

**Issues Paper July 2020
Comment**

The Biblical reference at the beginning of the *Issues Paper* (IP) “*Seek the peace and prosperity of the city ... because if it prospers, you too will prosper*” (*Jeremiah 29:7*)” sets the tone for the rest of the IP and begs questions concerning the real purpose of the IP and related review, and the nature of future decision processes for infrastructure for NSW.

The tight time frame for the very complex and vexed issue of infrastructure funding, a ‘wicked problem’¹ by any measure, and clearly identifiable as such in the IP, suggests a timetable to meet a narrow, political, ‘ideological’ agenda rather than a genuine attempt at real reform with appropriate, equitable funding mechanisms. Wicked problems often require complex solutions, but most particularly appropriate solutions which are equitable and mindful of the nuances and subtleties of the system as a whole, and not beholden to particular biased ideologies. Effective implementation is dependent on genuine engagement with **all** the stakeholders throughout the whole iterative process from problem ‘naming’ to solution for without such involvement and understanding the imposed solution is bound to fail. Those affected who haven’t been consulted have no ‘skin in the game’, no ownership. This is a sure-fire way of creating dissolution or disaffection politically.

Tight timetables are a repeating theme at both State and Federal levels when outcome is known or part of the mindset driving the review process; they feed scepticism and mistrust about purpose and intent, and raise serious questions about the empirical robustness of outcomes.

The current IP predetermines what will be considered and what won’t with regard to infrastructure funding through a less-than-transparent process. The IP fails to provide evidence as to who was actually consulted. Who are the “*peak stakeholder groups*” who helped shape the material in the IP and how did they shape it? But more importantly, how representative are they of the wider community which will be affected by the new policy. Where is the evidence to support the choices made for the IP? It is not sufficient to provide a list of references at the end of the paper. All the issues should be canvassed and there must be a clearly-stated nexus between what is said and the references so we can see the empirical evidence supporting the chosen alternatives for consideration. It is not convincing to make a statement that ‘pigs might fly’ without appropriate support showing that in fact pigs have the appropriate mechanisms for flying and there have been trials testing the hypothesis or factual evidence for efficacy. The IP has done itself an injury by not making the connection with supporting evidence for the choices made.

The cursory examination of matters critical to ratepayers, such as current council rating structures (less than half a page in Appendix C page 64 and relatively little in the body of the IP) only adds to questions of comprehensiveness and genuine purpose of the IP. There is far more to the issue of rate capping than the anaemic information provided. Problems of equity for socially-disadvantaged councils and other potential mechanisms for rating structures are not canvassed at all. It is left to others. Without explicit statement there is a clear momentum in the IP for rate capping removal. And it is not convincing to tell us otherwise when the following statement is made in the body of the IP : “*On 18 June 2020, the Minister for Local Government announced the Government’s response to IPART’s Review of the Local Government Rating System (2016) and advised that the Office of Local*

¹ Australian Public Service Commission (last reviewed June 2018). *Tackling wicked problems : A public policy perspective*. <https://www.apsc.gov.au/tackling-wicked-problems-public-policy-perspective>

Government is exploring changes to the rate peg to account for population growth. This development is welcomed by the Review and complements an efficient, reformed infrastructure contributions system.” (IP, p.28). Pity ratepayers seem to have been excluded from that discussion. And what is the nature of the “*efficient, reformed infrastructure contributions system*” and how does it “*complement*” the “*reformed*” system when it has yet to be determined? Isn’t that the purpose of the IP? Sounds all very ‘done and dusted’, a sure-fire device to guarantee resistance to change, social disadvantage and enhancement of distrust in our political institutions.

The ‘up front’ Jeremiah quotation in the IP is reminiscent of debunked “trickle down” economic theory: ‘If the city prospers, so will you, the ordinary citizen, too’. ‘All boats will rise’, and so on. Empirical evidence gathered over many years shows that ‘trickle down’ economics is problematic and some might say a con job pushed by ‘delusional conservatives’ to achieve their own self-interested objectives. Perhaps that wasn’t the intention of the use of the ‘good book’ in this instance, but it certainly leaves this reader with that impression.

