



6 August 2020

Mr Peter Achterstraat AM
NSW Productivity Commissioner
NSW Productivity Commission
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Our Ref: [REDACTED]
Your Ref: Infrastructure Contributions Review

Dear Sir

Infrastructure Contributions Review – Issues Paper

Thank you for the opportunity to comment on the review document by the NSW Productivity Commission on Infrastructure Contributions in New South Wales. Staff at Cessnock City Council have reviewed the document and offer the following comments in relation to each issue raised.

Issue 1.1: Striking the right balance

Council supports a simplified system for collection of local infrastructure contributions. This may include streamlining processes and ensuring greater consistency between plans across the state. We are concerned that bespoke solutions may result in more confusion for the development industry and add additional complexity to a system that is already difficult to interpret.

We recommend the Productivity Commission review the contribution framework in other states to explore more effective approaches. We understand that other states, such as WA and QLD, have simpler processes, greater transparency and more efficient mechanisms for the delivery of infrastructure.

To ensure the proposed reforms deliver certainty for infrastructure, the following issues need to be addressed.

- The difficulty councils have in ensuring their cost apportionment for infrastructure is met early in the process.
- Ensuring that the works schedule in a contributions plan is being delivered through each councils' delivery program. To achieve this, a work schedule within a contributions plan could be reviewed to align with the preparation of the four-year delivery program.

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

We offer the following recommendations:

- Special rate variations, specifically allowing councils to fund their share of local infrastructure (in addition to funds collected under section 7.11 contributions), could be a way of ensuring that infrastructure can be delivered in a timely manner over the life of the plan. The special rate variation could be adjusted with timing thresholds to ensure infrastructure is delivered.
- As discussed in the NSW Department of Planning, Industry and Environment's (DPIE) current review of the local infrastructure contributions system, one alternative could be to review the percentages and thresholds for section 7.12 levies so that councils could apply these to more types of development. While a council cannot impose a condition of consent requiring a monetary levy under both section 7.11 and section 7.12 to the same development, if section 7.12 percentages were raised, this would allow councils to collect more contributions to be allocated towards funding local infrastructure. Section 7.12 does not have the same restrictions of apportionment and nexus to adhere to.

Other potential funding mechanisms, which broaden councils' revenue for funding local infrastructure are listed below. However, these mechanisms are already utilised by most councils and don't wholly solve the issue of enabling a broader revenue source.

- planning agreements;
- rates;
- grant and subsidies from the state or federal government; however, these typically make up a minor part of the contributions system;
- government agency contributions – e.g. shared costs of classified road upgrades; and
- user charges (e.g. entry fees).

Again, the next phase of consultation should consider best practice in other states, so they can be considered and discussed.

Issue 2.2: Integrating land use and infrastructure planning

State agencies are often involved in the process of infrastructure delivery. Any new system or framework for local infrastructure contributions should consider how time delays in dealing with state agencies can be improved, e.g. Transport for NSW in considering traffic signals where the trigger is a release of lots within an urban release area.

Issue 3.1: Principles for planning agreements are non-binding

CCC already has an adopted Planning Agreement Policy based on the DPIE's contributions framework. This ensures applicants are provided with an added layer of transparency and guides all parties on Council's processes. Any changes to guidelines would need to provide councils with directions for the review of adopted policies.

Planning Agreements should not be subject to a nexus as this allows flexibility to deliver unique and innovative types of infrastructure as agreed between the parties, which may better suit the needs of the community.

All levels of government, whether it be state or local should be subject to the use of guidelines, this ensures transparency and accountability for planning agreements. It is requested that planning agreements as a funding mechanism not be excluded, as it allows the community to share in the economic benefit granted to individual land owners from a planning decision.

A clearer process for negotiation of planning agreements, where DPIE is the consent authority, is required. Further, clarification is required around modifications to DPIE consents where there is an existing local planning agreement. For example, is it a council or the DPIE who is responsible for ensuring the local planning agreement is amended in accordance with the modification?

