

25/08/2020

Attention: NSW Productivity Commissioner via the planning portal

Dear Sir/Madam

Submission – NSW Productivity Commission’s Issue Paper – Review of Infrastructure Contributions in NSW

Council welcomes the opportunity to provide comment on the NSW Productivity Commission’s Issue Paper – Review of Infrastructure Contributions in NSW (the Review).

1. Submission Timeframe and Extension

Considerable documentation needed to be considered in order for Council to provide a thorough and appropriate response to this Review. As you can appreciate, the submission process takes time to coordinate comments from multiple sections across Council and for the submission to be considered by the elected Council.

Council appreciates the granting of our request for an extension to the 5 August 2020 submission deadline until 14 August 2020, noting that a draft submission (this submission) is to be provided by 5 August 2020. This submission therefore does not necessarily reflect the views of the elected Council. This draft submission will be considered by Council on 25 August 2020, and once endorsed by Council, a final submission will be made with a cover letter detailing any substantial changes (as directed by the Treasury’s - Economic Strategy and Productivity Group).

In future, consideration of extended consultation timeframes is requested, not only in order to provide an appropriate and thorough submission, but to also allow the submission to go through the formal Council reporting processes so that it’s the endorsed Council position.

2. General Comments

Whilst a review of the contributions system is welcomed, concerns are raised **and need to be considered** in relation to the significant resourcing impacts any future reforms could have for local government in relation to the implementation of a new system/ contributions plans.

3. Response to Issues Paper Questions

Please see Council's response to a number of the Issues Paper questions overleaf.

4. Conclusion

The infrastructure contributions system has not always supported the delivery of timely, quality and essential infrastructure that new or evolving communities depend on. Therefore, an overhaul of the infrastructure contributions system is long overdue, and Council welcomes the Productivity Commissioners review. Whilst a simplified system that better serves councils and the development industry alike is welcomed, any new system must acknowledge the difference between metro and regional/rural councils, providing equity and the relevant flexibility that is required in the various geographical locations **of NSW**.

Issues Paper Questions	Council Response
<p>Chapter 1: Introduction Issue 1.1: Striking the right balance</p>	
<p>Is a 'one size fits all' approach appropriate or do parts of the State require a bespoke solution?</p>	<p>In the first instance, the Review needs to acknowledge the difference between metro and regional councils. Whilst development contributions generally represent one of the highest planning related costs to development, regardless of local government area (LGA), development contributions can vary significantly between LGAs and across NSW.</p> <p>It is important to note that many regional councils, especially those close to metropolitan Sydney, often and increasingly need similar levels of infrastructure to metropolitan councils.</p> <p>In recent years, numerous planning reforms have seen the standardisation of the planning system. Whilst there are drawbacks to this, benefits from a certainty and transparency perspective are acknowledged. Unfortunately, simplifying the contributions system by adopting a one size fits all approach, has the potential to impact smaller (based on population and growth) councils in NSW. Some elements within the contribution system, for example monetary caps on contributions, are not appropriate everywhere in the state.</p> <p>For example, with regard to passive open space, each is designed specifically for a location and responds to the site, its constraints, its opportunities, feedback received during consultation, and as such the level of site works and embellishments are never the same. Additionally, the cost to deliver infrastructure in regional and country areas is generally much higher than in metro areas due to a number of factors, but particularly due to skills shortages and supply constraints.</p> <p>On this basis, it is also not appropriate to establish a mandated average rate (\$) to levy for provision of infrastructure across the state. Within single LGA's, the cost to deliver single typologies of infrastructure are not necessarily a set rate.</p> <p>Additionally, in regional areas, the cost of development contributions can often be questioned by external stakeholders. This can place significant pressure on councils and can further reduce their ability to supply critical infrastructure via developer contributions.</p> <p>Rather than a standardised or bespoke solution, a mixed model may be more appropriate. It may be acceptable to establish set rates per LGA, however applying an average rate across the state would result in potentially significant shortfalls in total value of contribution projects vs actual cost to deliver.</p>

