Review of Infrastructure Contributions in New South Wales

NSW Productivity Commission - Issues Paper

This submission is made by me as an individual who has been involved in local government planning and engineering for the past 31 years, nearly 10 of which have been involved in development contributions in 3 different Councils. It is in no way a submission for or on behalf of [redacted], my current employer.

Issue 1.1: Striking the right balance

The principles of efficiency, equity, certainty and simplicity are well intentioned and supported by most. However what is missing from the Review is "outcome". What is the society/community that we are envisioning? What does it look like and what does it include? This is the principle tenet of planning. To create a community by providing for housing, employment, recreation, entertainment etc., including the ability to move from one to the either via either cycleways, shared paths, roads or public transport.

The contributions framework should then be a component of the multitude of solutions available for how this vision/outcome is to be delivered.

Currently, the vision is not being delivered because the driver behind most of the reforms since 2005 have been about money. The development industry is constantly seeking to destroy the contributions system to increase profit margins. The NSW Government reforms have been to minimise contributions and maximise state revenue. The result of this reform, not based on outcomes, is evident in today's complex system which fails all parties involved, including the principal stakeholder lost in all of this, the resident and future resident.

We have all grown up in established areas where we enjoy well connected roads, cycleways, libraries, aquatic centres, community halls, sporting fields and passive open space. The question is should we not create similar experiences for residents of newly created suburbs? In many cases, the residents include our children. Are we deliberately reducing the living standards of the next generation by creating policy settings that deliver massive financial benefits to the state and thereby reduce the burden on the taxpayer, but in doing so deny the same taxpayer with a library or pool in the new suburb and estate?

The resident is more often than not both a ratepayer and a taxpayer. In other words the same person is being delivered an outcome by both the Council and the NSW Government. So if reforms which allow the SIC to be introduced but cap the local development contribution, and therefore deny the resident community facilities and well embellished open space, how is this to the benefit of the resident? Where has the loss of infrastructure been compensated for? The cost of government contributions (local and state) is higher than it ever has been. If, as the development industry argues, this cost is borne by the purchaser (resident/future resident), how is it they are getting a reduced quantum of facilities as a consequence?

Prior to the introduction of the cap, the NSW Government argued that contributions of $60,000 per lot/dwelling charged by some Sydney councils were way too high. They were stifling development

and affordability and contributions towards performing arts centre and aquatic centres were gold plating and unnecessary. So a $20,000 cap was introduced.

The question which is not being asked is how did this reform assist in improving affordability? In fact the opposite appears to have occurred. Ever since the cap was introduced there has been a construction boom. This is great for productivity and employment. But what has it done for affordability? Did a substantial increase in supply result is a reduction in prices. The answer is absolutely not. The opposite in fact has occurred. The past 10 years has also seen property prices increase substantially to the point where affordability is one of the greatest issues facing NSW.

The result is that the resident is paying no less a price for their house or land, but is enjoying far fewer benefits in the way of local government facilities. Prior to the cap, it was possible to buy a house and land package and expect to receive $60,000 towards local infrastructure. After the implementation of the cap, the same resident was paying the same and more for the house and land, and only receive $20,000-$30,000 in local infrastructure for their money.

How is this a good outcome? Where did the benefit of the reduction in contributions go as far as the resident is concerned?

This is the balance that needs to be struck. The outcome for existing and future residents needs to ensure that expected standards of living are no worse an equally shared.

The current policy settings are ensuring that the future residents of Sydney, and the majority of this growth is in Western Sydney (Western Parkland City), will not enjoy the same lifestyle or benefits as enjoyed by residents in the Eastern Harbour City and the Central River City. Is this what we want? Is this the vision for Sydney, one where there is a clear divide between the have and the have nots, and that line being the boundary of the Western Parkland City?

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

One of the issues which has arisen over the last 15 years and which has neither been mentioned nor addressed is the infrastructure being considered as Essential and whether it should be included in a contributions plan at all.

Historically, subdivisions in NSW have tended to favour the Torrens Title approach of delivering individual lots and creating and dedicating public roads as a result. The provision of a public road is a “cost of development”. It is essential only so far as we have chosen not to proceed with community title estates where the internal roadway is private common driveway owned by and managed by all owners in the estate. Historically, developers have borne the cost of providing the land and the cost of roadworks in order to deliver the end product, being the torrens title lot.

Council’s typically did not include roads in early contributions plans as it was an essential requirement to deliver the final product. It was a direct cost to the developer. Where significant planning was undertaken to support rezoning by delivering masterplans of how the estate would and should look like, and where multiple land owners were involved, Council’s introduced elements such as roads and detention basins into contributions plan, not because they were essential infrastructure, but as a means of equity. That is, all landowners shared the benefit of development

and the burden of infrastructure, not simply who was unlucky enough to have a planned collector road or a catchment based detention basin sitting in their parcel of land.

What started as a means of ensuring a masterplan could be delivered as designed, and delivering equity to all landowners, has turned into what is considered “Essential Infrastructure”. It is not. It is no different to the other forms of residential development, namely medium and high density. High density development for instance requires elevators and detention tanks and often fire sprinkler systems above certain heights. These are “essential” components of a high rise tower, but they do not warrant inclusion in a contributions plan in a renewal area. The developer is not compensated for putting these elements into the building. They are mandatory requirements and a direct cost of business.

So, in the case of residential subdivision, why are roads and water quality/quantity facilities included in a contributions plan? Why are they not a cost of business? When you go to the supermarket to buy a loaf of bread, you pay $3.50. You don’t see the massive bakery creating the bread, the staff making the bread and the delivery trucks distributing the bread across the state. The shops unloading the product and storing it on the shelf for sale. There is no “contribution plan” recouping these behind the scenes costs. Rather it is factored into the $3.50 cost of the bread.

Subdivision should be no different. If Council’s and various state agencies require that roads, drains, water quality and water quantity basins are provided as a necessity of allowing the subdivision to proceed, then there is a real question as to what they are doing in a contributions plan? Or if they are in a Plan, why they are counted towards the capped limit?

