the definition of essential infrastructure outlined above. In this situation, only the component of land and/or works that serves the dual purpose can be considered as essential works.

### **What caps and the EWL mean for community facility buildings and open space embellishment**

We understand that it was the NSW Government's intention in 2008 that community facility buildings and other items traditionally funded under Section 7.11 contributions (now precluded by the EWL) should be funded by alternative local government funding sources such as rates and grants. We also understand that this was based on its understanding that increased revenue due to growth would be sufficient to cover these capital costs. This has not been the case.

The exclusion of levying for community facility buildings in Blacktown City will see an incoming population of more than 150,000 people that will have no libraries, no swimming pools, no youth centres and no community meeting spaces. Caps on developer contributions and the application of the DPIE's EWL have precluded the application of funds to provide community facilities in the NWGA.

The revised, conservative (i.e. not gold plated), unfunded, total cost of community facility infrastructure in Blacktown City's NWGA precincts (including community and neighbourhood



centres, libraries is estimated conservatively at \$524 million, plus additional land (due to higher densities than planned) at an estimated cost of \$56 million.

The advanced state of development in the NWGA means that any amendment to the contribution caps or to the NSW Government's EWL to enable community facilities infrastructure to be levied within Section 7.11 Contributions Plans would be unlikely to address the current funding shortfall, but would raise questions of equity between future and recent developments.

We strongly submit that this policy of government is flawed. We believe that, if the EWL is retained, it should include all infrastructure that a community expects as a result of development.

### **Standard of landscape embellishment funded through s.7.11 or through a new system of developer contributions**

In addition to the information above we remain concerned with the current standard of landscape embellishment funded by developer contributions, particularly in terms of the DPIE's EWL.

The EWL's scope limits 'open space embellishment' to base-level embellishment only. Planning for the NWGA has resulted in a significant under-provision of greenfield open space due to planned NSW Government densities being well exceeded. It is unlikely that open space provision will be increased to meet the higher densities being achieved in this area. If more open space land cannot be rezoned to meet the demand of new communities, then the standard of open space embellishment should be reviewed in a new system to compensate.

The issues below highlight our concerns and we suggest what we feel should be included in a new funding regime in NSW, to ensure new communities enjoy quality landscaped open space areas.

### **Insufficient open space budgets**

The current local developer contributions system provides insufficient budgets for quality open space embellishment. This is because it is either limited by the DPIE's EWL that only allows 'base level embellishment', or is scrutinised unreasonably through the IPART process.

### **Limited open space embellishment element**

Our experience also tells us that, due to the increasing costs to deliver infrastructure, there are often insufficient funds to provide high quality embellishment works to provide amenity to the community, for example tree planting. These are often the first design component to be scaled back due to a lack of funds through S 7.11 funding. It is very important that the costs to provide

amenity, such as trees, as well as suitable fit for purpose irrigation sources, are permitted and adequately funded in the new system of developer contributions.

We believe that the contributions system should permit funding for popular and recognised sport and recreation activities (e.g. BMX and skate facilities – both Olympic sports). Both sports are now more widely participated in across greater Sydney. The EWL (discussed in greater detail in the next section of this submission) does not allow funding for these activities. We submit that the provision of these facilities may assist with development of land with no clear end use, e.g. flood affected land.

### **Facilities should be able to be increased when population thresholds increase**

The new system of developer contributions for NSW should consider that open space and recreation needs, e.g. playgrounds, should be able to be increased in size in order to address increases in population from what was planned for an area, to that which is being realised. The EWL does not allow these activities to expand.

### **Synthetic surface sport fields**

Sports fields with ‘above base level’ synthetic surfaces should be able to be levied through a new system of developer contributions to also address increases in population.

### **Open space corridor connections and riparian lands**

Under the current system, councils cannot fund riparian corridors through developer contributions. We submit that the new system should explore possibilities that allow funded open space corridor connections through riparian land to provide recreational connectivity. This currently only seems possible in the Western Sydney Parklands.

The new system should also examine the lifecycle costs associated with the rehabilitation and management of waterways. Allowing works within riparian lands is valuable in providing multiple benefits for the community and the environment, including improving amenity, providing access to land that could be used for dual purposes, i.e drainage infrastructure and recreation, and providing local cooling and water quality benefits.

Recent rehabilitation of a creek line at the Fairwater Estate in Blacktown by Frasers is a great example of how this actually works. It is also important that the new system looks at rehabilitation of drainage lands, but also factors appropriate funding for these works through local or state funding mechanisms.

### **Consistent facility provision across different contributions plans**

Our experience shows us that this matter has not been dealt with consistently by IPART and the DPIE. IPART has made its assessment on individual contributions plans in the NWGA that are inconsistent with already-approved facility provision in other areas. This leads to inequities across LGA areas and should be made consistent in the new system.

### **Bushland open space recreational areas and facilities**

Again, these areas need to be funded with reasonable bushland capital works to provide alternative recreation opportunities.

### **Open space contamination costs**

These are often unanticipated costs for councils and their contributions plans, but real contamination rectification costs cannot be identified when preparing a contributions plan. These 'over costs' that a council ultimately pays ensures that open space is provided. The current system does not allow us to make a reasonable allowance for a cost we cannot avoid.

### ***What role is there for an independent review of infrastructure plans at an earlier point in the process to consider options for infrastructure design and selection?***

Early detailed design would firstly consume a design budget for any project. The early designed infrastructure has little chance of becoming the actual construction due to changes in design guidelines, approval processes and safety requirements over time. Early design at any level of detail, and even approvals, have little substance until poured in concrete.

A focus on reducing costs by locking down works costs is simply avoiding the real issues of land cost and increases the level at which Council will be subsidising development.

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

*Section 7.12 local infrastructure levies are low and do not reflect the cost of infrastructure.*

*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?*

There would be a real expectation that the facilities that the 'tax' is levied for would be delivered in a guaranteed timely manner. Currently, the developer pays the low rates with the low nexus with very little expectation of when the facilities in the plan will actually be delivered.

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

1% is considered too low to be a serious funding mechanism. 10% would be imposing a considerable burden to project viability.

A 3% levy imposed on non-residential development applied to a list of infrastructure types could be a reasonable trade off.