<p>What are the advantages and disadvantages of a site-specific calculation based on demand generated, compared with a broader average rate?</p>	<p>Site specific calculations enable councils to direct funds towards areas where infrastructure is most required; however, from a resourcing perspective these types of contribution plans can be resource intensive with regard to staff and amendments required to the plan.</p>
<p>Do other jurisdictions have a better approach to infrastructure funding we should explore?</p>	<p>According to a study undertaken by the Australian Housing and Urban Research Institute (AHURI), Victoria and Queensland both pay significantly less development contributions; however, appear to provide a similar level of infrastructure to NSW.</p>
<p>How can a reformed contributions system deliver on certainty for infrastructure contributions while providing flexibility to respond quickly to changing economic circumstances?</p>	<p>It is often non-financial barriers, for example the complexity of the planning system, uncertainty associated with time frames and additional information that often contribute to uncertainty within the planning system.</p> <p>Many regional LGAs also have outdated, paper-based plans, that can be both difficult to locate and read. Web-based plans provide easy and transparent access to the public, can be easily and readily amended, and can be supported by a development calculator which enables developers to obtain an estimate of their development contributions. Shoalhaven has a web-based plan with contributions calculator which is easy to use for both Council and the public; see https://cp.shoalhaven.nsw.gov.au/.</p> <p>In relation to the principle of simplicity and in order for the contributions system to respond quickly to changing economic circumstances, amendments could be made to the EP&A Act to reduce the 28-day public exhibition periods of contributions plans. Unlike LEPs which are standard instruments, contribution plans do not have the same provisions which allow the NSW Government to make amendments to the Standard Instrument, which then take effect to LEPs, almost immediately.</p>
<p>Chapter 2: Infrastructure Funding in NSW Issue 2.1: Enable a broader revenue source for the funding of Infrastructure</p>	
<p>Are there any potential funding avenues that could be explored in addition to those in the current infrastructure funding mix?</p>	<p>For regional areas, upfront investment by state government prior to the release of urban release areas (URAs) or greenfield land is essential. Additionally, the current method of local government funding does not support population growth and associated development, in particular the practice of rate pegging. Greater consideration of the special rate variation or differential rate mechanisms, as well as other recommendations from the 2016 Review of Rating Legislation should be explored to pay for new infrastructure.</p>

Issue 2.2: Integrating land use and infrastructure planning	
How can the infrastructure contributions system better support improved integration of land use planning and infrastructure delivery?	Strategic planning plays a key role in the sequencing of development in conjunction with critical and enabling infrastructure. Contributions plans not only need to integrate with strategic plans but also delivery plans. Strategic planning and principles such as placemaking need to be supported by infrastructure plans that can help to deliver not only cost effective infrastructure but desired and sustainable place outcomes.
Chapter 3: Infrastructure contributions mechanisms and issues	
Issue 3.1: Principles for planning agreements are non-binding	
What is the role of planning agreements? Do they add value, or do they undermine confidence in the planning system?	<p>Planning agreements provide benefits such as flexibility, enabling developers to provide innovative infrastructure solutions or enabling an out of sequence project to proceed where a contributions plan may not yet exist.</p> <p>Whilst planning agreements are consistent with the principles of efficiency, they can undermine the principles of equity, simplicity and transparency. This can be due to the nature of negotiations and inconsistent use of planning agreements.</p>
Is 'value capture' an appropriate use of planning agreements?	<p>The recent DPIE Draft Practice Note clarified that VPAs should not be used for the primary purpose of value capture, largely due to the public perception associated with the use of value capture.</p> <p>Value capture, when used for the purposes of providing infrastructure, can be a useful tool for achieving great community outcomes. The issue of value capture relates to transparency. Unfortunately, despite the benefits, value capture is often perceived as being linked to trading off outcomes or pushing set controls. The introduction of thresholds could be implemented (i.e. certain development value, employment generation, etc) to allow VPAs to be used in certain circumstances; however, in any instance, clear guidelines need to be established.</p> <p>Given that one of the main aims of the review is to create transparency and trust in the planning system, greater community consultation from the initial stages, (potentially from the initial 'letter of offer' stage), may address scrutiny of the system and provide opportunities prior to the formal public exhibition period, which occurs after the negotiation process.</p>
Should planning agreements require a nexus with the development, as for other types of contributions?	Similar to other types of contributions, planning agreements should require some level of nexus with the development. The nexus concept is a fundamental principle to the assessment and delivery of infrastructure, in that if a decision is made to change or develop a place or area, then timely and funded infrastructure must be delivered.