Issue 3.2: Transparency and accountability for planning agreements are low

CCC staff agree that there are very few reporting requirements for planning agreements. However, the Productivity Commission needs to bear in mind that some planning agreements are extremely complex and regular reporting would add an additional burden on Council's staffing resources.

Clear and precise direction is required in the form of current practice notes for planning agreements.

CCC supports a simple online planning agreement register administered by DPIE and subject to relevant training being provided to councils.

Issue 3.3: Planning agreements are resource intensive

A clearer process is required for entering into a planning agreement. The draft practice note, if adopted, would assist in clarifying this process. The lengthy timeframes for negotiation of planning agreements and the demands on staff resources are considerable, as planning agreements are very resource intensive. Planning agreements have the potential to deliver unique and innovative outcomes; however, the introduction of a clearer, simplified framework for their negotiation and implementation would be welcomed.

Issue 3.4: Contributions plans are complex and costly to administer

In preparing a contributions plan, forecasting the types and cost of infrastructure required, is very difficult and, as a result, the Works Schedule within a contributions plan is never perfect. This creates a vulnerability for councils in terms of potential legal challenges. The complexity could be reduced by eliminating section 7.11 and instead adopting a section 7.12 system across the board that caters for all types of development. This would require higher contributions percentages to ensure adequate funding to deliver infrastructure more efficiently.

If section 7.11 is to remain, additional guidance is required to assist in the preparation of robust contributions plans so that all councils adopt a reasonable and consistent approach. Best practice advice regarding the derivation of apportionment rationales, standards of provision and infrastructure needs assessments would be useful resources and create greater consistency across NSW. At the moment all councils have problems interpreting the legislation where new section 7.11 plans are applicable to modification applications. This is often a confusing matter for councils, as is the request for refunds of contributions. Clearer guidelines are required to deal with these issues consistently, e.g. practice notes.

Another issue for councils when using section 7.11 is developing a calculator. Each time a new plan is adopted a new calculator must be created for internal use. Developing a calculator for the public to use is even more difficult, time consuming and costly. A simplified and consistent contributions system with a centralised calculator, which could be accessed by all councils, would assist with enquiries from the development industry and provide greater access for those (including private certifiers) who calculate contributions in many different LGAs.

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

The risk with deferred payment is that the infrastructure will be delayed. A complete analysis of the average time it would take for all types of development to reach occupation certificate stage across the state would be needed to measure the impacts of potential delays in infrastructure. This would require further consultation with councils.

With respect to the timing of payments, it needs to be considered that council officers do not always have control over the issue of occupation certificates (i.e. when a private certifier is used) and therefore there is a significant risk that occupation occurs without contributions being paid. This is already an issue for councils who then have to deal with trying to collect the unpaid contributions. This could be further exacerbated by delaying the payment of all contributions to occupation certificate stage.

The issue with low cost loan initiatives is that while they do assist in the delivery of infrastructure, councils still have to repay the loan interest, albeit after the delivery of the infrastructure. In order to recoup the interest, an amendment to the contributions plan would be required.

Effective infrastructure planning requires certainty on expected income, so any changes to the current system in regard to the timing of payment should be across the board and not just applicable to larger developments. Perhaps a situation of half payment prior to construction and the rest upon settlement (or something similar) could be considered. Further consultation with the development industry is required and again, investigating how other states deal with this issue is something that should be considered.

Often greenfield development requires a significant portion of development to occur before enough in contributions is collected to construct the infrastructure identified in the works schedule of contributions plan. This is even more of an issue when collecting for larger types of infrastructure, such as regional or district level facilities, as well as acquisition or purchasing of land to deliver the infrastructure. There may be a perception that councils are not spending contribution funds, but greenfield development can occur over many stages and years and the way section 7.11 legislation works, it is difficult to avoid this issue.

A centralised online system where councils could provide updates on how much money has been collected, what is being pooled and where money is being allocated is needed. This would be more transparent and easier for the community to understand. Such a system would be too costly for individual councils and therefore a state based, centralised system for all councils is recommended.