### **Issue 3.8: Limited effectiveness of special infrastructure contributions**

*Special infrastructure contributions were introduced to strengthen delivery of state infrastructure. They can be an efficient and equitable mechanism for modest infrastructure cost recovery, while helping to ensure that development is serviced in a timely way. Over time, incremental changes and ad hoc decisions have, however, led to inconsistencies in their application, which may have limited their effectiveness.*

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

This is inequitable. Proper planning for Sydney and New South Wales and the sequencing of rezonings shouldn't be determined by which developer or entity can 'pay its way' to have their rezoning jump the queue. It also affects a council's long-term strategic planning which should be aligned with State planning and sequencing.

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

A broader distribution of a catchment area may reduce the impact to a particular development area and could lead to stimulating development through reduced levies to that development area. However, those areas that do not directly benefit from the impost would see this arrangement as inequitable.

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

Very much so and also to the relevant council's strategic plans to promote a co-ordinated approach.

#### ***Should the administration of special infrastructure contributions be coordinated by a central Government agency i.e. NSW Treasury?***

A central government agency would be preferred, provided it didn't lead to another level of red tape and bureaucracy.



### **Issue 3.9: Difficulty funding biodiversity through special infrastructure contributions**

*Biodiversity offsetting is a key part of the plan for developing Greater Sydney and requires a secure source of funding. The application of special infrastructure contributions to support this has been inconsistent.*

***Should implementation of special infrastructure contributions for biodiversity offsets be subject to a higher level of independent oversight?***

Yes, but kept within the DPIE.

***Are special infrastructure contributions the appropriate mechanism to collect funds for biodiversity offsetting, or should biodiversity offsets be managed under a separate framework?***

The SIC is administered and managed by the DPIE in consultation with Treasury. The DPIE sets the contribution rate for the SIC and can discount it depending on a number of factors.

Biodiversity offsetting should continue to be managed under the same framework. Creation of a separate framework is opposed. This would create the very funding blockage which industry and government rails against local government, where councils fail to pool their funds for Section 7.11 project delivery.

### **Issue 3.10: Affordable housing**

*Affordable housing contributions are made on top of other infrastructure contributions. The percentages are determined individually, and each scheme must demonstrate the rate does not impact development viability.*

***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? And do affordable housing contributions impact the ability of the planning system to increase housing supply in general?***

Contributions for affordable housing should not be a special one-off. If the State decides what infrastructure is required service growth, and if that includes affordable housing, then it should be funded in the same way as any other infrastructure.

To set up a separate regime is, in our view, inappropriate. The application of affordable housing contribution schemes has been ill-managed by the State with special deals for certain councils in limited areas. As a policy question, one must ask why affordable housing ought be delivered out of developer contributions when social housing is not delivered by developer contributions. The need for social housing is more profound than the need for affordable housing.

## Issue 4.1: Sharing land value uplift

*If investment in public infrastructure increases land values, then the benefits are largely captured by private property owners. 'Value capture' mechanisms can return a share of the value created by public investment to the taxpayer.*

*There are several ways a 'value capture' mechanism could be applied, including land tax, council rates, betterment levy, or an infrastructure contribution.*

### ***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?***

Given that this is a windfall gift of the State to en globo land owners, the most appropriate funding mechanism would be a betterment tax, or, if that is politically unpalatable, a developer contributions regime similar to Section 7.11.

Betterment taxes or levies try to capture part of the infrastructure investment already incurred by the government, although it needs to be remembered that sometimes there can be negative impacts associated with noise, pollution and increased traffic, for example Sydney's third runway.

There are various ways to implement betterment levies, and different countries have adopted various models. In the United States, many cities use levies called 'special assessment districts'. These districts levy a special assessment on the land values and the funds are then used to repay the debt incurred from capital markets.

Any funds extracted through betterment taxes or levies should be reinvested to provide infrastructure supporting the investment. This can be more broadly applied to infill development sites that become viable when major infrastructure is provided, such as an international airport or new freeway connections.

## **Issue 4.2: Land values that consider a future infrastructure charge**

*When land is rezoned, there is often an increase in land values as a result of the change in development potential.*

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

The current contributions system addresses the cost which would otherwise be imposed on existing communities for services in new release areas, after the en globo land owners have received the huge windfall gift of rezoning by the State for no effort whatsoever. The beneficiaries of the development process are the en globo land owners. Any increase in taxes on the development process flows, via the residual land value process used by all developers, to marginally reduce the size of the gift conferred on en globo land owners by the State's or local rezoning decision.

The impacts and benefits of the contributions systems appear significantly different to an analysis which simply looks at the contributions systems post rezoning. Our view is that land should not be sold or have development approval until the 'charge' is paid.

### **Issue 4.3: Land acquisition for public infrastructure purposes**

*Requiring the direct dedication of the land that is needed for infrastructure purposes is an option that aims to address the problem of rapidly increasing land values.*

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

Requiring the direct dedication of the land that is needed for infrastructure purposes will not address the problem of rapidly increasing land values unless the dedication is:

- free of charge for all road/widening etc
- compensation for the dedication of other land that is exempt from the *Land Acquisition (Just Terms Compensation) Act 1991*.

A suggestion is to amend the EP&A Act to allow dedication free of charge. Compensation / acquisition would only occur in the case of roads wider than 15 metres – for the width greater than 15 metres only.

Unfortunately, larger areas required for open space or drainage purposes would still need to be acquired if they had minimal development potential as they would never enter the development process and remain in private ownership until acquired by an acquisition authority.

#### **Dedication of DCP roads**

A major issue for Blacktown and local government is not being able to legally require developers to build, construct and dedicate local roads, other than through the mechanism of a section 7.11 contributions plan, when that local road is not funded in a contributions plan.

As a result, there is an urgent need for Section 7.11 of the *Environmental Planning and Assessment Act 1979* to be amended, to rectify the potentially financially prohibitive problem for local government generally. The Act prescribes that only roads that are identified in a contributions plan can be required to be dedicated free of cost.

Planning in the NWGA identified that future new roads (other than those funded through the SIC) are the responsibility of Council. The planning for the NWGA was based on the principle that, except for council roads subject to funding through Section 7.11, roads are to be provided through works undertaken by developers in association with subdivision works and dedicated to Council.