Contributions plans were borne from the need to somehow capture the “cumulative” effect of development that could not be delivered by an isolated development or developer. You can’t ask a small developer to deliver a few square metres of library and each new development to expand on this. This is where CP’s are most relevant. Good planning can look at consolidating infrastructure requirements so that it is more efficient. Collector roads to distribute traffic, large scale water quality/quantity basins to avoid each individual developer having to have their own facility and the result being a plethora of hodge podge facilities requiring maintenance at great expense. Again, the torrens title model demands this. You can’t ask a developer delivering a 10 lot subdivision to create a stand alone basin that remains in the developer’s ownership forever and a day. We do so in medium and high rise development by having single facilities on the site which are then the responsibility of the body corporate. OSD is one of the principle facilities provided within single development sites. In greenfield estates, the ideal outcome is to develop large single facilities appropriately located towards the bottom of the catchment and near the receiving waters. To deliver this efficient outcome, these facilities were inserted into contributions plans to ensure that everyone benefiting contributed, and anyone burdened was compensated. In other words, Council’s used Contributions Plans in a way that delivered good “outcomes”.

However, when the cap was introduced, it failed to understand this role that a contribution plan plays. It is not about whether the infrastructure is “essential”, rather it was about delivering it in an equitable and efficient way.

The point being, that a great many contributions plan, including those IPART approved plans exceeding the cap, are collecting funds for facilities which should be “cost of development” and thereby not including, or not being allowed to include, the infrastructure which local developer contributions were really developed to provide, namely social infrastructure.

Cost of business infrastructure, such as roads, water quality and quantity basins are “Impactor pay” facilities which should be borne by the developer.

Issue 2.2: Integrating land use and infrastructure planning

Council absolutely agrees with this issue and it is at the heart of the comments made in Issue 1.1 regarding the need for the reform to ensure the anticipated outcome is delivered.

As most contributions practitioners will advise, Planners consider their role completed once land is rezoned. It is someone else’s responsibility to deliver and implement their vision. They have delivered the framework and move on to the next job.

However this is where “outcomes” fall over. When reforms tinker with the assembly line without understanding the project as a whole.

Can you imagine if reforms, as they have occurred with development contributions, being applied to the assembly line at the warehouse constructing the Holden Commodore. The vision from the Company is clear. We are constructing a large family size car capable of seating 5 occupants and with room for their bags and accessories and capable of towing a boat or caravan on long trips. The cost to deliver this car is obviously determined and known in advance and for the sake of this exercise let’s argue the cost is $28,000 per unit. The selling price is $35,000 per vehicle and this profit is shared between the Company, Dealers and transporters.

The introduction of the “cap” in NSW was akin to the GM saying to the warehouse Board “deliver the Commodore at a cost of $22,000”. When the Board argues this is unreasonable and things will need to be removed or culled, and wants to know what changes the Company requires, the Company issues a list of “Essential” criteria. Body, wheels, engine, fuel tank, drivers seat, brakes, lights and indicators. Anything else is “non-essential” and the warehouse can find its own way to include these at no cost to the Company.

So out of the other end of the warehouse comes a Commodore with missing elements. One coat of paint applied by hand, no back seats, no rear or side vision mirrors, no airbags, no bluetooth, no radio/CD etc..

Any company whatsoever that worked in this way would not survive in the real world. Yet this is the way planning works in NSW. The only difference is that as consumers, we would not buy the $22,000 Commodore. We would steer clear and look for an alternative option which reflected our needs and expectations.

With recent purchasers of greenfield land, they have seen the brochure for the fully equipped Commodore. They have even paid in full for it. They are unaware that the car that has been delivered to them is missing lots of bits and those missing bits may never come (libraries, pools etc).

Issue 3.1: Principles for planning agreements are non-binding

Commissioner Simpson undertook an independent Inquiry in the contributions system in the early 90’s. This led to the Reform which delivered S94 as we know it today. A Council was unable to introduce a condition of Consent to a development requiring payment of monies, dedication of land or a combination of both, unless it was required by a Contributions Plan adopted by the Council. The

Contributions Plan further needed to meet the tenet principles of nexus (spatial and temporal) and apportionment and these requirements are built into the EP&A Act and Regulation. They were also extremely well documented in the 1997 Section 94 Manual prepared by the then Department of Urban Affairs and Planning (DUAP). Most older contributions practitioners retain this Manual and it is the best assistance when teaching new contributions officers what contributions are about and why they exist.

There is absolutely no reason why similar guidelines and changes to the Act and Regulation could not be undertaken with regard to planning agreements. The NSW Government tried and failed to reform the planning agreement system 3 years ago, and has reintroduced the same controversial reforms from then, without detailing what submissions were received, how they were addressed and considered. It would appear on the face of things that Covid-19 has provided an opportunity to pass ill conceived reforms which were too controversial to pass first time around under the cover of a pandemic crisis.

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

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.

Planning Agreements can also play a role in providing for long term maintenance obligation in association with delivery of riparian corridors, environmental corridors or biodiversity offsets. Typically development contributions were established to meet one off capital requirements, but as environmental requirements have evolved, this aspect of maintenance needed to ensure establishment of the environmental facility has become more prevalent and planning agreements appear to be a mechanism which provides the solution.

Unfortunately, since the introduction of Planning Proposals, VPA's have also played an important role from a Council perspective in managing either infrastructure issues associated with undesirable developments and/or considering how the public can gain benefit from a development which is often not in the public interest.

In the past, land use and infrastructure planning occurred with the timely review of the Council's Local Environmental Plan. Spot rezonings were often requested by developers in their own interest and Council had the ability to deny the request with no appeal mechanism.

Planning Proposals are glorified spot rezonings and represent developers seeking out of turn and out of scale development specifically for their interest, with little or no regard for those around them. The out of turn nature of a Planning Proposal, but more importantly the small scale isolated nature of such proposals, makes consideration of infrastructure extremely difficult to determine. As mentioned previously, development contributions considered the impact of cumulative development and determined the overall need. Consideration of ad-hoc development as occurs with Planning Proposals is difficult to manage using development contributions plans. You could argue that that the two are almost incompatible. Specific VPA's are a better fit in this regard.

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

Absolutely, but only if properly controlled.

Public perception is that State and Federal Governments are skewed towards governing for and on behalf of big business and the wealthy over the many. This has often left local government in the position of advocating for the little guy, the ratepayer. The public, who abide by the rules of the LEP, versus the rich developer seeking a Planning Proposal, which at its core, is about individual financial interest and benefit.

