



THE HILLS
Sydney's Garden Shire


THE HILLS SHIRE COUNCIL



25 September 2020

NSW Productivity Commissioner
Mr Peter Achterstaat AM

By email: ProductivityFeedback@treasury.nsw.gov.au

Our Ref: 

Dear Mr Achterstaat

GREEN PAPER – CONTINUING THE PRODUCTIVITY CONVERSATION

Thank you for the opportunity to provide comments on the NSW Productivity Commission's Green Paper 'Continuing the Productivity Commission'.

The comments provided herein have regard to our previous submission made on the 29 November 2019, previous resolutions of the Hills Shire Council and the strategic framework provided by the Hills Future Community Strategic Plan, and *Hills Future 2036: Local Strategic Planning Statement*. The submission itself however, comprising this letter and the attached comments on relevant draft recommendations, has not been reported to Council given the reporting timeframes.

As noted throughout the Green Paper, since the conversation commenced in October 2019, the global health and economic crisis has changed the context for how productivity improvements are considered. The ongoing conversation is important, and one we are happy to have, as we respond to the short term implications of the pandemic and put our mind to what changes may be lasting.

There is no doubt that productivity strategies and responsiveness to change are key to recovery, however a sound evidence based approach is needed to fully understand the long term planning implications of the Covid19 pandemic for population and economic growth and how people live, work, use public places and move around the local government area. In focusing on productivity reforms, it is imperative that measures do not lose sight of the need to plan for a quality of life where residents have access to the right mix of housing, improved centres, public spaces, open space and transport options.

Council's strong financial position and breadth of experience in planning for growth and necessary supporting services and infrastructure, across both release areas and urban renewal areas, means we have considerable insight as to the challenges in managing growth and change and are well equipped to provide input on suggested improvements.

We would encourage you to engage directly with councils rather than mostly private and industry stakeholders with little public authority representation. Whilst Local Government NSW have been involved in these discussions, a deeper understanding of the implications of productivity changes would be obtained by talking to those at the coal face of implementing and enforcing planning policy.

It is encouraging to see that our previous submission to the 'Kickstarting the Productivity' discussion paper, has been given some consideration in the preparation of the Green Paper, however part of this submission has been selectively quoted (page 236) and seems to support the position for smaller micro apartments which is contrary to the intent of the original comment.



The Hills have consistently advocated for a diversity of housing and particularly a proportion of larger apartment sizes to provide an appropriate level of amenity for families, the opposite of what is suggested in the Green Paper. The paper would appear to be weighted towards the interests of private development and industry groups, despite the growing body of research indicating that there is unmet demand in the apartment market for family-appropriate dwellings.

I have attached some comments on the Green Paper's draft recommendations where they are considered to be most relevant to Council's area of operations. Whilst a number are supported in principle, it should be noted that full implications are not able to be considered without detail on proposed legislation or implementation mechanisms. Further there are a number of areas where reconsideration of the approach is requested, noting that suggested measures require further justification or are considered unlikely to yield the productivity gains sought. In summary some of the key areas of concern include:

The role of the planning system in housing supply: It is disappointing to read the rhetoric that suggests 'restrictive' planning controls such as height of buildings, minimum standards for apartment sizes or numbers of car parks are limiting housing supply and that growth in housing along the Sydney North West Metro has fallen short of expectations. Noting that Council has enough land zoned and available with significant development capacity, the conversation needs to move beyond the role of planning controls and examine the reasons why industry does not have the capacity or willingness to take up realistic opportunities.

Minimising red tape and complexity in the planning system: The paper suggests development assessment periods deter developers in providing housing. The timing of assessments is primarily dependent on the complexity of proposal, and a compliant development which accords with local and state planning controls is unlikely to experience delays. Planning controls should not be viewed as a barrier to development but rather as facilitating development which has the least possible negative impacts and guides the development of livable neighborhoods in vibrant and productive cities and towns.

Reducing business and industrial zones: The approach appears to take a step back in planning policy since the introduction of the Standard Instrument which provided an opportunity to reinforce a hierarchy of centres which is also consistent with the principles for managing centres contained in the Region and District Plans. Overly flexible zones minimises the capacity to achieve growth in targeted industries and the effective clustering of businesses and employment uses, thereby reducing certainty and confidence for investors as to the land use outcomes they would be buying into. The Standard Instrument generally provides sufficient flexibility to tailor zones to accord with the strategic intent outlined in the district and local strategic plans.

