

15 September 2020

Review of Infrastructure Contributions in NSW  
NSW Productivity Commission

Email: [ICReview@productivity.nsw.gov.au](mailto:ICReview@productivity.nsw.gov.au)

Dear Commissioner,

**RE: Formal Submission: Review of Infrastructure Contributions in NSW**

Thank you for the opportunity to comment on the Productivity Commissions' review of the NSW developer contributions system and release of the Issues Paper for consultation.

Further to Council's informal submission dated 4 August 2020, Council considered a submission report at its Ordinary Meeting on 8 September 2020 and resolved to support the making of a submission, excluding certain matters.

Accordingly, please see attached a copy of the submission report and attachment that should be considered Council's formal submission.

Council looks forward to further collaboration with the Productivity Commission and would welcome the opportunity contribute further. Should you require any further information please contact me on

[REDACTED]

Yours sincerely,

[REDACTED]

[REDACTED]

**Attachments:**

1. Extract of Council Report, Ordinary Meeting 8 September 2020
2. Report Attachment

## 8.4 Review of Infrastructure Contributions in NSW

### Reporting Officer

Executive Manager Urban Release and Engagement  
City Development

### Community Strategic Plan

Objective	Strategy
1 Outcome One: A Vibrant, Liveable City	1.1 - Provide opportunities for our community to be engaged in decision making processes and to access information

### Officer's Recommendation

That Council endorse a formal submission to the NSW Productivity Commissioner's Issues Paper titled Review of Infrastructure Contributions in New South Wales with matters contained in this report and response to pre-formatted discussion questions as provided in attachment 2.

### Purpose

The purpose of this report is to provide Council a summary of key issues arising from the Productivity Commissioner's Issues Paper titled Review of Infrastructure Contributions in New South Wales and to seek an endorsement for a submission to be made to the Productivity Commission.

### History

On 15 April 2015, the Minister for Planning and Public Spaces appointed the Productivity Commissioner to undertake a comprehensive review of the infrastructure contributions system in NSW. The Terms of Reference (attachment 1) include, but more importantly go beyond, contributions under Part 7 of the *Environmental Planning and Assessment Act 1979*.

The principle aim of the review is to:

- (a) Review the infrastructure contributions system to determine whether it meets the objectives of certainty and efficiency while delivering public infrastructure required to support development
- (b) Make recommendations for reform aimed at delivering a principles-based system that delivers the infrastructure required to accompany growth and
- (c) Identify legislative and regulatory changes necessary to implement the proposed reforms.

During May and June 2020, the Commissioner heard from peak stakeholder groups and developed an Issues Paper designed to support community feedback on a variety of issues

raised and to ask questions that will inform broad reform directions. Stakeholders were invited to make a submission by 5 August 2020. To achieve this deadline, an informal submission has been made as per attachment 2 that addresses the discussion questions only. Upon council endorsement of this report, a further formal submission may be lodged.

The Issues Paper is to be followed by a series of stakeholder roundtables to enable further discussion of the issues and feedback on potential reform options. The combination of public submissions and stakeholder roundtables will be used to inform and refine the design of a shortlist of reform options. These will be contained in a Final Report planned for release at the end of 2020 to be issued to the Minister for Planning and Public Spaces.

## Report

This report addresses various issues and recommended responses to matters outlined in the NSW Productivity Commission Issues Paper "Review of Infrastructure Contributions in New South Wales". It is recommended that the issues outlined below be incorporated into a formal submission that also includes a response to pre-formed discussion questions as provided in attachment 2.

### 1. Ensure secure and sustainable funding for essential infrastructure

Concern is raised in relation to the current definition of Essential Works, which precludes community facility buildings such as libraries, multi-purpose centres, indoor recreation centres and aquatic centres. Any contributions plan that seeks contributions above the cap, such as Menangle Park, can only include the land component for the above facilities, not the building itself.

#### Recommend:

That if some form of Essential Works List is retained in future:

- a) There should be a clear and stated policy basis for what is considered essential and what is not
- b) It should have regard to benchmarks for the amount and type of infrastructure required to support growth
- c) Items on list should be clearly defined and the scope of works covered by each item be clarified
- d) The infrastructure requirements of infill development should be recognised
- e) Where items are excluded, alternate funding sources (such as grants or SIC contributions) should be identified.

### 2. Improve Council's capacity to secure land at a lower cost

The cost of acquiring land for local infrastructure is significant and, in some cases, exceeds half the total cost of infrastructure in Greenfield precinct contributions plans. The risk of price escalation beyond the indexes and processes that councils can apply, is also a significant risk, with funding shortfalls either delaying delivery or requiring councils to source other forms of revenue.

**Recommend:**

That councils are supported to build capacity to secure land at a lower cost. This could be achieved by the NSW Government taking a more active role in supporting councils to acquire land early, before land values rise as a result of development. This could include an expanded role for the Office of Strategic Lands or the NSW Treasury.