Council's that applied "value capture" mechanisms into VPA's, particularly in conjunction with Planning Proposals, sought to seek benefit on behalf of the public, the "public interest" per se.

Numerous Council's settled on the 50% value capture position. In short, Council's engaged a Valuer to determine the benefit of the uplift above and beyond what is permitted in the LEP. This then provided a target for which infrastructure in close proximity of the development would be considered as providing the "public benefit". There is nothing sinister or untoward in seeking to allow the public to benefit from proposals that otherwise have little or no benefit to them. In many cases, the opposite applies and these Planning Proposals can have a negative impact through overshadowing, increased traffic generation, loss of views, etc. Value capture seeks to give something back to the community.

Unfortunately, this has been misused by some Councils who have used this as a revenue raising means and no apparent benefit has flowed back to the community in the immediate vicinity and most affected by the Proposal. However this is simply an issue to be resolved through appropriate guidelines and possibly enshrined in the Act or Regulation.

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

There is no reason why the key principles of s94, being causal (what), spatial (where) and temporal (when) nexus should not apply equally to planning agreements. The "public benefit" for which the planning agreement has been used, should coincide with the location and timing of the development application or planning proposal which has generated the need for the agreement.

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

Absolutely. Unfortunately, much of the criticism arising from lack of transparency in planning agreements lies with the State. Given that Council's operate under various legislations and policies directly created by the State, it was always a matter of concern that the State willingly and knowingly executed planning agreements which did not abide by the very rules and regulations they expected and required Council to follow. In fact some of the key elements of recent SVPA's executed by the Department, if replicated by local government, would result in Ministerial intervention, legal proceedings and reform to prohibit such practices.

Issue 3.2: Transparency and accountability for planning agreements are low

There is absolutely no reason why the State cannot develop policies which apply equally to State and Local Government.

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

Planning Agreements exist in both the EP&A Act and Regulation. It is not difficult to codify the critical elements and insert them into the legislation. At worst, the main elements can be in the legislation and a VPA Policy referenced which sits in the VPA Register webpage, which is a well-constructed site.

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

As mentioned above, the State VPA Register is a well-constructed site. It separates VPA's into 4 categories within their life, being Notification, Under Consideration, Executed and Concluded. The site is easily searchable and typically contains the two critical documents, being the Agreement and the Explanatory Note.

There can be no reason why the State cannot have a central register as exists for Local Environmental Plans. Planning agreements and even contribution plans could be uploaded via the Planning Portal, and the documents readily viewable in a single centralised system.

Issue 3.3: Planning agreements are resource intensive

The extent to which planning agreements are resource intensive needs to be considered in context. Some Council's include an administrative cost component into an agreement to somewhat offset this cost. However, whether they do or don't, if the agreement is delivering millions of dollars in infrastructure, and the cost incurred is staff salaries and legal expenses, surely that is a small price to pay. Surely that is the role some parties play within Council to assist in infrastructure delivery.

It must be remembered that when Councils collect monetary developer contributions, there is a resource intensity in applying conditions, managing plans, indexation, land valuation, collection and reporting. In addition there is substantially project management required to then deliver the infrastructure for which the funds have been collected.

Planning agreements are no different and this is accepted as part and parcel of what needs to be done to deliver infrastructure for our communities.

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

This is a question to which suitable discussion needs to be held to determine the best course of action. There are some obvious cases where planning agreements work well (Planning Proposals and subdivision developments where there are only a small number of developers). However if you were to list cases where they are not considered "appropriate" then a reasonable debate could be had and a policy position determined as a result.

Currently, planning agreements appear to work hand in hand with development contributions and the immediate response suggests there does not appear to be occasions when it is not an appropriate mechanism.

Issue 3.4: Contributions plans are complex and costly to administer

Contribution plans are not opaque. The reforms arising from the Simpson Inquiry ensured that Plans are far more transparent today than they were prior to the mid 90's. Plans also need to be robust to survive both developer scrutiny and appeal in the Land and Environment Court. Plans that seek to collect in excess of the "cap" are also required to pass through the scrutiny of IPART and DPIE.

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

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.

However, while this approach works for established areas, it is not capable of addressing greenfield subdivisions without significant review.

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

As mentioned at the start of this submission, outcomes must be at the heart of decision making. It is insufficient to reduce complexity for developers and Councils if the end result is a lessening of the outcome required.

Increasing S7.12 in established areas can be a win-win. It greatly reduces complexity and risk and with minor amendments can be ensured that outcomes remain delivered. For example, if Councils were still required to establish nexus and prove the need for infrastructure in the same way that is required in a S7.11 Plan, but the payment mechanism is simply changed, then you have the best of both worlds. The robustness of S7.11 with the simplicity of S7.12.

Furthermore, the State has undertaken little or no analysis in this regard and many practitioners have noted that there are perverse outcomes arising from S7.11 that could be mitigated with an increased S7.12 levy. For example, most Contributions Plans determine a per person rate by dividing the cost of the infrastructure required by the anticipated population increase. This per person rate is then converted using occupancy rates into a form compatible with development applications, ie contributions for 1, 2 and 3+ bedroom units/dwellings.

While this is an accurate, robust and transparent way to apportion contributions costs, analysis shows that for when applied to low, medium and high density, the contribution as a percentage of the development cost varies with the three forms of development. In fact, the percentage rate is inversely proportional to the density. As such lower density developments such as granny flats and dual occupancies often pay a much higher percentage than medium density development. The lowest percentage rate applies to high density.

On the one hand, it has always been argued that high density development delivers a better outcome than urban sprawl from an energy, environmental and infrastructure point of view. The above illustrates this case. However, when the Department is espousing the "missing middle" being lower density development which is more palatable than high rise and reduces urban sprawl, the current contributions regime works against this outcome to some degree.

It would not be a difficult exercise for DPIE or a consultant to undertake a real world analysis of existing approval data for low, medium and high density development to confirm the implication of S7.11 versus S7.12 across NSW and metropolitan Sydney.

The current DPIE reforms seeking to implement a process by which higher percentages of 2 or 3% can be reached, are lazy and fail to investigate whether the 1% as a base is or was ever an

appropriate rate to begin with. Investigating the 1% levy with years of examples available would be true reform.