This is the way that planning for greenfield development has historically been carried out in Sydney, as a partnership between councils and developers. Our position in this regard is supported by the DPIE.

However, despite this longstanding custom and practice, the *Environmental Planning and Assessment Act 1979* does **not** allow councils to require the construction and dedication of 'non-contributions roads' if they are not included in a Section 7.11 contributions plan.

This means that Council could be legally is required to purchase all new roads at considerable, unbudgeted cost, or, in place of this unfunded liability, leave the new roads in fragmented private ownership with ongoing maintenance and right-of-way ramifications for road users and land owners.

### **What would this cost councils?**

Council has modelled this cost. The cost of all local roads in the NWGA of Blacktown is estimated at **\$6.05 billion**. This is on top of the estimated \$3.5 billion of local infrastructure already approved by IPART to be funded under our contributions plans in the NWGA.

If the additional costs were to be included in our contributions plans, with the agreement of IPART, per lot contributions would **more than double**. Rate pegging constraints on Council would mean that Council could not increase revenue to meet this massive additional cost.

Council would not be in a position to adjust other programs in order to fund the additional road projects. Accordingly, no new public roads would be created in the Growth Areas of Sydney as Local Government cannot fund such acquisition. The alternative, being the creation of a myriad of private roads, is unsustainable and contrary to broader industry practice and accepted infrastructure delivery outcomes.

We have raised this issue several times with the DPIE and asked for an urgent change to the *Environmental Planning and assessment Act 1979*. The Department has informed us that this cannot be done pending the review of infrastructure contributions by the Productivity Commissioner. **We therefore respectfully ask the Commissioner to address this matter in his review as a matter of urgency.**

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

Pooling of contributions is still after the event and in most circumstances cannot be used for early acquisition, See issue 3.5 for our comments on borrowing.

### ***Are there other options that would address this challenge such as higher indexation of the land component?***

Council strongly supports the ability to use a higher index of the land component.

Council has extensive experience in preparing Contribution Plans over the last 30 years. Many of the Contribution Plans we have adopted have applied to areas experiencing sustained rapid



growth. Our experience has been that increases in land values have the most significant adverse impact on the long-term financial position of a contributions plan. In short, if contribution rates cannot be increased quickly to reflect rapid significant increases in land value than it is not possible to fully fund the cost of all works and land listed in the Contributions Plan.

As an example, our first contributions plan was adopted in 2010 for a catchment area within our NWGA. It totalled \$745 million for works and land acquisition. At the time of its original adoption land represented around 34% of the total cost of works and land. This quickly increased to around 60% as a consequence of increasing land values.

The average estimated land value of the commencement of this plan in 2010 was \$169 per square metre. By the year 2015 this average had increased to \$387 per square metre and currently we are acquiring land at an average land value of \$500 per square metre. Over this 10-year period this is equivalent to an average annual increase of 19.5% per annum. By comparison, CPI increases applied to quarterly reviews of our contribution rates have averaged 1.6% per annum over the same period.

A further challenge for Council is we are bound to acquire land in accordance with the Land Acquisition (Just Terms Compensation) Act 1991. This can be problematic as to the amount of compensation payable because it assumes it will be at the highest and best land value in the absence of a public purpose based on the actual underlying land zoning.

#### **Issue 4.4: Keeping up with property escalation**

*Land values (particularly within the Sydney metropolitan area) can increase rapidly and often increase on early signs of land being considered for future development; well ahead of the rezoning process.*

##### **Our experience with land values**

Blacktown City Council has a significant portion (75%) of the NWGA. For precincts already zoned for development, Blacktown City manages 4 major contribution plans that, together with 2 more plans for future precincts, will fund \$3.5 billion in essential local infrastructure. Of this figure around 60% is for the acquisition of land.

The most significant cost driver in the contributions system is **the value of land**.

Blacktown is required to acquire very significant areas of land for open space, drainage reserves, community facilities and road reserves. Within the contributions system there are 2 significant points at which the value of land is critical:

- i. In formulation of the contributions plan, the assumed land value forms a considerable portion of the final contribution rate. The value of land forming the contribution rate is determined by a methodology imposed by IPART, and is generally assumed to be the lowest value that could reasonably be applied to the land given its constraints.
- ii. Acquisition of land is undertaken on a property by property basis, with land value generally in accordance with market value (just terms compensation) and the Valuer General or the Land & Environment Court (LEC) determinations of value in some cases. In each case the value of the land is determined by the 'Highest and best use if not for the public purpose'. This methodology starts with the highest value and works downward to account for constraints.

While both of these positions are theoretical, it places councils with a contributions plan in a position where we can only charge contributions at a rate based on the lowest values, but must pay to acquire land at higher values. This has been demonstrated with numerous land acquisitions and we can provide a multitude of examples to prove this.

In table 1.1 following, we provide the most recent land acquisitions in the NWGA affected by the Valuer General (VG) or LEC determination, demonstrating that the average cost of land through this process is 70% of the average value that can be levied under a contributions plan.

This creates significant losses for Council within its contributions plans.

There needs to be recognition of genuine constraint in land development, and of prior compensations already paid for easements etc. These factors are not adequately considered and attention is diverted to instead looking at potential engineering options that never need to be realised, just proposed. It appears that under these terms, any constraint can be engineered



away, with solutions that would be completely unacceptable, even impractical, if they were to be actually pursued.

### **Land acquisition costs through the Valuer General and the Land & Environment Court**

As discussed above, on the basis of successful arguments presented to the NSW Valuer General (VG) and the Land & Environment Court (LEC), the compensation paid for land is higher than the true cost of public purpose land proposed under the planning system.

In addition, there are inconsistencies of the DPIE planning the location of open space on a theoretical planning exercise, on land that has no constraints, such as land with an R3 zoning, leading to higher cost of land acquisitions in contributions plans. An unfortunate consequence is a reduction in the quality of open space by reducing the cost of quality spaces to be provided. DPIE and IPART have no control over the VG and LEC court directions for acquisition costs. This has led to the great differential ratio of the cost of land acquired to the value of embellishment in the contributions plan. Typically, this ratio is in the order of 80:20.