**3. Encourage sustainable borrowing for essential infrastructure**

The Issues Paper asks whether earlier land acquisition could be funded by pooling of contributions, or borrowings. Councils in the Western Sydney Planning Partnership support borrowing between contributions accounts (pooling of contributions) for purchasing land, however, they often don't have the funds to do so.

The use of borrowing is constrained by existing key performance indicators that can impact on the councils 'fit for future' standing.

**Recommend:**

That the NSW Government encourage sustainable council borrowing for essential infrastructure to support new growth. This could include:

- a) Clarifying or recommending amendments to key indicators that can impact on a councils' fit for future standing
- b) Confirming that contributions plans can include the interest cost associated with any borrowings for infrastructure in the plan
- c) Government underwriting the risk in repaying borrowings, due to uncertainty associated with recouplement of development contributions.

**4. Review/Refine IPART's role in the assessment of Contributions Plans**

For the past decade, the Independent Pricing and Regulatory Tribunal (IPART) has been required to review certain contributions plans that propose residential contributions over a threshold amount. The current review arrangements are considered problematic for a number of reasons and have led to:

- Uncertainty for councils and developers
- Additional costs to councils (preparing applications and responding to IPART requests)
- Reliance on other funding sources
- Geographic distortions
- Delays in approving development

**Recommend:**

That the Commissioner review whether the continued use of an independent review remains valid and whether IPART remains the appropriate review provider. If an independent review is maintained in the new system of developer contributions, it is recommended that:

- a) Existing review thresholds are replaced with suitable thresholds for each infrastructure category and are based on works-only (ie excluding land)
- b) All authorities involved in the review process be held to set timeframes.
- c) the Minister's delegate be required to provide an explanation of why any independent recommendation is not supported
- d) The Department of Planning, Infrastructure and Environment commit to updating policy or relevant guidance material to address issues identified through the independent review process

#### **5. Clarify responsibilities for funding and delivering stormwater management infrastructure**

Stormwater management infrastructure is currently provided via various funding arrangements, with differing arrangements existing within the Western Parkland City Councils. In addition to creating confusion, these funding arrangements may be considered inequitable. In areas where contributions are levied under section 7.11, the stormwater component may tip residential contributions over the relevant IPART review threshold, which in turn triggers the application of an essential works list. This means that plans for these areas cannot include community facilities and these must instead be funded through council's general revenue or government grants.

#### **Recommend:**

That further work is done to clarify responsibilities for providing and funding stormwater management infrastructure, whilst ensuring that systems built are capable of maintaining performance and remain efficient for councils to maintain.

#### **6. Review the appropriate percentage for section 7.12 contributions**

Section 7.12 contributions operate as 'flat rate levies', meaning that they are charged as a percentage of the proposed development cost. The Environmental Planning and Assessment Regulation 2000 sets one percent as the standard highest maximum percentage which councils can levy under a section 7.12 development contributions plan. The one percent maximum was imposed when these levies were initially incorporated in the *Environmental Planning and Assessment Act 1979* (EP&A Act) in 2006 and the one percent was based on an equivalent system operated by the City of Sydney at the time.

Although there have been localised variations to this maximum, at no stage has the appropriate-ness of the one percent levy been reviewed against changing costs and community expectations regarding the provision of infrastructure.

#### **Recommend:**

That the Commission review the appropriate percentage for section 7.12 contributions.

#### **7. Establish a standard structure and format for all contributions plans**

The Department of Planning, Infrastructure and Environment (DPIE) has previously published Practice Notes in 2005 and 2006 that included templates for section 7.11 section

7.12 plans respectively. Neither template was mandatory. Some councils have used the templates with few changes since. Others never used the templates or have since updated plans to address changes to policy, local preferences and court principles. As a result, the structure and format of plans varies significantly across and within councils.

The lack of a consistent structure and format contributes to the Productivity Commissioner's observations that "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". The absence of clear and comprehensive policy guidance has led to:

- Uncertainty for both councils and developers
- Extensive costs incurred to navigate the system
- IPART influencing policy decisions with exposure to only a handful of plans
- Time consuming and costly disputes in the NSW Land and Environment Court.

**Recommend:**

That DPIE, through a consultative process involving councils and industry, establish a standard structure and format for all contributions plans, with appropriate savings and transitional arrangements.

**8. Consolidate contributions plans across each council, potentially into a single plan**

In 2018, Campbelltown Council adopted a consolidated, City wide (section 7.11 and section 712) contributions plan and repealed all existing plans for mature, almost complete developments.

However, Western Sydney Planning Partnership councils, there are currently close to 50 plans in force across the nine councils, including both section 7.11 plans and section 7.12 plans.

In some cases, it is unclear what plan applies to a development. Also, local policy matters that are written into individual plans (e.g timing of payment, land dedication, indexation, and credits for existing development) are sometimes inconsistent, even within the same LGA. This can lead to uncertainty and administrative complexity.