Reform systems for rate pegging and infrastructure contributions: Whilst greater flexibility is needed over rate setting to reflect changes in costs, any suggestion that abolishing the rate peg will resolve infrastructure funding issues is inequitable, noting that much of the existing development has already paid a fair share towards local and regional infrastructure. Holding a plebiscite of rate payers to test support for abolishing the rate peg would be a costly process, and would be expected to face considerable community resistance. The assessment of needs should be driven holistically by State Government in consultation with councils.

We would welcome a meeting with the Commission to ensure the intent of the submission is fully understood and to provide further details on the matters outlined. Should you have any enquiries in relation to this submission, please contact [REDACTED]

Yours faithfully

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RESPONSE TO RELEVANT GREEN PAPER DRAFT RECOMMENDATIONS

GREEN PAPER DRAFT RECOMMENDATIONS	COUNCIL RESPONSE
4. FORWARD LOOKING REGULATION SUPPORTS COMPETITION AND INNOVATION	
4.15 Improve regulatory practices in local government by expanding the scope of 'Your Council' website. Encourage greater regulatory collaboration between state regulators and local councils	
<p>The Green Paper suggests :</p> <ul style="list-style-type: none"> 'Your Council' website could give citizens information about specific regulatory arrangements, fees and charges across local councils. Government agencies should identify regulations that involve local government responsibilities and <i>'agree on objectives for the regulatory functions that councils have the capacity to reach, with adequate cost recovery mechanisms to achieve this.'</i> (page 119) 	<p>Whilst this would duplicate information already available on Council's website there is no objection in principle in the interest of time savings and effort for users, provided the data requested does not create an additional administrative burden for councils.</p> <p>Further information is needed on specific functions proposed for collaboration to allow any meaningful assessment of the implications for Council. Critical examination is needed of the costs shifted onto local government by the other levels of government.</p>
4.18 Ease child care costs by bringing NSW requirements into line with national requirements for additional early childhood teachers	
<ul style="list-style-type: none"> The Paper notes NSW regulations specify staffing requirements for centre-based services that differ from the National Quality Framework – four early childhood teachers for a maximum of 80 children compared with one early childhood teacher and an additional early childhood teacher or suitably qualified person for a max of 80 children. 	<p>Pricing and affordability of child care centres is closely linked to the availability of government subsidization given to providers. Prices increase where providers need to recover costs that are not offset by the Australian Government Child Care subsidy. Reductions in staffing requirements may be unlikely to have a discernible impact on the pricing of child care centres.</p>
5. MEET THE CHALLENGE OF RELIABLE WELL-PRICED WATER AND ENERGY	
5.3 Identify more permanent governance measures to solve the fragmentation of water responsibilities across NSW	
<ul style="list-style-type: none"> The Paper suggests a shift to catchment level management, perhaps through a formalised collaboration arrangement or joint organisation, could generate efficiencies and improve environmental outcomes. 	<p>Currently there is no standardisation in design guidelines for stormwater infrastructure across Councils in NSW. This may present a challenge in an eventual consolidation, and community expectations will need to be managed around pricing and function of infrastructure.</p>

GREEN PAPER DRAFT RECOMMENDATIONS	COUNCIL RESPONSE
<ul style="list-style-type: none"> It is suggested in Greater Sydney, <i>'Sydney Water's oversight of stormwater management could be increased, either by subsuming councils' responsibilities for stormwater (and associated funding) completely, or in a coordinating role'</i> (page 147) 	<p>Approvals from the National Resources Access Regulator and Sydney Water can often take a considerable amount of time, which can impact project timelines. A single authority taking charge of the entirety of NSW will need to ensure adequate resources are available.</p> <p>Further clarification is required on proposed operating guidelines for any such scheme, including consideration of Council's role and responsibilities and how capital and renewal projects would be funded.</p> <p>Whilst a consolidated stormwater management system may have some merit, further consideration is required in regards to potential operational difficulties which could arise under the suggested model. This includes consideration of how capital works for stormwater management, maintenance and renewal will be prioritised to ensure equitable distribution of projects and improvements across greater Sydney.</p> <p>New projects will likely require extensive consultation between organisations and may result in more levels of approvals as compared to the existing system which may in turn result in delaying projects which would otherwise progress sooner under the current arrangements.</p>
6. SMARTER INFRASTRUCTURE WILL SUPPORT JOBS AND COMMUNITIES	
<ul style="list-style-type: none"> The Paper highlights the cost of providing infrastructure is rising (increased land acquisition costs and skills shortages) and the Government's capacity for capital spending is falling (Covid-19 measure have pushed up debt and raised interest costs). It is noted that post pandemic infrastructure needs may change: <i>'In cities, some public transport and road use patterns will be changed permanently, even after the pandemic recedes. This may lessen the demand on transport infrastructure and even let us defer or redirect some infrastructure spending to where it will deliver greater benefits. That would take some pressure off the Government's fiscal position'</i> (page 192). 	<p>It is too early to tell what the long-term implications of the COVID-19 pandemic will be on commuting patterns and movement. While the pandemic has temporarily reduced overseas migration since February 2020, it is possible that population growth rates could return to similar levels as prior to COVID-19, after the rollout of a vaccine.</p> <p>The Hills Shire is still planning for 128,000 additional residents by 2036. Commitment to support this growth, such as large infrastructure projects including the Norwest to Parramatta—mass transit link and the extension of Sydney Metro Northwest to St Marys will continue to be a priority to ensure the vision of the 30 minute city is not compromised.</p> <p>Notwithstanding, should the Commission decide that government infrastructure spending should be re-directed to smaller local projects, there are a number of projects within The Hills which are still awaiting State Government progression. These include the re-classification of Annangrove Road to arterial status with associated upgrades, and commitment to grade separation at Seven Hills Road and Windsor Road, Baulkham Hills.</p>