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

For greenfield subdivisions, it is hard to see how you can reduce the complexity of S7.11 which remains one of the best mechanisms to levy developers to deliver the infrastructure arising from development growth. The development industry has constantly screamed for either outright removal of contributions or increased transparency. The irony being it is in part the need for robustness and transparency and appeal rights which have made S7.11 so complex.

Planning agreements, when used in conjunction with S7.11 Plans can be one way to increase certainty for all parties, but it is not an ideal mechanism where multiple land owners exist.

In the past, development fronts were minimised to facilitate efficient development and in particular to minimise the number of fronts for which large public infrastructure such as electricity substations, sewage and water headworks, regional road upgrades, schools, hospitals etc were required.

The opening of development on multiple fronts to appease the cry for increased supply, and the introduction of such ”at no cost to government” needs to be independently evaluated to determine if it has been a successful approach, in particular to providing housing affordability, which was the main reason for the multiple front approach.

Another mechanism which has not been considered or evaluated is the introduction of a single contribution rate in metropolitan Sydney. The rate would be determined by the State and the State and LGSA, or individual Councils, would then sit down and negotiate a “Contributions Plan” that would provide the transparency as to where funds for each LGA were to be spent, detailing both local and regional/state infrastructure. Ideally these “Contributions Plans” should be prepared in conjunction with land rezoning as most of the required infrastructure will have been determined by that stage. This also provides the public with a clear understanding of what infrastructure will and will not be provided when land is rezoned. It also enables future land owners to have an opportunity to have a say in what their community will look like if they disagree with the infrastructure being provided or not provided.

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

Contributions have been sought at construction certificate stage by Councils predominately as a risk mitigation measure. In the case of subdivisions, most Council’s require payment to be made prior to the release of the subdivision certificate. Given that this certificate remains the responsibility of Councils and it is not possible to register the subdivision without Council signature, payment at this stage is generally considered to be without risk.

However, in the case of low, medium and high density type development, where private Certifiers are involved in the issue of Occupation Certificates, where developers are typically smaller and less professional and where financial difficulties and insolvencies are not uncommon, the risk of receiving a contribution at occupation certificate stage is considered unacceptable. Furthermore the ability for developers to create $2 companies exclusively for a single development has made Councils risk averse in these development types.

While it is technically superior to have contributions received early in the development to more closely align infrastructure delivery with the occupancy of the development, the reality is that very few Councils are that efficient that they are expending funds as quickly as they are being received. Councils are getting better at developing capital works programs aimed at looking after existing assets, but this has not automatically improved the ability to manage future assets and expend contributions already received.

In addition, given that the ability to pool funds has been available for many years provides reasonable flexibility to deliver infrastructure with good alignment to development if the infrastructure delivered is prioritised correctly and well.

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?

As mentioned above, the main risk is the actual receipt of the contribution itself and the lack of desire of Council to have to go through a time consuming process for cost recovery.

In the case of subdivisions, most Council plans would already require timing of payment to be at the subdivision certificate stage.

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

As indicated, the risk of non payment of contributions tends to be higher with smaller scale developments and low tier developers not associated with subdivision. Councils do not wish to spend months or even years chasing funds because of non-payment and developers that have gone into liquidation. This also does not assist in timely delivery of infrastructure.

Council's seek surety of payment as much as possible in the way the development system operates. This means that occupation certificates must not be allowed to be issued until any and all contributions and fees, bonds etc have been made. Essentially, all conditions of consent need to be satisfied and no certifier, whether public or private, should be allowed to issue the OC until ALL conditions are met and all payments made.

Once again the objective is to achieve an outcome, being delivery of adequate infrastructure. The system needs to ensure this outcome is met without overly burdening the majority of developers and developments which occur without issue.

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?

Unfortunately the existing system is based on each individual Council determining its own way of operating, provided it is within the legislated framework that exists. This includes determining whether to borrow or not borrow.

Unless there is a greater collaboration between DPIE, the Office of Local Government and individual Councils, this issue is extremely difficult to fix or improve.

As mentioned earlier, if delivering the outcome is the principle objective, and the beneficiary of that outcome is both a ratepayer and a taxpayer, it strongly suggests that both the State and Council need to work together to deliver on behalf of their constituent. It is insufficient at times to rely on

policy and procedure alone to deliver a desired result. On occasions you need to take the bull by the horns and be part of the process, even drive the process, to ensure the desired outcome.

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

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. To call out Council's that have significant reserves to explain themselves, and then hopefully work collaboratively with those Council's to ensure their capital works processes are adequate to expend the funds, is a good step.

Issue 3.6: Infrastructure costs and contribution rates are rising

One of the biggest issues with development in NSW is that the rezoning process, whether it is creating new land release areas or increasing density, is meeting "community" demand yet the benefit is directed to the existing land owner first and foremost. It privatises the profits while socialising the losses.

This issue has never been addressed and is at the core of why the end product, being the purchase of a development or parcel of land is so excessive.

Given that the State has in its fold a "developer" in Landcom, who are active in most forms of residential development, including greenfield subdivision, there is ample evidence of the costs associated with development and what percentage of the total is related to "land".

In the past, the NSW Government was able to address the issue through the outright purchase, at market value, of land to be rezoned under the Metropolitan Development Plan. Essentially, land required for open space and environmental protection was paid for at the initial value prior to rezoning. It was not subsequently paid for at the much higher value which occurs post rezoning.

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?

If the ultimate objective is outcome, then the basis needs to be that which is most likely to deliver the outcome. IPART released a final report on local infrastructure benchmark costs in 2014. The aim was to introduce a benchmark against which to assess contributions plans to ensure that the stated costs of the infrastructure to be provided were reasonable. This is a good approach. While it does not necessarily investigate the actual costs being incurred by Councils across the state, it nonetheless was a good starting point. It also provided a benchmark that the Council could use when tendering for the construction of a facility.

As such, use of reasonable costs maximising the chances that the Council will deliver on the stated outcome without risk of cost escalation and blowout threatening the provision of the infrastructure.

If the development industry is wanting "efficient" costs, then by all means let them set the cost and let them deliver the item for that cost through a works in king agreement or planning agreement. Too often the industry advises that costs included within a Plan are too onerous, yet when the project is out on tender, the quotes obtained are not reflective of the values the industry claim the project can be delivered for. They cannot have it both ways.

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?