Issue 3.6: Infrastructure costs and contributions rates are rising

Contribution caps are low and have never been indexed. If the caps are to remain they should be increased and indexed yearly to be consistent with the rising cost of infrastructure.

In a situation with section 7.11 where it already takes considerable time to write a contributions plan, any requirement for a plan to be reviewed by IPART causes long delays in finalising contributions plans, which in turn, impacts funding and delivery of the required infrastructure. An IPART review may also not be a favourable option for councils as IPART's list of essential works is limited. If the IPART review is to continue for contributions plans that exceed the caps, essential works list should be expanded to include construction costs for community facilities, particularly libraries. It is also considered reasonable to include costs to upgrade community facilities and open space.

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

In the recent submission to DPIE regarding their Local Infrastructure Systems Review, CCC supported setting a criteria for an increase to 2% and 3% in section 7.12 levies where appropriate. We continue to support this and request that it not be limited to specific local government areas, but be open to all councils if they meet the set criteria.

Section 7.12 levies are far easier and less costly to collect and administer and work very well where growth is sporadic and nexus is difficult to identify. The greater flexibility in expenditure makes it an excellent tool to assist councils in the delivery of local infrastructure, particular where the demand arises from non-residential development.

A combination of Planning Agreements for URAs and section 7.12 levies for all other areas would alleviate the need for section 7.11 and simplify the issue of nexus.

Issue 3.8: Limited effectiveness of special infrastructure contributions

CCC does not have a State Contributions Area in which State contributions are paid. The draft Hunter SIC is yet to be adopted so we are unable to comment on how well this works.

Issue 3.9: Difficulty funding biodiversity through special infrastructure contributions

As we are not yet subject to a Hunter SIC, it is difficult to provide feedback on this issue. However, it is envisaged that to ensure transparency and simplicity, biodiversity offsetting should be managed under a separate framework to that for infrastructure delivery.

Issue 3.10: Affordable housing

While an affordable housing contribution may be appropriate in some parts of the state, it is not really applicable to our LGA. Statistics show that we don't really have a housing affordability issue. Low and very low income households may be experiencing some housing stress; however, this group is unlikely to be in the market to purchase a home, even at a lower cost (i.e. affordable housing). For these types of households, discounting contributions for social and community housing providers could be appropriate.

Under the Cessnock City Wide Infrastructure Contributions Plan, based on lower occupancy rates and therefore lower demand on infrastructure, we already give a 50% discount in applicable contributions to some types of affordable housing such as secondary dwellings, seniors living developments and housing for people with a disability (that is not already exempt under a Ministerial Direction). To provide consistency across the state, these types of discounts are something that could be considered mandatory and not up to the discretion of individual councils, which would provide for improved certainty for the development industry and those providing these types of affordable housing.

Issue 4.1: Sharing land value uplift

CCC supports a funding mechanism that doesn't disadvantage residents. In order to be equitable and fair, the value capture would only occur when there is a transaction in which the windfall is realised, such as with the sale of land, development of land, or if accessing equity of land value to secure funding. Otherwise, capturing the value beforehand would financially disadvantage those landowners despite not necessarily having a personal advantage of the infrastructure or being able to pay for increased rates or local levies, thereby pricing out lower income residents (forced gentrification).

It is therefore suggestions that the existing situation of user pays via local infrastructure contributions must remain in some form, albeit a more simplified system is required.

Issue 4.2: Land values that consider a future infrastructure charge

An infrastructure development charge attached to the land title would be no different to what is currently occurring, i.e. the developer passes infrastructure charges to the end user as a component of the price of the land.

Issue 4.3: Land acquisition for public infrastructure purposes

This is a very complicated issue and we can offer no simple solution. Resolving contributions for development areas with fragmented land ownership requires robust masterplanning in advance to assist with what will ultimately become a matter for negotiation with individual land owners.

The rising values of land to be acquired should be addressed across the board, with some councils indexing land costs regularly using differing types of indexation methods, while others are using updated land valuations.