GREEN PAPER DRAFT RECOMMENDATIONS	COUNCIL RESPONSE
6.1 Change planning controls to enable more housing and business activity within reasonable walking distance of transport hubs or underutilised corridors	
<p>This section of the Green Paper talks about the need for land and infrastructure planning to work together to support expansion of business activity and housing in and around new centres and also to support new transport corridors required to move people and goods between the three cities identified in the vision for Sydney.</p>	<p>This draft recommendation is a very simplistic approach that reflects transit oriented development principles but does not address the challenges inherent in aligning infrastructure with growth or the need to recognise the views of existing communities who have a right to be engaged as part of the planning process.</p> <p>Despite the intentions in the Region and District Plans, Council continues to face difficulties in achieving government commitment to planning and delivery of regional infrastructure needed to support growth.</p> <p>A key example is the corridor of the Sydney Metro Northwest which was subject to an extensive government led process of structure planning (2013) and precinct planning for some of the stations along the corridor (2014-2017):</p> <ul style="list-style-type: none"> • The Government's Corridor Strategy created significant development expectations within the community without the detailed infrastructure investigations necessary to support growth and without any State infrastructure contributions framework to support essential regional infrastructure. • Planning for sensible growth in these precincts has been challenged by unrealistic landowner/developer expectations which need to be balanced by practical outcomes that create a level of amenity for future residents and ensure they are able to be adequately served with State and local infrastructure. • Rezoning occurred in the State led precincts in December 2017 to facilitate substantial uplift and this was capped in some areas – due to the need to resolve the regional infrastructure issues. The 5,000 dwelling cap in Showground Precinct artificially limits the total development yield as the primary planning controls (floor space ratio and height) would allow for approximately 9,000 dwellings. • Despite recognition that a new school is required to support the uplift, no site and no funding source has been identified for the required school in Showground Precinct. <p>Commitment is needed from relevant agencies to undertake earlier investigations and explore funding sources. No precinct should be rezoned to facilitate</p>

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	large scale growth without a suitable mechanism to ensure development contributes towards regional infrastructure.
<p><i>'To date, growth in housing along the new Metro line has fallen short of expectations. Developers have attributed this lack of activity to restrictions on housing density, which make some potential sites unviable'</i> (page 196)</p>	<p>To say development has fallen short of expectations is grossly inaccurate. There is considerable activity in the station precincts - almost 6,000 dwellings are under assessment in Bella Vista and Kellyville, almost 4,000 dwellings have been approved or are under assessment in Showground precinct and land has recently been rezoned for almost 4,000 dwellings in Castle Hill.</p> <p>Given the cap in Showground precinct is almost reached, the Government's delays in identifying and providing the required infrastructure is likely to delay the supply of housing in this location.</p> <p>Additionally, Council would instead observe that speculative land prices have set an inflated market which limits the desire of the development industry to deliver product in line with what is already permitted but rather they seek to rezone land to obtain greater yields or manage supply to drive up price.</p>
7. PLANNING FOR THE HOUSING WE WANT AND THE JOBS WE NEED	
<p>7.1 Require councils to analyse housing supply capacity and show that planning controls are consistent with the dwelling needs identified by Greater Sydney's 20-year strategic plans for 5-year, 10-year and 20-year windows.</p> <p><i>Where a lack of capacity is identified, ensure councils revise their Local Housing Strategies and Local Strategic Planning Statements to reflect the objectives identified in the Greater Sydney strategic plans.</i></p> <p><i>Ensure councils immediately update relevant planning instruments to meet 6-to-10-year housing targets and report housing completions by LGAs every six months.</i></p> <p><i>Publish annual 10-year forecasts for State-led/partnered precincts.</i></p> <p><i>Monitor housing forecasts and projections on a six-monthly basis. Where housing shortfalls arise, require councils to revise housing strategies and Local Strategic Planning Statements to indicate how the shortfalls will be remedied</i></p>	
<p>This section of the Green Paper (pages 221-231) identifies that the planning system is failing, with submissions noting the existing system is :</p> <ul style="list-style-type: none"> • overly complex, prescriptive, and slow • inflexible to the changing needs of business and residents • a driver of the continued lack of housing supply and poor housing affordability. 	<p>The focus on the local regulatory and planning framework as providing the answer to housing supply affordability fails to recognise the range of additional factors at play in determining supply:</p> <p>The delivery of housing to the market relies on the coordination of land use planning, the financial and taxation system, construction industry and importantly, without Government intervention, relies on the will of developers to increase supply to the market to create a more affordable product.</p>