The VG, acting as an independent, uses a blanket \$350 an hour for its services charged to councils and presumably this is 100% cost recovery. Council is now expected to pay this cost through S7.11 contributions plans (cost shifting). LEC proceedings are expensive resulting from a poor planning system and Regulation, and the view of the court in applying the Just Terms Compensation Act which has 'disregard for the public purpose' of the planning system. These costs + land owners costs are now payable by S7.11 contributions.

IPART, acting on its terms of reference, has directed us through the Minister for Planning to keep acquisition (just terms) costs to 5% initially, and then recently 2% in our contributions plans, and has disregarded the true cost of implementing the contributions plan under the current legislation.

These inconsistencies have, and will, lead to a gaping deficit in most contributions plans to be managed by councils in the future, which Blacktown considers to be another cost shifting exercise and delivering substandard infrastructure to serve Sydney's growth.

<b>Property area</b> m <sup>2</sup>	<b>Acquisition estimate in the contributions plan</b>	<b>Actual compensation paid</b>	<b>Compensation valued by VG / LEC</b>	<b>Loss to the contributions plan</b>	<b>Percentage difference between actual v estimate amount</b>
10,780	\$2,614,150	\$3,685,815.00	VG	\$1,071,665.00	41%
11,306	\$1,673,243	\$3,305,815.00	VG	\$1,632,571.40	98%



**Blacktown**  
City Council

Property area m <sup>2</sup>	Acquisition estimate in the contributions plan	Actual compensation paid	Compensation valued by VG / LEC	Loss to the contributions plan	Percentage difference between actual v estimate amount
13,976	\$4,269,729	\$5,187,053.00	VG	\$917,323.90	21%
21,174	\$1,799,790	\$4,195,000.00	LEC	\$2,395,210.00	133%
49,992	\$4,249,358	\$11,255,000.00	VG	\$7,005,641.75	165%
20,230	\$13,538,927	\$16,300,293.00	LEC	\$2,761,365.50	20%
22,070	\$1,875,950	\$3,125,183.00	VG	\$1,249,233.00	67%
4,416	\$375,398.68	\$2,286,611.00	VG	\$1,911,212.33	509%
6,836	\$4,785,410.00	\$5,930,292.00	VG	\$1,144,882.00	24%
20,230	\$2,963,695.00	\$9,746,360.00	VG	\$6,782,665.00	229%
<b>Totals</b>					
<b>181,010</b>	<b>\$38,145,652.13</b>	<b>\$65,017,422.00</b>		<b>\$26,871,769.88</b>	<b>70%</b>

Table 1.1

In the table above, we provide 10 recent land acquisitions where the acquisition has progressed to the Valuer General, and if not resolved by the VG then to the Land and Environment Court. Table 1.1 demonstrates that acquisitions through this process have extreme consequences for councils and costs that a contributions plan cannot recover. These shortfalls will eventually have to be supplemented by general revenue.

It also demonstrates that the average cost of land is 70% of the average value that can be levied under a contributions plan.

### ***What approaches would most effectively account for property acquisition costs?***

NSW is subject to much legislation. So is the current system of developer contributions in NSW. Often, when looking at developer contributions, applicable legislation is contradictory and does not work together.

We believe that, to answer this question, the Productivity Commissioner needs to critically analyse the impacts of the *Land Acquisition (Just Terms Compensation) Act 1991* and how it



interacts with other legislation pertaining to NSW developer contributions in some form, particularly:

- *Environmental Planning and Assessment Act 1979*
- *Local Government Act 1993*
- *Biodiversity certification under the Threatened Species Conservation Act 1995*
- *Contaminated Land Management Act 1997.*

#### **Issue 4.5: Corridor protection**

*Early identification of corridors has the potential to result in better land use and investment decisions. Without funds available to facilitate their early acquisition, it is likely that being 'identified' would encourage speculation and drive up land values, making the corridor more expensive to provide later.*

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

We agree in principle with identifying corridors early, but note that this will drive speculation along those corridors delivering the same issues as zoning being an uplift in property values. Such uplift will, necessarily, drive up subsequent land acquisitions by councils or the State.

## Issue 4.6: Open space

*While the seven-acre open space standard is not based on evidence, it nevertheless continues to be relied upon. Open space provision is moving towards a performance-based approach.*

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

Council considers to state that *the seven-acre open space standard is not based on evidence, but nevertheless continues to be relied upon* should be subject to much greater consideration in what will be a comprehensive review which will consider the whole of the contributions system challenges and opportunities for improvement. As part of this it would be relevant to draw on research from other jurisdictions to look at other ways of assessing the demands for and the provision of open space land.

Performance criteria will be used to reduce the area of land required to be delivered, but the trade-off will be a better level of embellishment that allows more intensive use of the smaller area.

The government already mandates the open space requirement by zoning. Measuring demand is also something that can only occur after the event – when a new community has been established - at that point the open space has already been zoned and delivered.

### ***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 area provision should be mandated. How councils use it should be more liberal. For example, if councils were to rezone and sell an area to fund an aquatic complex or library, that should be up to councils.

Infrastructure contributions should provide for a set area and a minimum level of embellishment, Councils should be able to negotiate alternative outcomes through the development process or implement alternatives after the event when a community is in place.

Consideration should be given to zoning RE1 open space with interim zone boundaries that can be adjusted after development is completed, or use a fuzzy line clause with adjoining R zones, the clause to be removed after development. The guidelines should stipulate that the total RE1 area cannot be increased but can only be reduced where a significant recreation benefit has been provided.

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

The funding of sufficient quality open space is a significant challenge. Any planning for open space should be backed with a robust strategy for funding. Whilst infrastructure contributions



from a funding point of view are the most efficient manner of funding open space, there is merit in considering other alternatives; noting that none would likely be an effective replacement for contributions.

## **Issue 4.7: Metropolitan water charges**

*Currently, costs of new and upgraded connections for Sydney Water and Hunter Water are borne by the broader customer base rather than new development.*

### ***How important is it to examine this approach?***

Yes, it is important and relevant, although it would be very difficult for developers alone to cover (or pass on) costs to landowners for the implementation of potable and recycled water schemes. We would expect that these costs need to continue to be covered by the broader customer base of a water utility.

Blacktown City Council is looking to increase recycled water schemes across Blacktown City and, if we were required to solely fund such a scheme based on a 'user pays' model, we would most likely find it cost prohibitive to do so.