A consistent system for dealing with increasing land values and a better way for councils to acquire land for public use is welcomed.

Issue 4.4: Keeping up with property escalation

At the moment, costs associated with valuation are paid through administration funds. Councils should have the ability to recoup the cost of valuation through the contributions plans.

Issue 4.5: Corridor protection

This is always a difficult issue for councils and perhaps the best way of dealing with this is for all URAs to be dealt with through a Planning Agreement.

Issue 4.6: Open space

CCC has an adopted strategy in relation to open space and recreation and this strategy informs the City Wide Infrastructure Contributions Plan. Council notes that minimum standards should be set by DPIE but also allow councils to be flexible to alter the standards in relation to different types of development. Benchmark cost standards across the board would assist councils in the preparation of contribution plans and would be welcomed.

Issue 4.7: Metropolitan water charges

Council would like to reply to this issue once we have had the opportunity of reviewing the response from Sydney Water and Hunter Water.

Issue 4.8: Improving transparency and accountability

Developing a complete software package for contributions, which could be used across the state and integrates with Council's existing software would be of great assistance. This should include registers, financial tracking with infrastructure, estimate of costs, infrastructure delivery tracking, calculating quotes, tracking payments, implementation of CPI increases, receipting, automating conditions of consent, linking mapping, automation with websites, preparing end of financial year reporting, etc. This documentation could be linked to a central area with DPIE for reporting purposes in line with any legislation changes.

Issue 4.9: Shortage of expertise and insufficient scale

The table provided on page 53 of the Issues Paper states that there is a shortage of planners/contributions officers; however it doesn't address the number of councils who are short or without staff in this area and who have to rely on consultants. There are a number of contributing factors and things that could be done to address this issue:

- This issue is in part due to a complete lack of educational opportunities for contribution planners in NSW. This includes planning degrees where contributions are not even an elective subject. One option would be that the DPIE prepare and conduct training or professional development for planners, this could be delivered by a university or private training provider. UTS previously conducted an annual short course relating to infrastructure contributions funding, which was extremely helpful but has now ceased.
- The complexity of contributions planning. This complex system means that many councils, particularly small councils, do simply not have staff skilled in this area and their only option is to use consultants, which is extremely costly.
- Contributions plans should fund the full cost of planners and relevant administration staff wages, which would relieve the burden on councils and assist councils in being able to engage staff in this niche area of planning. Contributions planning is a specialised field and being able to fully fund the cost of staff through contributions would allow councils to pay what is necessary to attract skilled contributions staff.
- It is not only a shortage of skilled professionals delivering the contributions plans, but there is a lack of knowledge around infrastructure contributions within other areas of Council and additional training is often needed in these areas also.

Issue 4.10: Current issues with exemptions

A complete review of all exemptions is required. The current contributions framework in regard to exemptions is confusing, i.e. ministerial directions regarding exemptions. It is recommended that a discount system is investigated, rather than an exemption. A review of other states' policy framework should occur in relation to this.

Any discounts or exemptions need to be justified and not be detrimental to Council's overall ability to deliver adequate infrastructure for the community.

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

Works in Kind (WIK) agreements are a good way to ensure the delivery of infrastructure. WIK agreements allow developers to deliver the infrastructure more effectively and usually far earlier than a Council would be able to. CCC has a Works in Kind Policy and this sets out requirements for entering into a WIK agreement. A WIK agreement should not allow the accrual of credits as this leads to an extra layer in delivering works in the contributions plan and could impede the delivery of infrastructure within catchment areas of the plan.

Cessnock City Council support a simpler, more transparent, more efficient system for local infrastructure delivery. It is understood that the Commission will next hold stakeholder roundtables and then provide a Final Report to the Minister for Planning and Public Spaces by the end of 2020. CCC would like to be consulted and continue to work together to deliver a reformed infrastructure contributions system for New South Wales.

If you require any further information, please do not hesitate to contact either [REDACTED]
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[REDACTED].

Yours faithfully

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