<p>Should State planning agreements be subject to guidelines for their use?</p>	<p>State planning agreements definitely require guidelines for use. The current guidelines implement fundamental principles that govern the use of planning agreements. Additionally, DPIE's draft practice note applies standard requirements for negotiating and preparing VPAs. Guidelines contribute to greater certainty, consistency and transparency of planning agreements for both proponents and the public. Given that State planning agreements are likely to relate to projects of a significant value, it is even more important to minimise the perception that planning decisions may not be bought or sold through VPAs.</p>
<p>Issue 3.2: Transparency and accountability for planning agreements are low</p>	
<p>What could be done to improve the transparency and accountability of planning agreements, without placing an undue burden on councils or the State?</p>	<p>To reduce the resource and time consumption associated with planning agreements, the creation of a template as part of the practice note should be established. It is noted that a template was included in the draft practice note from 2016. Shoalhaven has recently prepared a template for VPAs (currently on exhibition) to assist in this regard.</p> <p>Additionally, all councils should be required to have policies governing the framework for the preparation and use of VPAs. This would not only assist council officers, but proponents alike. These policies should be prepared in accordance with state governments draft Secretary's Practice Note on Planning Agreements.</p>
<p>Should councils and State government be required to maintain online planning agreement registers in a centralised system? What barriers might there be to this?</p>	<p>Shoalhaven City Council is an early adopter of the online register and it currently maintains a number of online registers. Today there are no technological reasons that would prevent councils or state government from maintaining online registers. Whilst many councils may argue that this creates additional resourcing issues, as long as online registers are only utilised to provide a record to the public of finalised/ endorsed documents, resourcing issues should not be significant.</p> <p>In saying this, it is recommended that a centralised system via the NSW Government's platform could be established (i.e. the Planning Portal). This would ensure consistency across all Council's in NSW and avoid duplication of information.</p> <p>Duplication of information at both local and state government level should be avoided.</p>
<p>Issue 3.3: Planning agreements are resource intensive</p>	
<p>Should the practice note make clear when planning agreements are (and are not) an appropriate mechanism?</p>	<p>The practice note should clearly identify and define when planning agreements are/are not appropriate. For example, value capture associated with rezoning may be acceptable, however, value capture with a variation to a LEP standard may not be acceptable.</p>
<p>Issue 3.4: Contributions plans are complex and costly to administer</p>	

<p>What are the trade-offs for, and potential consequences of, reducing complexity?</p>	<p>Whilst it is acknowledged that current 7.11 contributions are complex and vary significantly across the state, a one size fits all approach is not appropriate.</p> <p>The cost to deliver infrastructure in regional and country areas is generally much higher than in metro areas due to a number of factors, but particularly due to skills shortages and supply constraints. As mentioned previously, it is also not appropriate to establish a mandated average rate (\$) to levy for provision of infrastructure across the state. Within single LGA's, the cost to deliver single typologies of infrastructure are not necessarily a set rate.</p>
<p>How can certainty be increased for the development industry and for the community?</p>	<p>Many regional local government areas (LGAs) have outdated, paper-based plans, that can be both difficult to locate, as well as read. Web-based plans provide easy and transparent access to the public. This can be accompanied by a development calculator which enables developers to gain an estimate of development contributions applying to their development. In this regard, Shoalhaven Council has been operating a web-based plan and contributions calculator for nearly a decade; see https://cp.shoalhaven.nsw.gov.au/.</p>
<p>Issue 3.5: Timing of payment of contributions and delivery of infrastructure does not align</p>	
<p>What are the risks or benefits of deferring payment of infrastructure contributions until prior to the issuing of the occupation certificate, compared the issuing of a construction certificate? Are there options for deferring payment for subdivision?</p>	<p>Deferring infrastructure payments, in a system that is already struggling to provide appropriate infrastructure and achieve planning outcomes seems counter-intuitive. As population growth continues and places increased pressure, particularly on regional areas, it will present significant and further pressures on infrastructure delivery.</p> <p>Whilst deferred payments may be an option in metro (greenfield) areas, where a large portion of funding is derived from developer contributions, this option would not work in regional and rural areas, where the revenue derived via contributions, is significantly less and currently there is already a significant delay between the delivery of infrastructure and the payment of contributions. Allowing payments to be deferred in these locations would significantly disadvantage these councils, who often already lack essential infrastructure and are struggling financially, as a result of a smaller population base in which they can draw contributions and rates revenue.</p> <p>In any instance, if deferred payments were to be utilised, they must be attached to the land title. In Shoalhaven, contributions for subdivisions are payable at the subdivision certificate stage.</p>
<p>Would alternatives to financial securities, such as recording the contributions requirement on property title, make deferred payment more viable?</p>	<p>Currently financial securities are generally provided to councils in the form of an unconditional bank guarantee. This enables the council to utilise the security in order to finalise works where there is a breach. For example, in the instance a developer is unable to complete works or comply with the defect's liability period (perhaps where bankruptcy is experienced) etc.</p> <p>Given the instability of the construction industry, placing financial securities or deferred payments on the property title present a significant risk, that solely falls on council. Additionally, where a</p>