Consolidating contributions plans would reduce administrative complexity and provide greater clarity about the contributions payable by development. Such an outcome would need to address the IPART review process, to address the disincentive for councils to have the entire plan reviewed each time a change in one precinct occurs.

**Recommend:**

That councils be supported financially and through the publishing of clear guidance documents and/or templates to consolidate existing contributions plans, potentially into a single plan for each LGA.

**9. Provide funding for councils to update plans, invest in electronic contributions management systems and improve online access to plan-related information**

The Issues Paper recognises that local government faces a significant shortage of the skills required to efficiently deliver contributions plans. This shortage also extends to the skills and knowledge required to administer contributions plans and identify process improvements. A simpler contributions system is likely to reduce resourcing requirements across government, not just in the local government sector.

However, the transition to a new system may take several years and during that period, the strain on resources is likely to be exacerbated.

**Recommend:**

That councils are provided with funding to update plans, invest in electronic contributions management systems and improve online access to plan-related information.

## **10. Develop a consistent policy on exemptions**

One of the basic principles of a fair and equitable contributions system is that development should make a fair contribution to the provision of infrastructure where demand is generated. There are, however, a range of situations where an exemption from the requirement to make a monetary contribution or the discounting of contributions may be appropriate.

Exemptions are currently set out across a range of documents including:

- Regulations
- Ministerial Directions
- Environmental Planning Instruments
- Planning system circulars
- Individual contributions plans

**Recommend:**

It is recommended that a consistent exemptions policy is developed and consolidated into a single policy position.

## **11. Reporting requirements**

The proposition that additional reporting requirements would improve transparency is not supported. Unless reporting is actively used to monitor and improve the contributions system, imposing additional requirements on local government would only increase the administration burden on local government.

Under current reporting requirements, income, expenditure, interest earned and opening and closing balances held must be reported for each plan and planning agreements as a note to the Annual Financial Statements using the current accounting standards. This provides sufficient information regarding the financial status of contributions plans to identify whether the plan is being implemented. If this information was appropriately monitored by DPIE, it would be sufficient to identify those councils that may require further investigation.

The Integrated Planning and Reporting (IP&R) framework is the standard reporting framework for council operations. This framework references all major corporate strategic documents with the exception of contributions plans. If additional reporting is required, then

the IP&R framework should be updated to address this matter instead of implementing a separate framework.

**Recommend:**

The Integrated Planning and Reporting Framework be updated to incorporate reporting on contributions plans and voluntary planning agreements. This would assist to ensure that infrastructure planning for new communities is integrated into operations of Council.

**12. Enable a broader revenue source for the funding of infrastructure**

The *Local Government Act 1993* requires that local councils consider the financial impact of decisions on future generations. This principle of intergenerational equity has historically been applied to the ongoing maintenance of existing infrastructure or agreed infrastructure provided during the planning and development phase. As such, neither councils nor their communities should be adversely affected by any developer contribution funding arrangement change.

**Recommend:**

That careful examination be undertaken of any change to development (infrastructure) contributions to ensure there are no unwarranted impacts on council finances and ratepayers. In addition, land rates should not be considered as a potential funding source due to the burden it could place on local communities unless changes in government policy were made to provide any funding shortfall.

Item 13 removed as per Council Resolution.

## **Conclusion**

The Productivity Commission Review provides an important opportunity to raise issues and solutions aimed at ensuring Council can deliver the required public infrastructure to support development and our community.

It is recommended that Council endorse the making of a submission that includes the issues raised in this report and response to discussion questions as attached to this report.

## **Attachments**

1. Review of infrastructure conditions (contained within this report)
2. Response To Issues and Discussion Questions (contained within this report)



**CCC RESPONSE TO ISSUES AND DISCUSSION QUESTIONS**

<p>Issue 1.1: Striking the right balance</p>	<p>Is a 'one size fits all' approach appropriate or do parts of the State require a bespoke solution?</p>	<p>The formation of the issue appears to imply detailed and costed infrastructure plans are a burden and offer false precision. The proposition does not consider the framework in which land use plans are made and development approvals issued for either fragmented land holdings or consolidated master planned estates. A one size fits all approach is not appropriate as the model needs to consider the overarching framework that involves land use plans often being implemented via many individual development applications with associated conditions, appeal rights and role of the Land and Environment Court.</p>
	<p>What are the advantages and disadvantages of a sitespecific calculation based on demand generated, compared with a broader average rate?</p>	<p>Site specific calculations are beneficial under the current system where a nexus between proposed infrastructure and future development is required. For example, different landforms may demand a different stormwater solution for which an average rate cannot accommodate. In addition, infrastructure plans are often challenged with addressing exiting shortfalls in level of service when addressing the future needs of a new population.</p> <p>The site specific approach also best addresses the principle of efficiency as it highlights the viability of an area which would not be revealed if a broad average rate was used.</p>
	<p>How can a reformed contributions system deliver on certainty for infrastructure contributions while providing flexibility to respond quickly to changing economic circumstances?</p>	<p>The recent Ministerial Direction enabling deferred contributions until occupation certificate stage already demonstrates that the system has embedded flexibility. The economic drivers of development extend well beyond developer contributions and should not be targeted as the only lever to instigate stimulus. Taxes, interest rates and other fiscal policies are profoundly more influential on development feasibility and should also be considered in framing this issue.</p> <p>Under the current framework of impactor pays, once development consent is issued, there is no means to recoup foregone contributions. Therefore, flexibility should not equate to waiving the requirement for developer charges when the same demands for the required services will remain.</p> <p>Further, it the case that other than accommodating the administration costs of developing or managing a contributions plan, the existing contributions framework focuses mainly on the funding of hard infrastructure. This is considered to be a costly (time) flaw in the current contributions regime, where because of the lack of ability of councils to redirect valuable human resource (planners and engineers) to development proposals that carry significant infrastructure, the speed of the delivery of the infrastructure is significantly and adversely impacted.</p>