The IP Bible quotation uses the term “prosperity”. This particular version of this overused verse is a meme used by exponents of ‘prosperity theology’ or ‘health and wealth’ fundamentalists who have a particular view of the world not necessarily shared by others.

Another version of the same verse states: “*But seek the welfare of the city where I have sent you into exile, and pray to the Lord on its behalf, for in its welfare you will find your welfare*” (NRSV). This is quite a different view of the verse which has significant ramifications for how the problem at hand, mechanisms of funding for infrastructure and prioritisation, are managed. There is a big difference between “welfare” and “prosperity” with the former referring to the ‘social effort designed to promote basic physical and material well-being of people in need’ and the latter ‘characterized by financial success or good fortune’ without any reference to real social benefit or equity.

So why was the “prosperity” version of the verse chosen for the IP? Is it the intention of the Productivity Commission (PC) to push a particular ideological line driven by Christian fundamentalism in its thinking and subsequent recommendations without proper critical review of what the empirical evidence shows? And is it the case that the IP is doing nothing more than signalling to the converted that their economic ‘gospel’ is being fulfilled? The prominence of the Jeremiah verse at the outset suggests so and is worrying because it appears as if an economic solution based on a particular religious belief is inserting itself into government, a bridge too far! Isn’t there a separation between Church and State!

The IP quotation is also without context. The verse, from a letter from a prophet to folks who are exiled, also states in verse 8: “*...Do not let the prophets and the diviners who are among you deceive you, and do not listen to the dreams that they dream*”. So, should we view the current IP with a sceptical or jaundiced eye given the prophet’s warning! Are we about to be deceived or being deceived²?

I have read the IP and take issue with it at many levels but have no intention of commenting in detail because I’ve formed the view that I am probably wasting my time. The matter’s already been determined. Been here before. Take for example the *Draft Aboriginal Cultural Heritage Bill 2018 (NSW)* which I spent considerable time reviewing with comment but which has now disappeared into the ether. Where did it go? However, I cannot let the current IP pass without some comment lest it be said: ‘no-one raised these matters’ and it is given ‘free passage’ as witnessed by me elsewhere.

² Please note I have no religious affiliation but regard inclusion of Biblical material as inappropriate for a review paper for government purposes.

Unfortunately, the IP seems to be based on dated economic thought and 'binary choice' thinking where ideas are 'black or white' or mutually exclusive when the reality is that choice is more complex and nuanced particularly for wicked problems. A good example of this in the IP is the "cost recovery" discussion where there is a binary choice, "beneficiary pays" **OR** "impactor pays". But it is also noted that "*It is not therefore always possible to ensure that the impactor or beneficiary pays as the funded projects offer benefits well beyond the immediate development*", a hint that the binary choice on offer is not necessarily a good or equitable choice. The IP provides no resolution to this binary problem but the fact that a land tax, a favoured choice of the current State treasurer, is raised, sets up this possibility for the future infrastructure funding. Problem solved. Really?!

As mentioned previously the IP lacks thoroughness and rigor and is predicated on a problematic economic growth model. The use of weasel words such as "stakeholders" and "greater certainty and transparency" and "efficiency" and "fairness" are stigmata features of an era past. These are the words of ten-year-old boys designing their own utopian rules for their new cubby house. There is no use of the *Principles of Ecological Sustainable Development* (ESD) enshrined in so much of our legislation at all three levels of government, and no reference to known short-comings in human decision-making in complex and uncertain circumstances³ which accompany wicked problems. But more than that the proposals for infrastructure reform lack an integrated, empirical base including evidence-based criteria for decision-making. It all smells very much like the Hilmer and Karpin Reports on business and management and competition policy which relied on advice from the very managers who were part of the problem, and failed to take account of the robust empirical evidence available which challenged their thinking. It 'seemed like a good idea at the time' informed much of the content of those reports and we are still suffering from the effects of that failed ideology today (Gates & Cooksey, 1996⁴).

Who Knows About the Issues Paper?