	<p>developer experiences bankruptcy, if deferred contributions or securities are tied to the property title, this may make future development of the site (by others) unfeasible and essentially sterilise development.</p>
<p>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?</p>	<p>Initiatives such as the Low-Cost Loan Initiative (LCLI) are helpful in allowing Council to receive subsidised loan funding to deliver infrastructure of significant value and which may not be ordinarily possible within the delivery timeframe.</p> <p>It is noted that single infrastructure projects which service a catchment area, beyond the LGA boundaries can be covered by cross-boundary infrastructure contributions planning. Unfortunately, it is likely that this is rarely undertaken due to the limited guidance on how to achieve this, as well as other issues, such as limited staff resources/skills to administer the plan (particularly when amendments need to be made), the requirement for both/all councils to undertake public exhibition, etc. The review should provide clarity, to encourage the use of cross-boundary infrastructure contributions planning. For example, in the Shoalhaven, cross-boundary infrastructure contributions could have been utilised to fund projects deemed regionally significant, including regional sporting facilities and parks, had these options been known at the time.</p>
<p>What else could be done to ensure infrastructure is delivered in a timely manner and contributions balances are spent?</p>	<p>Land acquisition is often one of the biggest hurdles to the provision of infrastructure.</p> <p>In the Shoalhaven, early land acquisition for the purpose of reducing costs has been implemented in Moss Vale Road South URA and has been possible through the LCLI. In addition to potential cost savings, this also has the benefit of enabling council to deliver infrastructure sooner and in line with the release of the subdivision.</p> <p>Escalation of land values, or perceived escalation, created issues in negotiating the acquisition as part of this process. Whilst the land valuation completed for the parcels of land subject to acquisition indicated a lower rate per square metre for acquisition than the Contributions Plan (CP), the negotiations to acquire the land resulted in Council spending much more than the cost indicated by the land valuation. However some land owners also contested the value per square metre as per the CP indicating that the land was valued double or more purely based on the R1 zoning and perceived uplift of land value (i.e. it did not take into consideration encumbrances on the land identified for acquisition).</p> <p>Additionally, the review needs to focus on the SIC framework and in particular the preparation of SIC determinations, to ensure an efficient process, providing transparency and certainty for councils. Given the SIC process needs to be established prior to the finalisation of a URA, adjustments to the current timeframes are crucial. As such, the following issues are raised in relation to the SIC;</p>