As discussed in Issue 2.1 – it is considered that the infrastructure intended for inclusion in a contributions plan has been lost and the "Essential" works list shows this to be the case. At best, the Department erred in creating the list by excluding the valued community facilities such as libraries and pools, instead seeing roads and drains as being essential. At worst, the Department has been expertly lobbied and have added infrastructure that normally would be the role of the developer to implement into the contribution plan process. This effectively credits a developer for work they would have borne the cost for regardless and is therefore not a contribution. Each dollar for normal "cost of development" items that is included in a Plan is two dollars of profit redirected back to the developer. One for paying the dollar as a contribution when it need not and the second for displacing the dollar for an item it otherwise should have contributed towards.

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?

Councils alone cannot rezone land. We cannot rezone land for urban release and we cannot rezone land to increase density in established areas without the concurrence of the Department.

The issue has never been about independent review. The Department has in many cases worked hand in hand for years with the local Council prior to the rezoning being finalised. They have in many cases worked hand in hand with the local Council as part of the process developing the required infrastructure list. Yet despite this, they implemented reforms such as the contribution cap knowing full well the implications that reform would have.

The Menangle Park Urban Release Area was almost 30 years in the making. Thirty years of planning, studies, assessment and extensive consultation with multiple government agencies and stakeholders. In fact the two most significant land owners in the release area were Council and UrbanGrowth (a State agency). Yet the problems all occurred when the State tinkered with contributions and implemented caps just prior to the land being rezoned. By the time the land was rezoned, the likelihood that the outcomes envisaged through the rezoning would be achieved diminished significantly.

There should be an independent analysis of the history of the Menangle Park Release area and the lunacy of decisions made by the State in the latter stages and the effect they will have on the outcome. A light needs to be shone on examples such as this so that lessons are learned and hopefully our practices reviewed and reset to ensure these issues do not keep being repeated. Issues such as:

- Given planning for the rezoning had taken place from the 1990's until 2017, initiated by the State, why was grandfathering of contributions caps not considered before being implemented in 2012?
- If no grandfathering or concession was to be given for rezonings years in the planning but not yet finalised, where was the assistance from the State to see the outcomes envisaged implemented?
- Given the land was predominately owned by the State, including the proposed riparian lands rezoned as RE1 – Public recreation, why would the State sell all the lands to a private developer and then leave how acquisition of the land was to occur unresolved?

- Once the land was rezoned and the cap introduced, why was Council required to undergo the IPART process alone for a rezoning that the State initiated? Where was the assistance from the State?
- Where is the urgency when IPART completed their process in 6 months and the DPIE/Minister take 15 months, leaving Council exposed to financial losses for any DA's approved before the Plan is IPART approved?
- IPART in their assessment considered the inclusion of the riparian land into the CP as appropriate and recommended as such. The Minister did not support this recommendation. To be clear, land that was considered flood prone and of riparian value during the rezoning process and subsequently zoned as RE1 to bring it into public ownership, is now not supported by the Minister for inclusion into the Plan. The land which was recently in public ownership by virtue of state ownership, is not sold to a private developer.
- When the first DA submitted went to the L&E Court, Council requested that the DPIE not issue satisfactory arrangements as this would both enable the Court to determine the application and it would instantly subject Council to an estimated loss of about $1.22 million in contributions. Nonetheless, DPIE signed an SVPA and secured for itself monetary contributions unattached to the delivery of any infrastructure within the release area. This satisfied the satisfactory arrangements clause in the LEP and enabled the Court to approve the DA. It also resulted in an immediate loss to Council in contributions. That loss is currently valued at $2,137,040. To put this into context, Council has yet to collect a single $1 in contributions in Menangle Park, yet it has already incurred a loss of $2.14 million with the total assistance of the State.

As previously mentioned, the DPIE appear to consider their main job complete when the land is rezoned, and this is the biggest issue. The job is not complete until the last house is built and all the infrastructure envisaged prior to rezoning the land has been implemented. Unfortunately not only does the State disappear and walk away from all responsibility after the rezoning, but it is during this implementation stage that they can do the most harm and damage as shown above. The above shows not an exercise in good planning and outcomes, it could be a episode from the ABC show Utopia.

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

The introduction of S94A/s7.12 occurred in around 2005. As such, there is 15 years of data available for dissemination as to whether s7.12 and the base rate of 1% is delivering for the community. Certainly it is understood by all that s7.12 is far simpler for all concerned to administer, to understand and to determine the financial obligation. As an added benefit it cannot be appealed in the L&E Court.

But DPIE have never bothered to undertake even a rudimentary analysis of whether the 1% is appropriate and what benefits could exist if s7.12 was used in preference to s7.11.

As discussed previously, DPIE is espousing the "missing middle" as an alternative between the extremes of low density land release and the contentious high rise development. If DPIE bothered to undertake an analysis they would realise that as a percentage of the development cost, s7.11 is greatest for low density development, decreasing for medium density and decreasing further for

high density. If you want to promote the "missing middle" form of development, then making no change to the current regime does not assist, but continues to hinder this development type.

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?

The two do not have to be mutually exclusive. There is no reason why the S7.11 framework and principles cannot be applied but with a S7.12 levy as opposed to determination of a contribution amount. While it would need to be investigated whether there are issues with this for non-metropolitan Councils, this could still be addressed in the legislation.

However, as discussed, there is 15 years of hard data available for dissemination and based on which a review could be prepared and circulated for discussion with all Councils. Some review is required to determine whether the same rate is applied to residential uses as non-residential uses. It also needs to consider the current issues around the differences in contributions charged under s7.11 for low, medium and high density. It is likely that a single percentage may not be desirable. It may require consideration of a progressive levy value based on the "cost of development" much like the federal income tax thresholds.

Proper analysis of the data would reveal the impediments of a single percentage rate across all development types and would enable discussion and consideration on options available to enable adequate infrastructure funding to be received without onerous contributions on the smaller scale development.

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

As discussed above, based on previous analysis of s7.11 contributions collected, and the quantum of a s7.12 required to return a similar financial return (excluding consideration of existing greenfield area Plans), it was found that there would be difficulties picking a single number. It is more than likely that consideration would at least be required to consider a different rate for residential versus non-residential development. However it is also considered likely that a progressive rate, based on the costs of development, may be needed to avoid disparities between the costs to low density developments such as granny flats versus the cost to high density apartments. A sliding scale much like for income tax may be required but would be confirmed with suitable analysis of existing data.