The IP does not appear in our local government website for public information or discussion yet the outcome of your review will no doubt impact on the ordinary ratepayer who is already under the gun from unfair rating structures and special rate variations which impose an enormous financial burden on many, particularly those on fixed incomes, through no fault of their own⁵. No-one I have spoken with seems to know anything about the IP or that a review of infrastructure funding is going on. Local government is not helping, or so it would appear, as it clearly does not want to be the bearer of bad news albeit in the form of a new land tax or an uncapped rating structure, or both, items which seem to be high on the current IP agenda.

Local Government Problems

Our local government area⁶ has a very large infrastructure backlog although the quantum seems to vary substantially. How can you ever hope to have certainty when there are large fluctuations in asset values and outstanding infrastructure backlogs? Now you see it, now you don't! Is this part of the 'deception' referred to in Jeremiah 29:8, with local government, handmaiden to the State government, complicit in the process? And how do such changes through desktop modification to the rules engender public trust in the system which is seen to be so easily manipulated and the basis for Special Rate Variation when the backlog value is high?

³ Kahneman, D., Slovic, P. and Tversky, A. (1982), *Judgment Under Uncertainty: Heuristics and Biases*, Cambridge, Cambridge University Press, UK. The literature has expanded vastly since this publication.

⁴ Gates, GR & Cooksey, R. (1996). *Karpin and Hilmer: classic cases of 'It seemed like a good idea at the time'* *Small Enterprise Research*, 4(1-2). <https://doi.org/10.5172/ser.4.1-2.7>

⁵ <https://www.northernstar.com.au/news/this-councils-rates-have-risen-by-63-over-nine-yea/4077918/>

⁶ Richmond Valley Council

Our local government has a history of giving preferential treatment for developer contributions, sometimes out of the public view. Council invariably hides behind the rubric of ‘commercial-in-confidence’ under Section 10 of the *Local Government Act* to keep such information from the public notwithstanding the intent of the Act to provide for ‘transparency’ and ‘accountability’. Council staff and councillors meet with developers and when enquiries are made about such meetings, the council obstructs information which should be readily available. Why should the public have to resort to NCAT⁷ for decision for something which should be transparent? I do not see the IP dealing with problems of this kind although it touched on lack of transparency creating problems of trust in the system, again confirming that the funding mechanism for infrastructure is a complex matter, a wicked problem which remains unresolved and will continue to remain unresolved equitably.

Council and State government have also engaged in many public infrastructure projects which have led to enormous waste of funds. Some are clearly populist ‘pork barrel’ projects appearing with monotonous regularity around election time, while others are driven by failed strategies and poor paid advice, some of it either corrupt or incompetent, or both, a topic for another time.

Engagement with developer organisations known to use the ‘corporate veil’ to avoid financial responsibility are also part of the problem. Of course, it might be argued in a narrow, lawyerly, siloed fashion that these problems are beyond the mechanisms of infrastructure funding but it could also easily be argued that control and regulation of these problems must be part of the consideration to meet the IP’s ‘principled’ objectives of “fairness”, “certainty”, “transparency”, “efficiency”, etc. I shudder to think what might happen if councils defer requirements for payment for infrastructure to give developers a leg up only to find that the developer goes bankrupt⁸ and defaults on payment and/or leaves councils with a huge bill to pay for its borrowings from the State to make sure the development happens (loans an IP suggestion) to meet a state agenda. I cannot understand why a council would want to borrow money for infrastructure. Surely this is nothing but cost-shifting from the State to local government, a real problem with real costs to ratepayers⁹.

Until there is a thorough and realistic review of current genuine, realistic and not ambit infrastructure needs based on the principles of ESD in NSW tempered by measures to deal with the cheats and spivs who exploit the current system for a variety of reasons, the IP is a sop to the public, a tick-the-box exercise. It is clearly an agenda to cost shift infrastructure funding to local ratepayers by whatever means including new forms of land tax, and to sell off public assets to the private sector, which of course as we all know, always does things better!