		<p>In this regard, it is considered essential that the contributions framework be adjusted to acknowledge the importance of the human resource that is required to assess and certify development in a timely manner, and allow the value of the contribution to include the reasonable and relatively small costs of employing specialist staff, that are focused on the delivery of infrastructure and affordable housing outcomes.</p> <p>The ability to deliver infrastructure quickly is more a function of the human resource available to assess and certify the project, than it is ability to accumulate contributions.</p>
<p>Issue 2.1: Enable a broader revenue source for the funding of infrastructure</p>	<p>Are there any potential funding avenues that could be explored in addition to those in the current infrastructure funding mix?</p>	<p>The concept that developer contributions may be replaced or supplemented with a user charge fails to consider that residents expect to pay the same, or similar charges to any other resident in the city and this will influence their decision to locate in a particular area. In addition to this, the concept of a broader revenue source would also imply a longer time scale which does not support the existing practices of conditioning development to address demand via the payment of development contributions or the undertaking of works in kind.</p> <p>Land acquisition usually forms the largest class of asset that Council is required to purchase within fragmented development precincts. Given the requirements of the Land Acquisition (Just Terms Compensation) Act and indexation limitations, Council support by way of borrowing assistance from Tcorp to finance acquisition ahead of receiving contributions would be of assistance, and significantly reduce the risk to local government. Any reform in this area would also need to address 'fit for future' considerations that councils are assessed against under the Local Government Act.</p>
<p>Issue 2.2: Integrating land use and infrastructure planning</p>	<p>How can the infrastructure contributions system better support improved integration of land use planning and infrastructure delivery?</p>	<p>The existing development of Place Infrastructure Compacts by the Greater Sydney Commission is an excellent example of the coordination of agency effort to evaluate the cost of infrastructure and sequencing of development to achieve positive net benefits. Unfortunately, the replication of this effort cannot easily be translated into all development fronts to provide an efficient planning system, nor does it address local developer contributions.</p> <p>It has traditionally been good planning practice to determine the required infrastructure and prepare a Local Contributions Plan and for the Plan to be publicly exhibited in conjunction with the proposed LEP and DCP for the area being rezoned. This approach enables all stakeholders to review the exhibited documents in their full context and make submissions accordingly.</p> <p>Additionally, the current requirement for contributions plans above the threshold to go through the process of IPART assessment (6 months) and Ministerial approval (15 months) must be resolved and the timeframe reduced substantially to</p>

		<p>ensure that the rezoning and the adoption of the IPART approved contributions plan occurs simultaneously.</p> <p>Alternatively, most LEP's contain Satisfactory Arrangements clauses for State Infrastructure. These could be amended to also include Local Infrastructure. In this way a Development Application could be considered and assessed, but not determined, until such time as the contributions plan was finalised and satisfactory arrangements, either through a VPA or conditions of consent for monetary contributions in accordance with the Plan, were endorsed.</p>
Issue 3.1: Principles for planning agreements are nonbinding	<p>What is the role of planning agreements? Do they add value, or do they undermine confidence in the planning system?</p>	<p>Planning agreements are an essential component of the planning systems to securing public benefits or other undertakings required as a condition of development consent. For example, in large development precincts under single ownership, planning agreements can establish the infrastructure delivery plan that would be implemented by the developer over time. Where these agreements occur, they are often a significantly more efficient method of delivery for the benefit of future residents.</p>
	<p>Is 'value capture' an appropriate use of planning agreements?</p>	<p>Item removed as per Council Resolution.</p>
	<p>Should planning agreements require a nexus with the development, as for other types of contributions?</p>	<p>Yes, in most cases planning agreements should be based on the principles of nexus and apportionment.</p> <p>Planning Agreements can play a meaningful role in the contributions system and are especially advantageous when developments are controlled by a single or limited number of developers. In these cases, the Agreements act much like Work In Kind Agreements, in that the delivery responsibility goes from Council to the developer. This benefits the Council and reduces the risk of cost escalation and land value escalation. The benefit to the developer is controlling the timing for infrastructure delivery, which improves sales and marketability when potential residents see the infrastructure that will exist in the area they are considering purchasing.</p>
	<p>Should State planning agreement be subject to guidelines for their use?</p>	<p>The existing guidelines and legislative framework is considered appropriate and could equally apply to State Voluntary Planning Agreements.</p>
Issue 3.2: Transparency and accountability for planning	<p>What could be done to improve the transparency and accountability of planning agreements,</p>	<p>Planning agreement registers are already required by local government. Under current reporting requirements income, expenditure, interest earned and opening and closing balances held must be reported for each plan and planning agreements as a note to the Annual Financial Statements using the current accounting standards. This provides sufficient information</p>