	<ul style="list-style-type: none"> • The proposed SIC principles are broad, however, will have no effect if they do not address the number of draft SICs. • The SIC process for the Illawarra-Shoalhaven Region has commenced, however it is unclear when a draft SIC will be exhibited and implemented. In addition to the SIC Guidelines, priority must be given to the preparation and delivery of outstanding SICs. Shoalhaven has a number of Part 6 URAs which urgently need the Illawarra- Shoalhaven SIC to be resolved. With the ongoing absence of a SIC, the effective coordination of regional and state infrastructure is questioned. • The requirement for each developer in a URA to enter into a State Planning Agreement for State Infrastructure in the absence of a SIC is onerous and another hurdle in the delivery of housing.
<p>Issue 3.6: Infrastructure costs and contributions rates are rising</p>	
<p>Currently IPART reviews contributions plans based on 'reasonable costs', while some assert the review should be based on 'efficient costs'. What are the risks or benefits of reframing the review in this way?</p>	<p>The current system of making submissions to IPART is inefficient and rarely produces results which resolve infrastructure deficits. This is even more the case now that the LIGS scheme has been abolished.</p> <p>Whilst Council understands why the development industry would want to revert from 'reasonable costs' to 'efficient costs', this has the risk of creating infrastructure deficiencies. It is also unclear how cost savings would be achieved. The infrastructure costings that sit behind and inform council CPs are based on infrastructure being delivered in accordance with certain standards and construction methodologies (i.e. Australian Standards). Where a developer undertakes a VPA or WIKA, they are still required to adhere to relevant council policies, as well as broader construction industry standards.</p> <p>Council contribution projects and plans are not based on made up figures, but are informed by detailed costings, prepared by relevant experts and often accompanied by quantitative survey reports. It should be up to the council to justify going over the cost in areas. This balances flexibility and cost certainty.</p> <p>The exhibition documentation does not go far enough in explaining the difference between reasonable and efficient costs.</p>
<p>Should the essential works list be maintained? If it were to be expanded to include more items, what might be done to ensure that infrastructure contributions do not increase unreasonably?</p>	<p>The essential works list should be broadened to provide greater equity to rural, regional and greenfield councils whose plans contain community facilities. As most greenfield, regional and rural councils contain community facilities within their plans, they do not meet the requirements for an IPART assessment. This means that where a plan is required to be reviewed by IPART,</p>

	infrastructure not on the essential works list must be removed from the plan and funded by other means such as council rates, fees and charges, or grants.
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?	It is likely that where an independent review of infrastructure plans is required, councils would welcome this being undertaken much earlier in the process. Additionally, these reviews currently take anywhere between 12-18 months, which does not give developers or councils confidence in the planning system. Measures must be taken to reduce these processing times.
Issue 3.7: The maximum s7.12 rate is low but balanced with low need for nexus	
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?	Shoalhaven City Council currently does not operate a s7.12 plan, however, it should be up to individual councils to justify why they should operate above the maximum percentage.
What would be a reasonable rate for s7.12 development consent levies?	Whilst the proposal is unlikely to affect Shoalhaven in the immediate future, largely because we do not utilise section 7.12 for contributions, from a transparency and process perspective, the proposal is strongly supported. Currently, if Council's wish to make a request for an increase above 1%, approval is required by the Minister, who determines whether to list the area in Clause 25K(1)(b) of the EP&A Regulation; however, there is no set criteria in which to seek approval for levies greater than the 1%. Given section 7.12 is one of the main mechanisms available to Councils, and in particular regional councils, to fund infrastructure, a clear and strategic-based assessment criterion identifying a clear approval pathway is essential.
Issue 3.8: Limited effectiveness of special infrastructure contributions	
Should special infrastructure contributions be applied more broadly to fund infrastructure?	For regional areas, upfront investment by state government prior to the release of urban release areas (URAs) or greenfield land is essential.
Should they be aligned to District Plans or other land use planning strategies?	The SIC should definitely align with Regional Plans and the relevant LSPS.
Should the administration of special infrastructure contributions be coordinated by a central	The current SIC process is often taking a significant time and is not delivering certainty for councils or the development industry. As such, new processes and frameworks would be welcomed, along with a change to NSW Treasury, provided efficiencies were achieved via this process.