### ***What is the best way to provide for the funding of potable and recycled water provision?***

Sydney Water and Hunter Water need to have a mechanism for them to charge outside of developer contributions for the funding of these types of schemes, both from a new development point of view but also for existing. Equally so for developers, they need to be able to work with water utilities (who have access to a broader funding source) to help pay for these types of schemes.

#### **Issue 4.8: Improving transparency and accountability**

*There are limited infrastructure contributions reporting requirements.*

##### ***What would an improved reporting framework look like? Should each council report to a central electronic repository?***

Certainty for the community and stakeholders could be increased by an annual release of a simple consistent statement by councils that outlines total budget, money in / out and a list of all facilities funded. The establishment of a central repository similar to the Planning Portal is also supported.

##### ***What elements should be included? How much has been collected by contributions plan and other mechanisms? How much council has spent, and on what infrastructure items?***

Whilst the reporting of expenditure of 7.11 funds is, in principle, a good objective, there are difficulties created by the pooling of contributions. If the purpose of such transparency is to demonstrate to the developer of a dual occupancy in say Seven Hills, where their Section 7.11/12 funds have been spent, when those funds have been put into Council's finding pool and have therefore lost their individuality. Subsequently, perhaps after a number of years, they have been spent on the embellishment of a detention basin in Vineyard. There are significant challenges in, and perhaps of no benefit to, that transparency, provided councils properly account for where funds go.

##### ***Should an improved reporting framework consider the scale of infrastructure contributions collected?***

Yes, it should be considered, but if the right framework is established the scale should not be an issue.



#### **Issue 4.9: Shortage of expertise and insufficient scale**

*The ability of the local government sector to efficiently deliver contributions plans are impaired by shortages of skilled professionals and lack of scale for smaller councils.*

##### ***What can be done to address this issue?***

Contributions planners have a particular skill-set but come from a range of backgrounds. Predominately, planners with planning degrees, but also a mixture of accountants, engineers and council clerical staff. Universities could be asked to develop undergraduate subjects for contributions planners, maybe as a component of a planning degree.

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

Any practical way to make the contributions system simpler would be supported on the proviso that it does not reduce the overall amount of funding available for essential infrastructure. But the higher priority for councils would be a contributions system that requires minimal injections of funding from other sources as a consequence of inadequate contributions revenue being raised.

#### **Issue 4.10: Current issues with exemptions**

*Exemptions from contributions are complex as they are set out across a range of planning documents and are inconsistent across contribution mechanisms.*

#### ***Given that all developments require infrastructure, should there be any exemptions to infrastructure contributions?***

If developments create the need for infrastructure (the nexus principle) then there should not in theory be any exceptions to infrastructure contributions in a user pays system. Our primary position is therefore that no exemptions should be granted.

#### **Blue green infrastructure**

Investment in blue green infrastructure is not easily reflected in current contributions frameworks partly due to its multifaceted nature. For example, a constructed wetland provides aesthetics, recreational amenity, urban cooling, terrestrial and aquatic habitat, recycled water as well as water quality improvement and stormwater management. The ability to consider blue green infrastructure under several existing line items in existing Section 7.11 contribution plans is lacking and should be reviewed.

#### **Rehabilitation and management of riparian land**

A current key issue with Section 7.11 contributions is that funding cannot be spent on rehabilitation and management of riparian land. The only way rehabilitation and management of the riparian lands is permitted is when SP2 (drainage infrastructure) zoned works are required to modify or relocate a waterway. These works mainly relate to small tributaries, and not the trunk drainage or main creek line.

The Commissioner should examine how the rehabilitation and management of waterways can be funded, allowing works within riparian lands is valuable in providing multiple benefits for the community and the environment, including improving amenity, providing access to land that could be used for dual purposes i.e. drainage infrastructure and recreation, and proving local cooling and water quality benefits.

It is also important that funding is found to not only allow for rehabilitation of riparian lands but also factor appropriate funding mechanisms to maintain these works in perpetuity. We appreciate that Section 7.11 does not allow for the maintenance of an asset once it is delivered. Current rate pegging limits our ability to fund these lifecycle costs.

#### **Extractive industries**

We note that the discussion paper states that *Section 7.11 contributions cannot be applied for maintenance or operating costs (with the limited exception of extractive industry operations).*

Why is it that extractive industries operations are the subject of an exception? This arises from particular case law and is not beneficial as an overall policy position. It makes no sense that, for instance, an energy from waste scheme which is sized to consume much of the red top bin waste garbage from the whole of Sydney, and which is proposed to be located within the City of Blacktown, would not contribute to the accelerated destruction of its roads caused by the vehicles delivering that waste to that plant.

### **Social housing**

There are inequities in rating exemptions around housing. Where the State then transfers the housing to community housing providers on long-term leases, those community housing providers rely on the charity exemptions in the Local Government Act and, in the main, do not pay rates.

The impact of this is to not reduce the total pool of rates available to council because of the application of the rating cap, but rather spread the cost of those rates foregone across all other rate payers in the city. One could not imagine that this was the intended consequence of the drafting of those rating provisions in 1993.

#### ***Is it reasonable to share the cost of 'exemptions' across all of the new development rather than requiring a taxpayer subsidy?***

If exemptions are granted they have 2 effects:

1. Subsidy or sharing of the costs across the rest of the catchment or contributions plan
2. Subsidy of the contributions not collected by the council.

Both are not considered reasonable in a user pays system as they result in inequities for both new development and potential additional funding holes for councils.

We believe that there are inequities in rating exemptions around housing. We note that the State, as a policy position, pays a rate equivalent for social housing. The State then transfers the housing to community housing providers on long-term leases, and those community housing providers rely on the charity exceptions in the Local Government Act and, in the main, do not pay rates.

The impact of this is, to reduce the total pool of rates available to Council, because of the application of the rating cap, instead of spreading the cost of those rates foregone across all other rate payers in the city. One could not imagine that this was the intended consequence of the drafting of those rating provisions in 1993.

#### ***Are there any comparative neutrality issues in providing exemptions for one type of development, or owner type, over another?***



Not of any particular significance.