agreements are low	without placing an undue burden on councils or the State?	regarding the financial status of contributions plans to identify whether the plan is being implemented. If this information was appropriately monitored by DPIE it is sufficient to identify those councils that may require further investigation.
	Should councils and State government be required to maintain online planning agreement registers in a centralised system? What barriers might there be to this?	This outcome is generally supported and could be accommodated within the NSW Planning Portal.
Issue 3.3: Planning agreements are resource intensive	Should the practice note make clear when planning agreements are (and are not) an appropriate mechanism?	The existing guidelines and legislative framework addresses this requirement.
Issue 3.4: Contributions plans are complex and costly to administer	How could the complexity of s7.11 contributions planning be reduced?	<p>The perception that 7.11 contribution plans are considered complex is the result of various government interventions, court principles and IPART assessment requirements. The proposition that complexity should be reduced must not reduce the ability of councils to correctly calculate and index plans. There are various risks (price escalation, timing, contract costs, unknown costs such as utility adjustment, contamination and remediation) that councils are exposed to in preparing infrastructure plans and should not be constrained in addressing these.</p> <p>Many Council's would argue and have approached DPIE seeking to increase the S7.12 threshold from the current 1% to 4-5%. The aim is to deliver an equivalent quantum of funds without the complexity and strings attached to S7.11. Also without the appeal rights. The benefit to the development industry is the simplicity of determining the required contribution.</p> <p>However, while this approach works for established areas, it is not capable of addressing greenfield subdivisions without significant review.</p>
	What are the tradeoffs for, and potential consequences of, reducing complexity?	As above, the trade off, or consequence is a limitation on councils to address price risk.
	How can certainty be increased for the development industry and for the community?	Where an existing contributions plan applies, it is considered that sufficient certainty exists. The issue of uncertainty mainly occurs at the rezoning stage, where all costs associated with development may not be fully understood. Therefore, an appropriate response would be to require contribution plans or planning agreements to be prepared concurrently with rezoning processes. As stated in Issue 2.2, this process needs to consider streamlining the current processing time for contributions plans

		which seek to levy above the threshold and must go through the IPART and Ministerial approvals process.
Issue 3.5: Timing of payment of contributions and delivery of infrastructure does not align	What are the risks or benefits of deferring payment of infrastructure contributions until prior to the issuing of the occupation certificate, compared the issuing of a construction certificate? Are there options for deferring payment for subdivision?	<p>The risk of deferring contributions prior to the issuing of the occupation certificate is mainly associated with securing the payment from the applicant prior to commencement of works. Where an individual or corporate entity is unable to make the payment, councils would be required to commence legal proceedings to peruse unpaid contributions. As an unsecured creditor, the feasibility of Council recouping unpaid contributions is of concern. For this reason, council's usually seek a bank guarantee to secure any deferral of contributions. Recent COVID amendments that require registered certifiers to seek the advice of Council regarding outstanding contributions prior to issuing an occupation certificate has significantly improved the situation.</p> <p>An alternate approach to requiring bank guarantees may involve investigating the suitability of insurance bonds which are a less expensive form of security.</p> <p>In relation to subdivision, the payment of monetary contributions usually only occurs prior to the issuing of the Subdivision Certificate which occurs within weeks of property settlement. The issuing of a Subdivision Certificate represents that satisfaction of all conditions of development consent. Beyond this step, there are no certificates or processes that could be used as a "hold point" to defer contributions to a later stage.</p>
	Would alternatives to financial securities, such as recording the contributions requirement on property title, make deferred payment more viable?	No, the recording of contributions on property title would introduce further complexity and timing risk for councils. Further to this, financial institutions are often the first mortgagee on title and therefore more likely to recoup their costs in legal proceedings. The payment of monetary contributions should remain a condition of development consent that is the responsibility of the applicant to comply with.
	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?	See response to 2.1.
	What else could be done to ensure infrastructure is delivered in a timely manner and contributions balances are spent?	The timely expenditure of contributions plan balances depends on the nature of works items and land to be acquired. In the case of land, unless the council actively pursues acquisition, including compulsory acquisition, transfers may not occur for some time until land owners seek to develop. In the case of works that incur high capital costs, significant funds on-hand are

