Submission to NSW Commissioner for Productivity on exhibition of *Review of Infrastructure Contributions in New South Wales – July 2020*

MidCoast Council response to discussion questions:

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?

> No, a 'one size fits all' approach is not preferred - councils in regional NSW have been asking for many years to have a planning system that is not Sydney/metro-centric. There is also a difference between coastal and inland regions that is rarely acknowledged in the planning system.

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

> Assume that this question relates to s7.11 versus s7.12. If a higher % rate were applicable to s7.12 then this option would be much more attractive for councils to use. It is a much simpler method, more easily understood and easy to administer. The concepts behind s7.11 are not well understood (e.g. nexus), are complex in nature and more difficult to administer.

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

> Without speaking to council staff and the development industry in other jurisdictions it is difficult to say whether one of the examples listed in Appendix D (or not listed), or whether a combination of some of these, would be a better approach. Regardless, when reviewing any planning system we should look at what others are doing so as to inform any review.

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

> This depends upon whether there is a need to respond to changing economic circumstances? The cost of providing infrastructure does not necessarily change in this circumstance, so any attempt to reduce the amount payable either would provide a short-fall or shift payment. All that changes is that when there is an economic down-turn, councils receive less funds to build the infrastructure, but this is balanced against less people therefore moving to that area and hence less need to provide the infrastructure.

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?

> Revisiting rate capping is the most important funding stream that can be explored for local government. Also, the need to revisit FAGs grants should not only be undertaken by incorporating consideration of socio-economic status and land value, but more importantly it should relate to length of roads and number of bridges (wood and concrete) against the

size of the population in the LGA. This would enable an equitable redistribution of FAGs grant to where they are needed most.

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?

The inability of contribution plans to keep up with changing land use planning and infrastructure delivery is a result of a lack of resources within local government to create, review and update plans, the need to create s7.11 plans that satisfy the relevant requirements and the ongoing management of contributions. Councils, particularly regional, can struggle to dedicate staff to this task alongside all the other requirements relating to planning. While the ability to include the management of plans as a cost within the contributions is appreciated, the yearly fluctuations in income make it difficult for councils to employ staff based solely on this revenue stream.

In regional councils there is also often a significant time lag between when the plans are created and when enough funding is collected to implement the infrastructure, often 10-15 years after the plans were created for costly infrastructure.

A simple system with a flat % rate on development with a separate infrastructure list that can be revised and updated separately would be beneficial in supporting potentially changing infrastructure needs of our community and enabling the system to better reflect land use outcomes being experienced.

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?

Planning agreements are a necessary tool in the planning system. Prior to these councils used Deeds of Agreement to capture negotiated outcomes, particularly with landowners in relation to the rezoning of land. Having a mechanism with the EP&A Act has enabled a link between these agreements and stages in the planning process.

They are typically used in regional councils to ensure that land identified for a public purpose is dedicated as part of the DA process (and offset against payment of contributions in plans) as well as for the provision of public infrastructure identified as part of the rezoning process that was not anticipated when the contributions plan was developed.

▪ Is ‘value capture’ an appropriate use of planning agreements?

No. While the up-lift in value could potentially be significant in metropolitan areas (not so much in regional areas), the developer/landowner has had to take all the risk in seeking a change (usually rezoning) and been subject to the significant cost and time in doing so. Ultimately a council shouldn't rezone land or approve a development that does not have strategic merit – it shouldn't do so in exchange for capturing some of the added value.

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

One of the benefits of using a planning agreement is that nexus is not required. While most do have a connection between the negotiated outcome and the development, not requiring it to do so provides greater flexibility.

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

Yes. Our community expects consistency in decision making and transparency – guidelines provide a framework for this to occur.

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?

All planning agreement registers, whether State or local, should be made available online for viewing. The ongoing management of planning agreements is difficult for councils, particularly regional, so any additional requirements should be carefully considered.

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

While at least all agreements would be in the same place and easily searchable, it is questioned whether this is the right location for councils – the public tend to use each council website to access documents relevant to that area and we're likely to end up with duplicating current registers.

If the end decision was to have a centralised State register, the Planning Portal would be the logical location for this.

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?

The practice note should provide guidance for common use and outline uses clearly inappropriate, but not at the expense of flexibility to negotiate an outcome in the public interest.

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?

> Having an easy to use template that enables assumptions around population increase for a local area to be inserted (e.g. average persons per household) and a standard formula for how contributions are derived would be beneficial.

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

> The trade-off for less complex plans is that there is less justification in a plan for why and what the contributions are for. While this is a risk, it shouldn't be used as an excuse to not make plans simpler and more user-friendly.

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

> Plans need to clearly show what new infrastructure is needed to support the growing population, the cost of that infrastructure, the apportionment (if any) between the current population and an incoming population and the priority between the various infrastructure.

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 the issuing of a construction certificate? Are there options for deferring payment for subdivision?

> The impact of deferring payment until occupation certificate is a time-lag between when new residents move in and when the new infrastructure is provided. The risk to councils is that not all developments (although they should) apply for an occupation certificate prior to being occupied.
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> While the above is true, the benefits of deferring prior to occupation certificate are that it enables a developer to push this cost to later in the development and provides the opportunity for the developer to pre-sell the development prior to payment. If as a community we accept the potential delay in providing infrastructure then this could be a workable solution.
>
> Deferring payments for subdivision are problematic. Some council allow a bank guarantee to be lodged to defer payment but this has its own funding problems for developers and some apply caveats to land to enable recoupment following sale of the new lot. This however is resource intensive to administer. Developers in regional areas tend to stage subdivisions to distribute contribution payments over a longer period – this involves no extra management from councils is seen as preferable to enabling deferment post issuing of a subdivision certificate.