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

*Works-in-kind agreements can realise savings and efficiencies, but they can result in infrastructure being provided out of the planned sequence and prioritise delivery of some infrastructure (such as roads) at the expense of other infrastructure (such as open space and biodiversity offsetting).*

#### **Works-in-Kind Agreements and the contributions system**

There is no specific legislative framework for Works-in Kind agreements in the NSW developer contributions system. The EP&A Act refers to payment of contributions by a means of a material public benefit (MPB), but does not regulate the use of WIKAs. This is inconsistent with the system's approach to VPAs which are 'governed' by the Act, Regulation and the Secretary's Practice Note. This Commissioner should note this as part of his review.

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

Yes. Developers should be able to provide Works in-Kind or land in lieu of monetary contributions. However, councils should have the option to accept or reject a Works-in-Kind proposal to ensure that the proposal aligns with its planned sequencing and priority of delivering infrastructure.

Works-in-Kind agreements have been an integral component of Blacktown City Council's developer contributions system for decades. We submit that there is merit in being able to continue these agreements as they are essential to the orderly delivery of infrastructure within release areas.

As one of Australia's largest growth councils and having 12 of the 16 precincts in Sydney's NWGA, the delivery of approximately \$2 billion in capital works (excluding land acquisition) is a huge task for any council. As part of our delivery strategy, we assume that much of the infrastructure that needs to be provided will be provided by developers in-kind, particularly in an area where developers have large land holdings. Normally, the land under this infrastructure is market-valued and dedicated to Council to offset contributions.

Sometimes, we receive requests from developers to deliver infrastructure 'ahead of schedule', when we wouldn't have provided the infrastructure for quite some time.

### ***Developers may accrue works-in-kind credits that exceed their monetary contribution.***

In certain circumstances developers should be able to accrue WIK credits, while in other cases councils should have the flexibility to not allow the accrual of credits. This may be dependant on a number of factors including:

- future development with the same developer
- a council's cash flow
- risk to potential liabilities etc.

We would encourage a matrix be developed to standardise and guide this decision process.

### **Our history with 'credit banks'**

We have extensive experience with large master-planned communities delivered through credit-bank arrangements between Council and large developers. These include the Parklea Release Area and Second Ponds Creek credit banks with Landcom, and more recently the Elara, Marsden Park credit bank with Stockland.

These credit bank models, which these days are facilitated through VPAs, can be used to deliver infrastructure more efficiently for all stakeholders without numerous Works-in-Kind agreements and consent conditions for Development Applications. Council was able to negotiate the value of land and works early, that the developers would provide, and the developers would offset their contributions by these amounts. If land and in-kind contributions exceed monetary contributions, the credit bank deed or VPA provided a transparent mechanism as to how Council would 'pay-out' the credit upon sufficient income from the rest of the contributions plan, or would allow the developer to assign its credit to another developer in the catchment.

The cons or risks to these arrangements are if a Council badly negotiates these arrangements so that its liability is exposed. For example, a Council may agree to 'pay-out' a developer its excess credits but does not have sufficient contributions income from the rest of the catchment. In this case a council is contractually obliged to make this payment from general revenue. This can be avoided by good management and governance.

We submit that there are merits in having such provisions included in a new contributions regime.

### ***Should works-in-kind credits be tradeable?***

We understand that WIK credits transferring from one developer to another developer has a level of legal complexity with the original developer's obligation under the WIK agreement and a council's ability to enforce those obligations with future developers.

The implications of credits being traded to, and from, other contributions areas involve a detailed level of complexity to a council's accounting for contributions. It also means that one area's expectation of when infrastructure may be provided is affected by another's.

### ***What would be pros and cons of credits trading scheme?***

Advantage of credits trading scheme:

- cashflow management is easy as cash is not exchanged and book keeping records can be audited.

Disadvantage of credits trading scheme:

- delivery of infrastructure will be highly dependent on the developer's program
- additional complexity in contributions plan administration
- negative impact to council's Section 7.11 cash flow.

### ***What are implications of credits being traded to, and from, other contributions areas?***

When credits are traded from other contribution areas, a council's commitment to the planned sequence delivery of the infrastructure is disturbed.

If there is a downturn in development activities and monetary contributions, council may not be able to deliver some of the essential infrastructure within a particular contributions plan area as the credit is being traded to another contributions plan area.

The advantage of trading credits is that councils obtain more flexibility and may be enabled to provide much needed infrastructure in a particular contributions area, while delaying infrastructure delivery in another contributions plan area.

## **Other matters for discussion**

### **Lifecycle costs of assets should be funded**

As mentioned in the introduction to this submission, infrastructure funding or infrastructure contributions are different to infrastructure financing. Financing is how you meet the upfront costs of building the infrastructure, funding is how you pay for it over its lifecycle.

Lifecycle costs are currently shared between the upfront capital cost of an asset (funded through Section 7.11) and then the ongoing maintenance and ultimately replacement cost (funded through Rates). These various costs are the direct result of development, but arguably both funding sources do not provide councils with sufficient income to provide and maintain the asset for the community.

#### **Financing**

Councils prepare contributions plans to finance the capital cost of infrastructure. Contributions for this infrastructure are collected slowly as development starts to occur. As this development occurs, land acquisition costs that councils need to pay at market value for land under the capital infrastructure, escalates faster than CPI, and a council's contributions plan's rates are quickly not setting the rate needed to actually finance the infrastructure. Councils review their contributions plan to set a new contribution rate, but have to submit that new rate through the IPART process (2-years) to see whether IPART determines if it's reasonable, by which time the revised costs are further out of date. This cycle leads to numerous financing holes throughout the life of a contributions plan, which will eventually have to be covered by rating revenue.

#### **Funding**

Once the asset is financed and delivered, councils need to maintain the asset and eventually replace it. As this cannot be funded through developer contributions (recurrent funding), it is generally funded through rating revenue. Councils however, cannot set an adequate rate to fund the maintenance of the asset as rates are pegged. Even through special rate variations approved by IPART, it is unlikely that councils will raise enough revenue to maintain and eventually replace the asset.

We ask that the Commissioner consider both areas of funding in its review.

### **Indexation**

The current IPART review process for Section 7.11 plans necessitates wholesale review of every element of every contributions plan. It is commonly accepted in the community that costs move over time as a result of inflation, yet, there is no standardised system for indexation of developer contributions to reflect changes in the price of construction or changes in land values.