		<p>required to commence these works unless forward funded by borrowing.</p> <p>The NSW Government through a recent Ministerial Direction has already started this process. Ensuring that contributions can be pooled both within a CP and across CP's is a good step.</p>
Issue 3.6: Infrastructure costs and contributions rates are rising	<p>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?</p>	<p>Efficient to who? Ultimately, the concept of efficiency should not only relate to the cost of delivery but also the ongoing cost of management. The delivery of fewer, but larger facilities provides a cost benefit to councils who are require to maintain and / or staff the assets over the long term.</p> <p>For example, Water Sensitive Urban Design (WSUD) practices encompass all aspects of urban water cycle management including water supply, wastewater and stormwater management that promotes opportunities for linking water infrastructure, landscape design and the urban built form to minimize the impacts of development upon the water cycle and achieve sustainable outcomes. A good WSUD strategy for management of stormwater quality, quantity and flooding would nominate at source pollution control measures for industrial, commercial and higher density residential areas combined with precinct scale co-located detention/bioretention basins, and gross pollutant traps at key locations. These outcomes are based on catchment characteristics and not land ownership patterns.</p> <p>Ultimately it is Council that will own and maintain these assets over their anticipated life and it is considered that the current approach already considers the most "efficient" cost in terms of capital cost but also the long term maintenance cost to the community.</p>
	<p>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?</p>	<p>If the essential works list is to be retained, there needs to be a clear policy on what is considered essential or not. This position should have clear alignment with the aspirations of the Regional and District Plans which reference facilities such as libraries which are not considered essential under the current framework.</p>
	<p>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?</p>	<p>It has always been considered good practice to determine infrastructure needs in conjunction with land use planning. This approach can maximise the use of existing infrastructure and determine the need for new infrastructure as a consequence of growth.</p> <p>The key to this process needs to be timing. Once the infrastructure needs are determined, analysed and costed, a draft contributions plan is capable of being drafted. Provided</p>

		<p>the quantum of contributions required is within acceptable limits, as assessed by the State, IPART and Council collaboratively, the draft contributions plans can and should be publicly exhibited concurrently with the rezoning. The aim would be to provide all stakeholders the opportunity to analyse and assess the document holistically, and if possible, for the rezoning and contributions plan to be adopted simultaneously. This avoids potential financial losses which can occur if the adoption of the plan occurs post rezoning and where any development applications received before the plan is legally effective can only levy at the threshold rate and not the true rate required to deliver the infrastructure determined as necessary through the process.</p>
<p>Issue 3.7: The maximum s7.12 rate is low but balanced with low need for nexus</p>	<p>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?</p>	<p>The problem with the existing 7.12 levy is the disparity with contributions under 7.11 which often return greater contributions for the same development. In addition to this, the administrative burden of preparing quantity surveyors reports to determine the cost of development, often involves applicants “gaming” the system to underquote development value.</p>
	<p>What would be a reasonable rate for s7.12 development consent levies?</p>	<p>Should the maximum percentage be increased, the resulting contributions should generally be equivalent to the capped rate, or be based on sliding scale or categories of development to account for residential, commercial and industrial development which generate different demands for community facilities.</p>
<p>Issue 3.8: Limited effectiveness of special infrastructure contributions</p>	<p>Is it appropriate that special infrastructure contributions are used to permit out-of-sequence rezoning?</p>	<p>The current use of SIC to address out of sequence rezonings appears to mainly address existing infrastructure backlogs such as regional road upgrades. In these cases, local developers are tasked with addressing regional deficiencies as a condition of development.</p> <p>Unfortunately, this results in other infrastructure such as schools, utilities, health, strategic biodiversity and other outcomes being excluded to the detriment of future communities. Therefore, where special infrastructure contributions are applied, they should be for the benefit for the future community instead of addressing exiting funding backlogs.</p>
	<p>Should special infrastructure contributions be applied more broadly to fund infrastructure?</p>	<p>As above, the application of special infrastructure should be subject to similar nexus and apportionment considerations as applied to local development contribution plans.</p>
	<p>Should they be aligned to District Plans or other land use planning strategies?</p>	<p>As demonstrated by the Greater Sydney Commission, Place Infrastructure Compacts provide an example of infrastructure planning aligned to District planning strategies. Concern exists however, that the timeliness of such plans may be a constraint to their delivery for out of sequence development.</p>
	<p>Should the administration of special infrastructure</p>	<p>Special Infrastructure Contributions are currently administered by the NSW Department of Planning, Industry and Environment which already meets this requirement. Whomever is</p>