Issue 3.8: Limited effectiveness of special infrastructure contributions

The SIC is a revenue raising measure introduced by the NSW Government to assist in funding infrastructure for which the state traditionally bore the burden for delivering. It was a new tax and was introduced in around 2006. See attached E-Brief "History of development contributions under the NSW planning system".

Given that the development contributions framework for Council contributions was significantly overhauled as part of the 1992 reforms (following the Simpson Inquiry), there is absolutely no reason why the same framework could not have been adopted by the NSW Government when it introduced the SIC some 14 years later. The only reason it wasn't introduced is because the intention was never to commit to any work as Councils are committed in adopting a CP. The NSW Government

wanted the money with no strings attached to bolster the bottom line. Delivery of the outcome for the community was the stated intention, but certainly not the legislated intention.

When the burden of local and state government contributions combined crippled the development industry, the SIC was at first reduced (See the 2007 reforms) and was then reformed on a number of occasions as it was such an ill-conceived idea. Unfortunately the 2007 reforms also resulted in the "cap" being introduced and which effectively ensured that the SIC was achieved via a significant cost shift from local to state contributions. The result being a significant loss to the future population through diminished provision of infrastructure being inherited by the new communities versus existing established communities.

The entire purpose of the SIC was to raise revenue for the NSW Government to assist with population growth. In this regard it has been effective as it has achieved it intended purpose. Now they are simply proposing to legitimise what has been a long implemented but ill conceived reform.

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

The argument has always been that housing affordability is best addressed by increasing supply. Out of sequence developments were born and espoused as a means of achieving increased supply. Delivering these developments at "no cost to government" has been the official position though the introduction of SIC's has changed that to "at reduced cost to government".

Has this led to improved supply and affordability? It is not in Councils remit to be able to answer this question., though it would appear that the answer is no.

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?

Yes to all of the above. Given that SIC's were introduced 14 years after the 1992 reforms to development contributions, it is apparent that a robust and transparent framework already existed and could have been readily applied to any new state based contribution. More importantly, the Simpson Inquiry investigated the issues surrounding the levying of development contributions, determination of appropriate infrastructure, nexus to development, adequate determination of costs of the infrastructure and the collection and expenditure of the funds received in a timely manner. The Inquiry addressed all of these issues. As such there is no reason why we are having to review the implementation and operation of SIC, brought in 14 years ago and 28 years after a good framework was delivered by the Simpson Inquiry.

Issue 3.9: Difficulty funding biodiversity through special infrastructure contributions

The issue surrounding riparian corridors and more recently biodiversity offsets has been bubbling away unanswered for many years. Many rezonings going back 20 years faced the issue that state agencies would seek to sterilise land for flooding purposes, riparian corridors, retention of endangered ecological communities and reinstalling corridors for the safe movement of fauna.

However all of these outcomes were sought with no dollars brought to the table by the State. When Councils would raise the issue of where and how it would be funded, particularly when the land was proposed to be rezoned RE1 – Public Recreation, the silence was deafening. The same issue arose when the "lungs of Sydney" were espoused for development in western Sydney. Everyone agreed they were required and would be a significant asset, but the mechanism for delivery was never determined. As mentioned previously, the Department has historically considered their role ended once the land was rezoned. Why and how these finer details were sorted was not their concern. They effectively stuck their heads into a bucket of sand and would then move on to the next planning matter.

Biodiversity, like riparian corridors, flood prone land, electricity and gas easements are constraints on development. As such they have the unique position of being both a community asset and being a burden on the developer. In the Torrens title system of subdivision, no developer will retain and manage these lands forever and a day after the remainder of the land is fully developed. Similarly the inclusion of these lands within private ownership does not address the issue of long term maintenance. Given the community benefit of retaining these communities, it is accepted that their long term ownership and management should rest with Council or the State. However the use of development contributions, borne from the principle of meeting the one-off capital need arising from development, sends the wrong message regarding the fundamental purpose of the contributions framework and should be reconsidered. It would be more appropriate to consider this via a Planning Agreement than using the SIC.

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

Absolutely. Given the enormous technical complexities associated with biodiversity matters, independent oversight should be required, in particular to ensure that delivery and on-going management is robust enough to maintain the viability and quality of the agreed end product and that the funds received are used exactly as required.

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

As indicated above, the key principle behind the development contributions framework has been that the user pays for the one-off capital cost at the time of development and the long term management of infrastructure and amenities is met by the community.

While it is understandable that this is the solution that has come to be, it has because the SIC was never properly administered and regulated as were development contributions. However it clearly blurs the lines regarding development contributions and from that point of view may be a negative.

Planning Agreements would be a more appropriate framework.

Issue 4.1: Sharing land value uplift

Absolutely. The existing system sees profits privatised and losses socialised. This is not working and needs to be better managed for the greater good.

In the case of greenfield development, the rezoning results in a substantial change to land value and while the land price does partly reflect the potential development contributions and cost to develop,

in the main the land owners enjoy the spoils more than any other. There should be no reason why all rezoning proposals are not accompanied by overarching Planning Agreements, which spell out the expectations from both parties. The land owner is guaranteed the rezoning and the State guarantees the required land and infrastructure that needs to be provided, with robust costs attached to ensure developers can adequately cost the development and determine the price they are able to purchase the land to adequately meet their required rate of return.

In the case of rezoning of established areas to meet supply via increased density, the current system is one of winners and losers. The recent push to development focussed on transport corridors (TOD) rightly considers that appropriate high density should in the first instance be located close to transport nodes to more efficiently move people between home and work and reduce the need for augmented traffic facilities. However, it is one of many options in how you could develop Sydney for example to meet the requirements for the next 100+ years.

Part of the problem of planning in Sydney is that the term of the planning is significantly shorter than the asset it creates. Modern brick and tile homes could reasonably be expected to exist for 75-100 years. High density residential and commercial buildings are likely to have a life expectancy of 100-150 years. Yet the longest term we plan for, which is only recent is about 40 years. You can't plan for a period shorter than the life expectancy of the product, unless you acknowledge that once developed, that area is likely to be financially unviable for future redevelopment. In other words, you had better required the right scale of development now as there is not likely to be a second chance any time soon.