The community would be well served by the Productivity Commissioner enquiring into appropriate methods for indexation of both items with a view to recommending to the Department a system for indexation which avoids the administrative cost of reviewing section 7.11 plans but allowing developer contributions to be indexed to levy realistic rising costs for works and land.

### **Increasing density without infrastructure**

We have been monitoring residential development activity in the rezoned Blacktown Precincts of the NWGA to compare the actual delivered densities against the minimum densities that have been relied upon by the NSW Government in forecasts and infrastructure planning.

Our 49-page density analysis *NWGA Blacktown Precincts – Revised growth forecasts and analysis of unplanned infrastructure needs March 2020* has been submitted to the DPIE and we have requested a meeting with the Minister for Planning and Public Spaces to discuss the implications and address the potential shortfall in infrastructure provision.

The comparison has highlighted that residential development activity is occurring at a far greater density than was originally predicted and planned for. This has significant implications for the required infrastructure that is needed to service the unplanned population.

We estimate that the NWGA precincts in Blacktown have the potential to provide for 84,648 dwellings and 256,100 people should current development trends continue, which is 102,585 more people than originally planned for by the NSW Government when the Precincts were planned and rezoned.

The significant implication of this is that the level of provision of open space, community facilities and road infrastructure that is necessary to support that increased scale of population will not be provided, leading to an inadequate living environment, social disharmony and traffic congestion.

The Department currently has no idea how to address this problem and we would be happy to provide the Commissioner with a copy of our analysis and discuss what could be achieved through the results of this review.

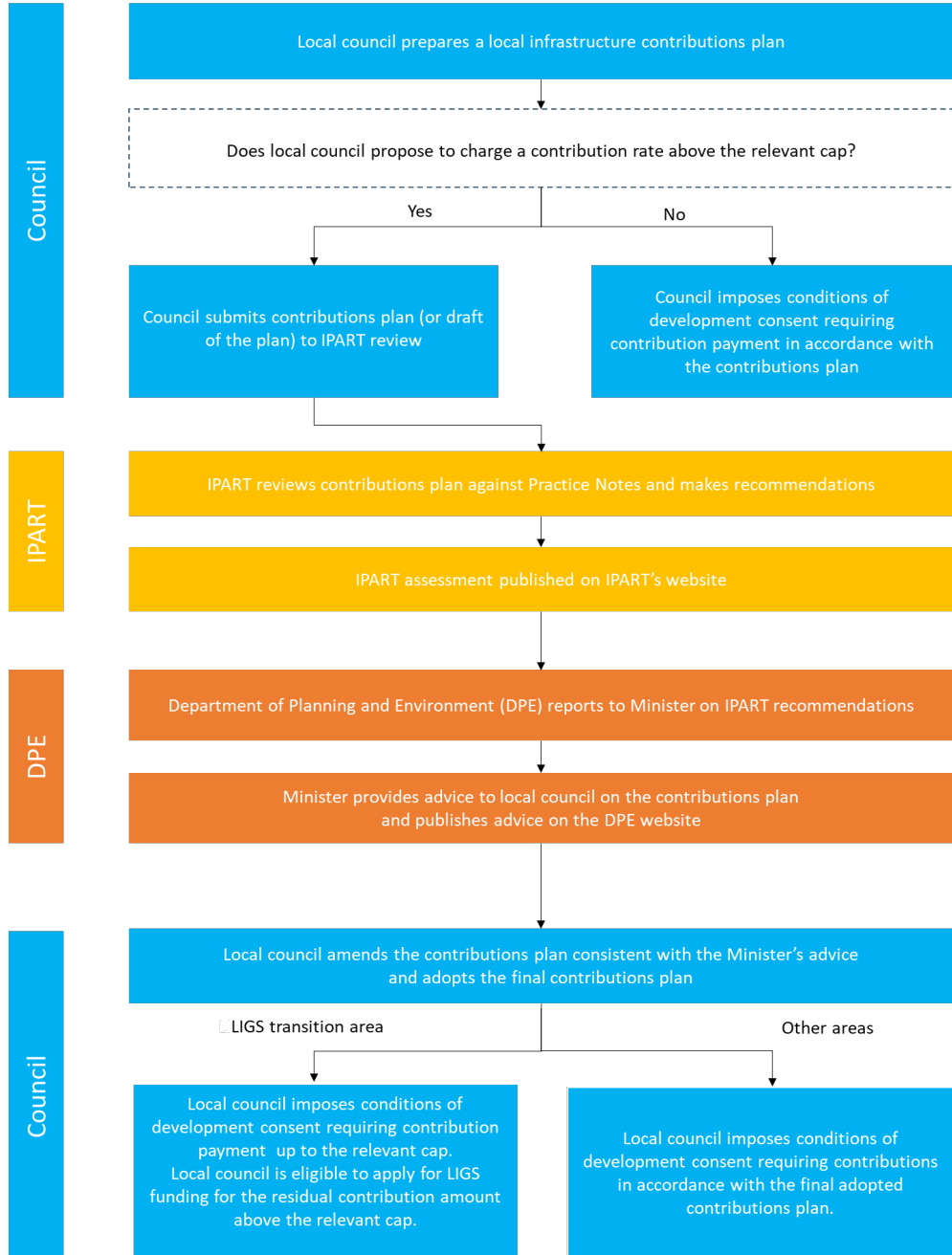
### **The IPART process and the cost to councils**

Blacktown City was the first council in NSW to submit a contributions plan to IPART for assessment in January 2011. It has since submitted 8 new or revised contributions plans for assessment (9 in total). As such, we feel that we are well placed to highlight deficiencies with the current process in terms of efficiencies, reasonableness and scope.



It is acknowledged that IPART is only one part of the assessment process. The DPIE and the Minister for Planning and Public Spaces (or delegate) complete the process chain. The current process for assessing local infrastructure contributions plans is shown on the following page.