	contributions be coordinated by a central Government agency i.e. NSW Treasury?	responsible for the making and management of SICs should equally be responsible for the associated planning decisions to ensure timely decision making.
Issue 3.9: Difficulty funding biodiversity through special infrastructure contributions	Are special infrastructure contributions the appropriate mechanism to collect funds for biodiversity offsetting, or should biodiversity offsets be managed under a separate framework?	As strategic bio certification is associated with land use planning, it would appear appropriate that special infrastructure contributions are the appropriate mechanism and would simplify the process of development concurrence.
Issue 3.10: Affordable housing	Is provision of affordable housing through the contributions system an effective part of the solution to the housing affordability issue? Is the recommended target of 5-10 per cent of new residential floorspace appropriate?	The provision of an affordable housing target should be based on local circumstances and development feasibility.
	Do affordable housing contributions impact the ability of the planning system to increase housing supply in general?	As above, this would depend on local circumstances.
Issue 4.1: Sharing land value uplift	Where land values are lifted as a result of public investment, should taxpayers share in the benefits by broadening value capture mechanisms? What would be the best way to do this?	Should land value capture be considered, the appropriate mechanism would be to review the taxation system rather than addressing via the development contributions system.



Issue 4.2: Land values that consider a future infrastructure charge	Should an "infrastructure development charge" be attached to the land title?	See response to issue 3.5.
Issue 4.3: Land acquisition for public infrastructure purposes	If supported, how could direct dedication be implemented? How could this be done for development areas with fragmented land ownership?	<p>Direct dedication of land in lieu of contributions is not considered efficient or appropriate. Land use plans are based on strategies for consolidated stormwater, open space and transport networks. Implementation of these strategies requires targeted acquisition or dedication of the relevant land.</p> <p>Direct dedication therefore does not consider the situation where a landowner does not wish to develop and is therefore an unwilling seller. To address this situation requires compulsory acquisition under the Land Acquisition (Just Terms Compensation) Act 1991 which adds, complexity, time and cost to the process.</p> <p>Dedication of lands outside of these strategies would only add additional administrative burden on councils and time delay. In the case of land identified for acquisition, sufficient existing mechanisms are available to support acquisition / dedication.</p>
	Could earlier land acquisition be funded by pooling of contributions, or borrowings?	Yes, pooling of contributions is already practiced by many councils and should be encouraged and supported by guidelines and regulation. Borrowings are problematic as outlined in response to issue 3.5.
	Are there other options that would address this challenge such as higher indexation of the land component?	The application of an appropriate land index is already available to councils. Additional supporting advice and guidance would be of assistance.
Issue 4.4: Keeping up with property escalation	What approaches would most effectively account for property acquisition costs?	There are a variety of methods which are used to index land prices within a contributions plans with the view of keeping pace with escalating property acquisition costs. These include CPI, land indices created by third parties, desktop valuations and full property valuations undertaken on a yearly basis. A concern that has arisen since the introduction of the contributions threshold is the separate assessment of indexation methods undertaken by IPART as a consequence of no formal policy position by DPIE. Improved guidance and endorsement of appropriate indexes as supported by IPART would be appropriate.
Issue 4.5: Corridor protection	What options would assist to strike a balance in strategic corridor planning and infrastructure delivery?	Identification of corridors prior to land use planning would be the most effective process. Examples of this include the North West Metro and early identification of the Bella Vista to Rouse Hill corridor which eventually supported construction of the North West Metro and associated land use planning which occurred some 15 years after initial corridor preservation.

Issue 4.6: Open space	How can performance criteria assist to contain the costs of open space?	Application of a performance criteria often arrives at the same result as the existing standard of 2.83 hectares per 1000 people. Therefore, the utility of a performance approach is more likely to introduce more uncertainty than application on an understood standard. If anything, the rate of provision would increase to account for the transition from the quarter acre block to medium and high density development.
	Should the government mandate open space requirements, or should councils be allowed to decide how much open space will be included, based on demand?	<p>As above, the exiting standard is appropriate. Planning for new communities should not be about reducing the service level or quality of life when compared with living in existing urban areas. Councils are best placed to make decisions on provision and where to adjust. For example, of the 2.83ha standard, 1.37ha per 1000 is the accepted provision for structure organised sport, with the minimum acceptable size of a sports field being 5ha. For the remaining area, it should be up to councils to balance the need for passive recreation against other outcomes such as water management, riparian corridors and biodiversity conservation, which may also incorporate uses such as walking and cycling to provide a network of spaces.</p> <p>More recent objectives which consider that high density development (over 60 dwellings per hectare) should be located within 200 metres of quality open space and all dwellings should be within 400 metres of open space is welcomed. However this overarching approach needs to be taken down to the fine grain level and, if supported by councils and residents, enshrined in Local Environmental Plans. This fine grain analysis is important as the objective should not simply be to provide numerous pockets of open space with no connectivity and which only adds to the maintenance burden of Council in the long term.</p>
	Are infrastructure contributions an appropriate way to fund open public space?	<p>Yes, councils are the responsible authority for land acquisition under the Land Acquisition (Just Terms Compensation) Act 1991 and are required to zone land for this purpose when preparing a precinct plan or similar strategy. In this context, local developer contributions collected by s7.11 and 7.12 plans are an appropriate funding strategy.</p> <p>For example, in areas where there is multiple ownership, development contribution plans are the best way to equitably levy development for the provision of the open space which their development generates the need for. In areas where single or few owners exist, Planning Agreements represent an effective means of delivering the required open space without the cost escalation issues associated with a contributions plan.</p>
Issue 4.8: Improving transparency and accountability	What would an improved reporting framework look like? Should each council report to a central electronic repository?	There are already significant reporting requirements for councils and is being further investigated by DPIE as part of the "Review of the infrastructure contributions system" and in particular the "Proposed amendments to the EP&A Regulation".
	What elements should be included? How much has been	Under current reporting requirements income, expenditure, interest earned and opening and closing balances held must be reported for each plan and planning agreements as a note to