The other issue with planning in NSW is that we have never seen the alternative ways in which development could occur. For example, if it is expected that the population of Sydney will double over the period of 100 years, as a rule of thumb it means everything we see today nearly needs to double. Where there is a single house on a block of land there needs to be two. Where there is an 8 storey residential building there will need to be a 16 storey building and so on and so forth, including for industrial and commercial development. Some development, such as retail and commercial can exist on multiple floors and do not require increased land to expand. However others, such as industrial do not expand vertically. As such these need to be separately considered.

However, it is simply possible as an alternative option to evenly spread the provision of residential growth. That is, if we allowed no further development greater than 4 storeys, it may be possible that to lift all existing residential land to enable development of a 4 storey product could provide 100 or more years of growth potential. It would eliminate the issues surrounding high density and would equitably spread the potential for development to all existing land owners. Planning Proposals would be unnecessary and the potential for corruption all but eliminated if no-one received special favours.

An alternative option would be to create a market for development rights. For instance, if as per the above we assign all properties with development rights to build as an example a 4 storey building with an FSR of say 1.5:1. If this is the magic number needed to unlock 100+ years of supply, then you have immediately unlocked 100 years of supply. However, we continue to enable development in accordance with Council LEP's and subsequent amendments via Planning Proposals. Where land is rezoned in close proximity to a transport node to permit high density of let's assume 12 storeys with an FSR of 3.5:1, then the land is deemed immediately capable of 4 storeys and an FSR of 1.5:1. The added development capability needs to be acquired from anywhere within the LGA. The obvious is to seek property owners in outer areas with a low density zoning and unlikely to develop in the near future. They then share in the spoils of development in Sydney. They are not losers anymore but

have the ability to sell one off development rights to a development that previously was deemed a winner without doing anything.

The above system creates a market for development rights which the State, through the LRS, can administer by locking the exchange on title. If you sell all development rights above and beyond what exists on your property, it is used in the DA assessment to show where the development right has come from, and if the proposal proceeds to construction, it would be locked into the land register detailing the floor space that has been traded from the low density property so that it could not be further developed for the next 100 years. Essentially, the idea is to provide a market for development rights while at the same time guaranteeing that 100 years supply hits the market.

This approach also locks in a market value that would have to be considered when any public authority sought to acquire land for a public purpose, whether a road, a park, a school or justice precinct. Given that 100+ years of supply has been unlocked, it is assumed this would set a significantly lower market price than currently exists. Just as importantly, there would be a significant cohort of owners wishing to avail themselves to selling their rights when they have every intention of remaining in their current premise.

In the case of Planning Proposals, many are cases of development players gaming the system. Seeking increases above and beyond what everyone else is entitled to. The primary aim of most Planning Proposals is to increase the value of the land through increased development opportunities. If the Planning Proposal is approved, the developer/owner alone profit from the increased value of the land.

In a market based system, all uplift above and beyond the 4 storeys and an FSR of 1.5:1 has to be purchased by the developer/owner, or options taken to purchase, in order to submit a Planning Proposal in the first instance. In this scenario, a number of local residents share in the spoil by selling their rights to enable the Planning Proposal to proceed. This then enables a PP to be considered on its merits and is likely to reduce the number of PP's submitted or the scale of development sought by the PP as the profit is diluted and if profit was the motivator, this has now been reduced.

Of course a comprehensive register of existing rights would need to be created as it would not be possible to deny development greater than 4 storeys and an FSR of 1.5:1 for either existing developments which exist that are over this threshold or existing zoning where this is possible. These existing rights would need to be catered for.

The advantage of a market system for development rights is that it likely negates a land tax as an alternative option. There is no tax. Instead there is a system of community sharing of future development growth requirements.

Issue 4.2: Land values that consider future infrastructure charge

Should an "infrastructure development charge" be attached to the land title?

Absolutely. As stated in the response to Section 4.1, substantial work and analysis is undertaken before any land is rezoned either for greenfield purposes or urban renewal and changes to a local LEP. This often includes determination of necessary infrastructure arising from the Transport Strategy, Drainage/Flood Strategy and the Social Infrastructure Strategy. The majority of infrastructure associated with modern contributions plans arise from these 3 strategies/studies.

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.

As an aside, it is noted that the current requirement for contributions plans above the cap to go through the process of IPART and Ministerial assessment and approval must be resolved and the timeframe reduced substantially to ensure that the rezoning and the adoption of the contributions plan occurs simultaneously. If the assessment time for the contributions plans cannot be reduced substantially, then the rezoning needs to occur at the completion of the process. It is not sufficient to maintain the current approach where the State is responsible for the process yet their tardiness comes at Council's expense. Otherwise, the NSW Government should agree to compensate Council for any loss incurred through early DA's while the contributions plan is being considered by IPART and the Minister.

Alternatively, most LEP's contain Satisfactory Arrangements clauses for State Infrastructure. These could be amended to include Local Infrastructure. In this way a DA 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.

Issue 4.4 and 4.5: Property escalation and corridor protection

The NSW Government is much better placed financially to take carriage of this issue, which in the main affects Council's. As previously stated, Property NSW is already in place and could act for both the State and Council's in acquiring the required land at the appropriate time. Currently Property NSW represents the State and each individual Council relies on its own small Property team to deliver local acquisitions. Consideration should be given to expanding Property NSW and this could be in small part funded by the various Council's in accordance with the quantum of land to be acquired, or for a set fee.

The Cumberland Planning Scheme was a land use and transport strategy in Sydney in the 40's, 50's & 60's which resulted in the delivery of significant transport projects and acquisition of open spaces within Sydney.

The State has the ability, and there have been numerous previous examples, where good outcomes can be delivered if there is a whole of government approach and desire.

Issue 4.6: Open space

The seven-acre open space standard is a classic example of where NSW Planning has dropped the ball and considered the issue to sit within the too hard basket. This standard was brought to Australia from the UK and it needs to be remembered that not only did this set the standard for open space provision, it did so at a time when the quarter acre block was the predominate residential block. In other words, this quantum of open space was deemed necessary despite the substantial existence of open space resting within private yards.

As correctly stated, this standard is still relied upon, even used by IPART in their consideration of contribution plans, and yet apparently abandoned by the DPIE. Unfortunately, with no alternative standard recommended, other than reference to a performance-based approach, without definitive guidelines as to what these are. All too hard for DPIE.