Government agency i.e. NSW Treasury?	
Issue 3.9: Difficulty funding biodiversity through special infrastructure contributions	
Are special infrastructure contributions the appropriate mechanism to collect funds for biodiversity offsetting, or should biodiversity offsets be managed under a separate framework?	One of the current arguments is that the development contributions system is overly complex and inefficient. Adding Biodiversity offsetting, another complicated issue , would add an additional layer of complexity and further inefficiency to the contributions system. This is not supported. It is recommended that the biodiversity offsetting should be managed under a separate framework.
Issue 3.10: Affordable housing	
Is provision of affordable housing through the contributions system an effective part of the solution to the housing affordability issue? Is the recommended target of 5-10 per cent of new residential floorspace appropriate?	<p>Provision of affordable housing through the contributions system will not deliver affordable housing in a timely manner, especially in regional areas. This is a very resource intensive method of trying to produce affordable housing and would work best in very high-growth areas, delivering very large projects. Once sufficient contributions are collected, (which could take many years depending on the levy mechanisms and how much large development occurs) spending of collected contributions will also take up considerable time and resources. There is no quick or easy process for local government to deliver affordable housing – land acquisition, dedication, establishing partnerships with housing providers and providing legal frameworks for such development is currently difficult and slow.</p> <p>It is likely that the recommended target of 5-10% of new residential floorspace is too low to provide an effective number of affordable dwellings in a timely manner. If the contribution system only applies to new apartment floorspace or development, then regional areas with predominantly new detached housing will not collect sufficient funds.</p> <p>Contributions plans should have mechanisms which allow developers to build the required affordable housing as part of their development, but if they choose not to, then they have to pay additional levies – and these levies should be set so that building of the affordable housing is cheaper than paying the levy, thus delivering more timely affordable housing. Development feasibility must be taken into account when developing and maintaining contributions plans and this requires local governments dedicating additional expertise, resourcing, funding and time to these projects.</p>
Do affordable housing contributions impact the ability of	This question is difficult to answer and would vary geographically. In some high value high growth locations, it is likely that affordable housing contributions would not impede increased housing supply, but in other areas it may. Caution must be applied to ensure that developers do not raise

the planning system to increase housing supply in general?	the cost of their market-rate housing and pass on costs to consumers to offset the losses on the affordable housing component.
Chapter 4: Further issues in infrastructure contributions	
Issue 4.2: Land values that consider a future infrastructure charge	
Should an “infrastructure development charge” be attached to the land title?	No. This would further complicate the system and would simply transfer costs from one area to another. For example, once infrastructure charges are paid, who pays for the charge to be removed from the land title?
Issue 4.6: Open space	
How can performance criteria assist to contain the costs of open space?	Performance criteria can provide a benchmark to deliver open space infrastructure that is responsive to the needs of the current and growing population, as well as the site context.
Should the government mandate open space requirements, or should councils be allowed to decide how much open space will be included, based on demand?	<p>The seven-acre standard may not always be appropriate, particularly for active recreation infrastructure and meeting the requirements applicable under various sporting codes, as well as the provision of supporting infrastructure including amenities, car parking, spectator area, buffer areas.</p> <p>Open space is no longer being delivered as a single-stream open space, it incorporates multi-nodes as well as other infrastructure for drainage and vegetation management areas which in some cases can utilise vast areas of land and may impinge on usable open space within the “seven-acre standard”.</p> <p>The state government should continue to identify benchmarks for open space infrastructure, in line with the Premiers Priorities. It is not appropriate to mandate open space requirements given the significant difference in population (current and forecasted) from LGA to LGA in relation to age, gender, socio-economic profile, health and wellbeing, etc.</p>
Are infrastructure contributions an appropriate way to fund open public space?	Infrastructure contributions are appropriate to fund open space, particularly in greenfield areas where there is none within the immediate area. It is acknowledged that in a lot of our older open space projects, the apportionment to development is low which acknowledges that there are other beneficiaries to the open space infrastructure provided. These beneficiaries are ‘levied’ via general rates.
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?

Works in kind agreements should continue to operate as they provide the benefit of delivery infrastructure works required by a particular development, whilst limiting the strain placed on Council to deliver those works outside of the timeframe.

Despite this, works in kind agreements do impact Council from a resource and time perspective including undertaking reviews of the documentation throughout the process, i.e. prior to construction, during construction, inspections, handover, etc. These are typically not resourced given the timing of the infrastructure delivery is later than the WIK.

If you need further information about this matter, please contact

Yours faithfully

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[Redacted name]

[Redacted contact information]