	collected by contributions plan and other mechanisms? How much council has spent, and on what infrastructure items?	the Annual Financial Statements using the current accounting standards. This provides sufficient information regarding the financial status of contributions plans to identify whether the plan is being implemented. If this information was appropriately monitored by DPIE it would be sufficient to assist further engagement on this issue.
	Should an improved reporting framework consider the scale of infrastructure contributions collected?	As above.
Issue 4.9: Shortage of expertise and insufficient scale	What can be done to address this issue?	The perceived shortage of expertise to prepare and administer contributions plans appears mainly associated with the siloing of responsibilities within councils. As different directorates are mainly responsible for administration of the EP&A Act and Local Government Act, staff shortages could be addressed by drawing on all available skills within local government, and not just relying on forward / strategic planners etc. In addition, it is open for council's to draw upon consultants to assist which may be engaged via council procurement processes or via existing endorsed consultants on the Local Government Procurement Panel.
	Should the contributions system be simplified to reduce the resourcing requirement? If so, how would that system be designed?	As above, simplification of the development contributions system should not be at the expense of delivering timely and appropriate infrastructure. The NSW planning system involves all levels of local government and private industry in planning assessment and determination, assessment, construction, handover and management of new assets which is an end-to-end process. Well considered and detailed contributions plans provide for certainty of delivery and determination of development applications in a timely manner. Simplification of the system may have unintended consequences that only transfer to the issue to another stage in the development assessment process.
Issue 4.10: Current issues with exemptions	Given that all developments require infrastructure, should there be any exemptions to infrastructure contributions?	There biggest issue with exemptions is that they are not centralised and in a single location. There are exemptions granted by one Ministerial Direction only to be revoked by another, which can make it difficult for even long term contributions officers to keep track.  Given development contributions are enshrined in the EP&A Act and Regulation, the exemptions should be categorically stated in the Regulation. This would assist Council staff, developers and anyone interested in submitting an application and wishing to determine if they are exempt from contributions or not.
	Is it reasonable to share the cost of 'exemptions' across all of the new development rather than	No, the principle of nexus and apportionment should remain a key principle as applied under the current framework.
	requiring a taxpayer subsidy?	

	<p>Are there any comparative neutrality issues in the providing exemptions for one type of development, or owner type, over another?</p>	<p>The current planning Act enables the Crown to dismiss conditions requiring the payment of a monetary contribution required as a condition of development consent. This provision does not similarly apply in the case of complying development and is the source of regular confusion and inconsistency.</p> <p>There biggest issue with exemptions is that they are not centralised and in a single location. There are exemptions granted by one Ministerial Direction only to be revoked by another, which can make it difficult for even long term contributions officers to keep track. Passing this on to new less experienced staff is very difficult.</p> <p>Given development contributions are enshrined in the EP&amp;A Act and Regulation, likewise the exemptions should be categorically stated in the Regulation. This would assist Council staff, developers and anyone interested in submitting an application and wishing to determine if they are exempt from contributions or not.</p>
<p>Issue 4.11: Works-in-kind agreements and special infrastructure contributions</p>	<p>Should developers be able to provide works-in-kind, or land, in lieu of infrastructure contributions?</p>	<p>Yes. The decision as to whether to permit a work in kind or material public benefit is not automatic but typically subject to council discretion. This enables a council to determine whether the proposal is appropriate from not only a spatial nexus position, but also temporal nexus.</p>
	<p>Developers may accrue works-in-kind credits that exceed their monetary contribution. Should works-in-kind credits be tradeable? What would be pros and cons of credits trading scheme?</p>	<p>The trading of credits would be supportable so long as the valuation of works follows an appropriate procurement processes and is managed by the relevant council.</p>
	<p>What are implications of credits being traded to, and from, other contributions areas?</p>	<p>The pooling of contributions to support timely delivery of contributions is supported. The challenge with credit trading between plans would be maintaining equivalence and / or nexus and would also complicate record keeping.</p>