While the Cumberland County Scheme did not fully deliver on its grand visions, there are significant elements which were. However in order to start this process, there needs to be a grand vision and a will to implement on the vision.

A grand vision would look not just on the quantum of open space required, but type (active versus passive), as well as the linkages between existing open space.

Most importantly, this would be a coordinated process between the State and Council's with public exhibition and engagement with the community. This negates the need for mandated open space requirements as the provision and location of the open space is considered in totality. For instance, there are some Council's within Sydney with open space provision below 1 hectare (2.5 acres) per thousand. Alone, this is an issue and the community is likely being underprovided for their open space needs. However if they adjoin Council's with provisions greater than seven-acre, then it may be appropriate. In this regard, residents do not view or consider open space relative to local government boundaries. Provided you can access passive open space and active open space for recreational needs within close proximity to your home, this is a good outcome.

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 Council's and residents, enshrined in Local Environmental Plans.

It is significantly easier to embellish open space than to provide it. Too often Councils over embellish to compensate for the under supply. While there can be merit in this approach, it is not a conversation that has been had at any level.

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

Absolutely. As previously discussed, in areas where there is multiple ownership, then 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.

Issue 4.8: Improving transparency and accountability

There are already significant reporting requirements of Council and this 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".

Issue 4.9: Shortage of expertise and insufficient scale

One issue that exists is the perception that a development contributions officer needs to be a planner and that this function needs to sit within planning as it is an EP&A Act thing. This is part of the issue as most planners do not wish to have their career pigeon-holed by accepting a contributions officer role, which is understandable.

Some Council's share a contributions planner and this is an obvious solution.

However, I am a civil engineer. I consider that development of a strategic infrastructure suite is as much engineering as it is planning. The role can also be managed by someone with legal, economic and project management expertise as there are many aspects to the role.

However, the issue is not necessarily about shortage of expertise, but by a lack of risk understanding within Council's themselves. Auditors look to process to ensure transparency. Nobody looks to loss of potential income. It is not measured by either the finance teams or the audit teams. If you have no plans or poor plans, there is no measuring the loss of contributions not flowing to the Council. Because there is no benchmark and no investigation of the potential loss, the issue is rarely addressed or addressed at a slow pace as other planning matters are seen to be more important.

An example is the recent requirement for Councils to develop a Local Strategic Planning Statement. It is amazing how many staff were mobilised to deliver on these statement as required by the DPIE. In many cases it has been to the exclusion of all else. I recently raised this issue with a working group of planning professionals and was surprised at how many have dropped or curtailed furthering work on contributions as they scrambled to complete the LSPS. My question to all was how much money are you losing while you develop the LSPS and defer work on improving your contributions plans? What is the penalty if you stop work on the LSPS? I was looked at as if I had two heads because they all took the planning first path as it marries with their expertise.

However, if the State developed a set of benchmark rates, even compiling data obtained by individual Council's, you could get a set of numbers that indicated contributions receipt as a ratio of population increase. That is a contribution receipt per person of growth.

The NSW Government regularly releases tables showing DA processing times across all Councils in NSW. It uses these as a shame file to spur those with long determination times down.

Yet where is the same or similar attempt to analyse forgone contributions and foregone infrastructure for the community if a Council is shown to have very low contribution receipt per person of growth as compared to adjoining Councils?

The former is analysed because it is in the interest of developers to have reduce assessment times.

The latter is not analysed because again the winner is the developer.

The State needs to undertake the analysis, raise the issue and highlight the financial losses occurring when a Council fails to contemplate or understand the risk associated with no CP or poor CP's. Once this occurs, then the likelihood of staff being mobilised becomes more critical. Council's may scramble to consultants such as GN Planning to deliver up a robust Plan. Alternatively, Council's in seeing the financial losses they have been incurring may reconsider the role differently and seek to employ professionals on a contractor basis at a significantly higher salary than you would seek to pay a contributions planner on a permanent basis. The reason being is that development of CP's is a one off event requiring review every 5 years. If viewed in the light of the financial cost to Council and the cyclical nature of the work, it will offer new solutions as to how the shortage of staff can be addressed. It does not have to be more of the same. We require a contributions planner at Grade 17

who reports to a Manager and so on and so forth. Just as a researcher can earn significantly more than the Manager of the research team, there should be no reason why a person delivering a whole of organisation infrastructure document to Council should not be highly paid, above and beyond the Managers and possibly Directors, if it results in a robust Plan delivered in a reasonable time and which will significantly improve the quantum of receipts collected that has been lost year in and year out.

Issue 4.10: Current issues with exemptions

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.

Given development contributions are enshrined in the EP&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. All Council CP's need only reference the Regulation, and any other specific exemption the Council wishes to consider.

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

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

Yes. The decision as to whether to permit a work in kind or material public benefit is not automatic but typically subject to Councils discretion. This enables a Council to determine whether the proposal is appropriate from not only a spatial nexus position, but also temporal nexus. It is also highly appropriate when the infrastructure required sits within the development site. A good example in an urbanised area is when a site requires provision of a new or augmented trunk drainage line. The time to do so is during construction of the high density development and while they are already undertaking site earthworks and likely excavation for a basement. It would be a poor outcome if Council received the monetary contribution and then was to come in a few years later and install a trunk drainage line within private property while digging up their courtyard/open space. It would be horrific for both Council and the residents.

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?

In most instances, the works-in-kind credit is less than the monetary contribution. In a few instances, the reverse applies. In these instances, the Council firstly needs to assess whether the work-in-kind request is appropriate from not only a spatial nexus position, but also temporal nexus, as mentioned above. If the answer is yes and it requires a Council contribution to the developer for the excess value, and Council is in a position to do so, then there is no reason why this is not a good outcome. This can particularly occur when the work-in-kind being considered is provision of a substantial piece of open space required under the Plan.

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

Credits should only apply within the scope of a Plan, and not across contributions plans as a general rule. This ensures that spatial nexus is maintained.

Unfortunately, a recent Ministerial Direction, aimed at reducing unspent contributions, has enabled pooling of contributions not only within any Council Plan, but across Plans.

While this may serve the purpose of ensuring funds are not just collected but spent, it is a broad brush approach that could see areas where funds are being collected missing out as funds are transferred to “politically” preferred areas. This is clearly an undesirable outcome and again reveals a lack of understanding of the core principles of development contributions and seeking an easy solution versus seeking a good outcome.