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

This would still require a system and administration process to be set up and an extra drain on councils limited resources, and is not preferable.

▪ 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?

Borrowing funds in advance of contribution income is always a risky proposition, especially considering GFC, GFC2 and now COVID. The fluctuation in income from contributions in regional areas is significant and councils General Fund often has to 'carry' contribution plan borrowings – this is not a desirable position.

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

Better integration with councils capital works program and long term financial plan. Setting time limits for expenditure of funds, as has been mooted in the past, is not workable in regional areas due to the time taken to collect funds, which can be 10-15 years for significant infrastructure.

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?

No comment – regional councils try to avoid triggering IPART reviews by keeping contributions under the cap.

▪ 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?

Community facilities (construction e.g. new library) should be considered as essential works, not just the acquisition of land for this purpose. Ideally, there should be no difference between what a plan should collect for, regardless of whether it exceeds the cap.

▪ 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?

No comment.

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?

For s7.12 plans to be a viable alternative to s7.11, the rates need to be increased significantly. The obvious risk is that funds are collected for infrastructure that does not benefit the development. That being said, any public infrastructure provided in a local government area has the ability to be used by residents and hence there is a nexus, albeit not always a direct correlation.

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

Between 5-10% would be a range where s7.12 is a viable alternative to using s7.11. This would enable less complex plans and better administration.

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.

No comment is provided here as SICs are mainly metropolitan related. The only comment to be made for regional councils is if a SIC is applied on top of council development contributions then it is likely to make development too costly to undertake.

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

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

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

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

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.

No comment is provided here as SICs are mainly metropolitan related. The only comment to be made for regional councils is if a SIC is applied on top of council development contributions then it is likely to make development too costly to undertake.

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

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

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?

No comment – many regional councils have no experience with affordable housing contributions.

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

> No comment – many regional councils have no experience with affordable housing contributions.

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?

> No. Whether it is luck on behalf of the landowner or they have already paid a premium to own land in an area where public infrastructure was going to occur at some time in the future (as public infrastructure should be strategic in nature and not random), it is not seen as appropriate to 'tax' that landowner due to something that was outside their control.

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?

> No. The landowner/developer will have to pay development contributions the same as someone not recently rezoned and they have had to undertake a costly and risky process to have their land rezoned so it is not appropriate to attached such an additional charge to the title of the land.

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?

> When rezoning land, this is when a planning agreement is entered into – to provide certainty to council that the land will be dedicated at no cost and to the landowner/developer in that dedication will be offset against contributions.
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> Outside the rezoning of land, while a plan could say (for example) that dedication of land for a park will completely offset contributions for parks, there will be winners and losers in this scenario. A better way may be to link land valuation to a separate index to CPI which accounts for fluctuations in land values more effectively.

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

> Yes, acquisition early on could be advantageous.

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

> Yes, see response to first question.

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.

▪ What approaches would most effectively account for property acquisition costs?

No comment

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?

No comment

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?

The provision of open space should relate to the demographics of the population. For example, an ageing population generally requires more passive open space including pedestrian/cycleways, rather than sports fields. This should be a factor in the provision of open space rather than rigidly applying a historical standard.

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

As per the above answer, councils should be allowed to tailor open space provision to the needs of its community.

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

Yes, unless rate capping is abolished for councils or the State is willing to provide instead of councils.

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?

No comment.

▪ What it the best way to provide for the funding of potable and recycled water provision?

No comment.

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?

> The State has a history of putting additional requirements onto councils without providing additional funding to do so, which is not helpful for councils to manage an increasing portfolio of responsibility and infrastructure.
>
> An improved reporting framework would have to be an online tool that is easy for councils to input data that is readily available. Whether it is central or not is not the issue, the issue is about not making it resource intensive while at the same time improving transparency.

▪ 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?

> Yes. How much has been collected in a financial year and how much has been spent in a financial year can be easily made available. While there is some extra effort involved on report what the funds were expended on, this is not an unreasonable request.

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

> Yes. The total of funds held at any one time should be reportable.

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?

> The State government could consider whether it may be more beneficial to procure a team of contribution experts that could then be made available to help regional and smaller councils develop updated plans and administration systems, rather than each council having to undertake this function without assistance.

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

> Yes, as mentioned to a previous question, increasing the s7.12 to between 5-10% would avoid the need to develop complex s7.11 plans. The administration is also significantly reduced.

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?

> No. As mentioned in the Issues Paper, this revenue is lost to councils and not able to be made up by other means, particularly with rate capping in place.

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

No. This only increases the cost to other developments.

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

No comment.

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).

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

Yes. Sometime this is for land or works identified in the plan and should be enabled through the plan. At other times it could be for a public outcome not identified in the plan but deemed important for the local community at that time and it is important for councils to have the ability to enable this to occur.

▪ 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?

Yes, but only against other contributions within the plan (i.e. not a trading scheme). For example, if the value of the open space dedication is twice that of the open space contribution then the credit should be able to be used against another aspect of the plan, such as roads.

A credit trading scheme would be resource intensive and impracticable for regional councils.

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

The implication is that it would have the effect of bringing forward an aspect of the plan against another. This is seen as a positive outcome for all involved.

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MidCoast Council

5 August 2020