Local ratepayers are experiencing the dramatic drop in Federal Assistance Grants to local councils, as a result of so-called local government reform, where ratepayers are expected to cough up more money for council budgets including those folks who live in disadvantaged local government areas where capacity to pay is impaired. One size does not fit all! So, is the IP there to provide some form of public legitimacy for cost shifting so that it can be said “we consulted with the community before we put these new measures in place”? One positive thing about the IP is that it gives numbers for Federal Assistance Grants provided to the State and ultimately to local government. It is interesting to note that the size of the Grant pool has not diminished in recent years (see Figure 2.5 of the IP) yet for our local government the amount passed on to us has diminished dramatically so that it now around a fifth of what it was just a couple of year ago. So where did all the money go, the ‘pork barrel’ basket? And who picked up the shortfall? Guess who! A Special Rate Variation special!

⁷ NSW Civil and Administrative Tribunal

⁸ Sometimes deliberately to avoid responsibility

⁹ https://www.lgsw.org.au/files/imce-uploads/206/Cost_Shifting_Summary.pdf

Limits to Growth

In Northern NSW we are already past the 'carrying capacity' of the land¹⁰ yet the State continues to push for further population growth¹¹ and contingent infrastructure development. You only have to look at the parlous state of our river systems¹² to know that we have major problems with both growth and an inadequate infrastructure, which never catches up.

And in our local government area you only have to look at the fact that the sewerage treatment plant at Evans Head¹³ is dumping incompatible effluent into a waterway running into a lake system in a National Park. I see nothing in the IP which will fix those problems and the problems of failing and replacement infrastructure, an area of growing concern as the population grows and ages. Infrastructure usually follows development and does not precede it. We are always playing catchup and never do! Perhaps it would be more appropriate to focus on these priorities without attention to new redistributive funding models?

Let's face it, the State government is hooked on growth and support for the 'big end of town' to be paid for by us. The current review of infrastructure contributions is looking to find mechanisms which while appearing palatable to the public with all the appropriate rhetoric and promise, will achieve that end. A land tax and uncapped rates will solve so many problems as will sale of the family silverware, our assets, in a recycle program that benefits who? Cui bono?

And what could be better than a trading system for developers who can use credits from their development for other purposes. Sounds all very Murray-Darling Basin water-trading rights¹⁴! Such a credit system is ripe for exploitation and not the 'public good'.

Final Remarks

I remain to be convinced that the current review process is a genuine attempt to reform infrastructure funding equitably and in keeping with the principles of ESD. I anticipate that there will be a recommendation for a new land tax as a solve-all for our infrastructure woes so that the State Treasurer can be satisfied. He has been softening us up for this 'great big new tax' for some time now. And there will be further development of the nightmare of public-private partnerships with ultimate control of infrastructure being passed to the private sector as has happened for other parts of state-controlled enterprises under the State's asset recycling program¹⁵. The Land Titles Office comes to mind here. The pressure will be on for this outcome as the State coffers dry up because of SARS-CoV-2. I can hear it now: 'Our stakeholders have recommended a clear choice, a Land Tax, to raise funds for infrastructure in this great State of ours. It is the best way, *ceteris paribus*, to achieve a balance between the competing "*principles of equity, efficiency and certainty that retains the best features of the current system but is more easily understood*". It is a win-win! Mmmmm!

Sadly, this is not a solution to the 'wicked problem' of infrastructure funding, but a political expedient which comes at a significant cost to those least likely to be able to pay, and part of it includes a transfer of wealth.

¹⁰ Northern Rivers Regional Strategy Secretariat (2001). *A Discussion Paper: A Region of Villages*.

¹¹ <https://www.planning.nsw.gov.au/Plans-for-your-area/Regional-Plans/North-Coast/Plan>

¹² See for example: <https://www.echo.net.au/2017/07/richmond-rivers-d-minus-score-explained/>

¹³ POEO licence #2386

¹⁴ <https://www.acco.gov.au/system/files/Murray-Darling%20Basin%20water%20markets%20inquiry-Issues%20Paper.pdf>

¹⁵ <http://infrastructure.nsw.gov.au/restart-nsw/?recom=regional>

Oh, and a little New Testament to finish off in keeping with the pace set by Jeremiah at the 'Genesis' of this IP, an 'Alpha and Omega' if you will. Matthew 7 Verse 15: *"Beware of false prophets, who come to you in sheep's clothing but inwardly are ravenous wolves"*

Here Endeth the Lesson

[REDACTED]