Figure 1 Process for assessing local infrastructure contributions plans



<sup>4</sup> Process for assessing local infrastructure contributions plans – Secretary's Practice Note: Local Infrastructure Contributions | January 2020

### Current IPART process time

The table below shows the process assessment times over 9 years for 9 of Blacktown's new or revised contributions plans. The process time only accounts for the time from lodgement to IPART, to Council receiving the Minister's advice. It does not include statutory public consultation, council reporting and contributions plan adoption times:

<b>Contributions plan</b>	<b>IPART lodgement date</b>	<b>IPART report submitted to Minister for Planning</b>	<b>Date of Minister's (or delegate's) advice</b>	<b>Process time</b>
CP20 – Riverstone & Alex Avenue Precincts	January 2011	October 2011	April 2012	16 months
CP21 – Marsden Park Industrial Precinct	January 2012	September 2012	December 2012	12 months
CP22 – Area 20 Precinct	January 2012	September 2012	December 2012	12 months
CP24 – Schofields Precinct	December 2013	August 2014	March 2015	16 months
Revised CP20 – Riverstone & Alex Avenue Precincts	December 2014	March 2015	May 2015	6 months
Revised CP20 – Riverstone & Alex Avenue Precincts	December 2015	July 2016	January 2019	38 months
Revised CP21- Marsden Park	December 2016	August 2017	January 2019	26 months
Revised CP22- Rouse Hill	May 2018	December 2018	March 2020	23 months

<b>Contributions plan</b>	<b>IPART lodgement date</b>	<b>IPART report submitted to Minister for Planning</b>	<b>Date of Minister's (or delegate's) advice</b>	<b>Process time</b>
Revised CP24 – Schofields Precinct	December 2018	August 2019	No advice received	17 months (so far)

Table 1.2

Process times range from 6 months to 38 months. What has concerned us greatly is the longer process time over the last 5 years.

### **What happens when there are significant delays in process time**

The process in the current practice note<sup>5</sup> delays a council's ability to quickly review a contributions plan to ensure its estimated costs are current and reasonable.

When councils review a contributions plan, they can only use costs applicable at the time of review, i.e. they cannot use predicted future costs. If the process takes, at best, 12 months, or at worst, 38 months, before the new approved costs can be levied on a development consent, the revised costs are quickly outdated and councils lose significant revenue needed to fund the infrastructure it has the responsibility to provide.

The current process of independent assessment by IPART aims to give developers confidence that the estimated costs in a contributions plan are reasonable i.e. not gold-plated. However, when the process takes many months or even years to run its course, councils and communities are penalised with a process they have no control over. Developers also have no idea what the ultimate contributions will be for their developments, which affects the feasibility of future projects.

### **Who peer reviews IPART's recommendations**

As mentioned above, Blacktown City Council has been submitting contributions plans to IPART since January 2011. While we agree that by IPART assessing contributions plans it adds an element of transparency and accountability to the process, councils have very little right of appeal/review to IPART's recommendations, and the DPIE is reluctant to challenge the tribunal's independent findings. However, IPART does not always understand the implications of its recommendations when it comes to funding infrastructure.

An example of this was IPART's recommendation to review \$112 million in open space embellishment infrastructure funding from Section 7.11 Contributions Plan No.21 – Marsden

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<sup>5</sup> Secretary's Practice Note: Local Infrastructure Contributions | January 2019

Park, which has resulted in a community not receiving funding for parks and active sporting fields.

IPART stated in its assessment report that:

the cost of open space embellishment in CP21, based on indexation of estimates by a quantity surveyor in 2012, is higher than the reasonable costs in comparable plans IPART has recently reviewed. Some of the costs in CP21 of open space facilities are reasonable, but costs for many of the items appear to be excessive and require revision (i.e., costs for playing fields, amenities buildings, tennis courts, car parking, landscaping and the youth recreation facility). The costs of embellishment of reserves 995, 997, 999, and 1001 are excessive as in each case the total area of embellishment exceeds the area of the reserve. Additional costs for plans of management for the combined netball facility and remediation of Reserve 1006 are not reasonable because design (including project management) fees (10%) are already included in the cost estimates for the relevant works.

IPART then recommend that:

BCC undertakes a review of the costs of all items of open space infrastructure to ensure the costs in CP21 are reasonable, based on up-to-date information, reflect the level of risk for the project stage, and more site-specific plans, where necessary. Pending the outcome of the recommended review, **BCC removes \$112,038,471 for the costs of the following facilities from CP21:**

- playing fields (\$27,501,399)
- amenities buildings (\$12,013,084)
- tennis courts (\$2,843,160)
- car parking (\$10,254,705)
- landscaping types 1 and 2 (\$57,266,300), and
- youth recreation facilities (\$2,159,822).

We informed the DPIE that we had undertaken this review by engaging a new quantity surveyor and wished to present our up-to-date information for assessment. The DPIE informed us that IPART did not undertake targeted reviews of information from contributions plans as it was outside of IPART's terms of reference.

On 22 January 2019, 24 months after we submitted CP21 to IPART for review, and 17 months after the DPIE received IPART's assessment report, we received the Minister's advice on CP21.

Despite our protestations and discussion with the DPIE over many months, the Minister had endorsed IPART's recommendations without change.

Upon receiving this advice, we continued dialogue with the DPIE, particularly with regard to the review of our new open space embellishment costs that needed to be reviewed. Eventually we received advice from the DPIE on 2 February 2020 that:



We have been liaising with IPART, the Minister's Office and our Executive on Council's request. IPART have confirmed that they require a written request from the Minister for Planning, and the Premier to approve of the arrangement. Our next step is to progress the above.

At the date of writing this submission we have not received any further advice regarding the review of our open space embellishment costs.

Notwithstanding the non-resolution of this matter, we have been required to remove \$112,038,471 of open space embellishments from CP21 to be eligible for LIGS funding.

By removing these costs from CP21, we face the real possibility that most of the open space embellishment in Marsden Park will be unfunded. Until a suitable resolution is reached with the Minister for Planning and Public Spaces, residents of Marsden Park (initially planned to be 30,238 but now forecast to be 53,745) potentially will not have any further playing fields, parks or playgrounds.

When the next funding round of LIGS is announced, amended CP21 will have been adopted and Council will be eligible to submit a funding claim for Development Applications approved in Marsden Park between 1 May 2014 and 30 June 2020. We estimate this to be around \$87 million. However, this claim will be minus the open space embellishment costs removed from the plan.

To ensure Marsden Park residents have funding for their open space requirements, we require the Minister for Planning and Public Spaces to honour any adjusted LIGS claim in the future that includes the approved revised open space embellishment costs, whatever they will be.

This example highlights the problem caused by the current process in the absence of any peer review of the matter by an independent party.