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	<p>Whilst improvements in planning and assessment efficiency are supported, if industry does not have the capacity or willingness to take up realistic development opportunities, supply will continue to be restrained and actions requiring Council to remedy shortfalls via their housing strategies and LSPS will achieve little, particularly where land is already zoned and available for development.</p> <p>This point is highlighted by industry leader's recent reports such as AHURI (2020) which states the following:</p> <p><i>While the planning system can create opportunities for development by zoning land and ensuring that zoning and development controls allow for a range of housing types, decisions about whether and when to develop are ultimately made by the development industry and reflect market factors.</i></p> <p><i>Ultimately housing supply is driven by market conditions and the ability of a developer to deliver an acceptable return. Variations in market conditions and the availability of quality development sites drive uneven patterns of supply.</i></p> <p>The recommendation that housing Strategies be reviewed every 6 months, based on housing delivery over which Council has no actual control, would be difficult to achieve given both local and state government reporting and review frameworks and not particularly useful.</p> <p>Council's housing strategy was adopted by on 22 October 2019 and forwarded to the Department of Planning, Industry and Environment (DPIE). It is noted that the Strategy has been with DPIE awaiting endorsement for close to 12 months. The dwelling demand and population growth is consistent with the forecasted figures provided by DPIE at the time of the Strategy adoption.</p> <p>Revision to the housing strategy and LSPS will require a complex framework of reporting, exhibition, authority engagement and review and endorsement. Council have previously requested advice from the Greater Sydney Commission/DPIE in regards to the process for making such amendments and have yet to receive a response.</p> <p>Notwithstanding, it is unlikely that a review of these strategic documents could be satisfactorily undertaken every six months.</p> <p>Also, contrary to reinforcing the primacy of a planning-led system the continued emphasis on resourcing, accelerating and granting additional jurisdiction for rezoning proposals sends an entirely contrary message.</p>

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<p>7.2 Review and revise SEPP 65, aiming to minimise prescriptions so as to ensure maximum flexibility for housing that matches consumer choice while maintaining minimum basic quality.</p>	
<p>The paper suggests that 'restrictive' planning controls such as height of buildings, minimum standards for apartment sizes or numbers of car parks are limiting housing supply.</p>	<p>It is disappointing to see Council's previous submission misquoted within the Green Paper, supporting an argument contrary to the context of the submission.</p> <p>The Hills has advocated for a greater diversity of apartments, including larger apartments for families with complementary parking rates.</p> <p>This is reflected in our current Housing Diversity Mechanism which is instrumental in facilitating a range of dwelling sizes including some to accommodate family groups within station precincts. It is our intention to expand this to our other station precincts to ensure that larger apartments to accommodate families are available. The Commission could include a recommendation to investigate similar provisions being implemented on a wider scale to better reflect community demand.</p> <p>Numerous studies have indicated that there is demand for larger; rather than smaller, apartments. The Victorian Department of Environment, Land, Water and Planning Better Apartments survey (2015) investigated housing preferences for those living in high density developments. The survey concluded in the following:</p> <p><i>When you consider all results and qualitative commentary, overall there is consistency in the feedback with all segments pointing out essentially two key issues facing apartment living for the future:</i></p> <ul style="list-style-type: none"> • Reasonable apartment sizes to ensure sufficient space and storage to suit any family type and life stage; and • Quality of air, ventilation and natural daylight because it's important for health and well-being. <p>The results clearly indicate a demand for larger apartments and the need for additional apartment space. Housing diversity needs to reflect a greater mix of two and three bedroom apartments which are larger in size, as opposed to reducing or removing the minimum apartment size in the Apartment Design Guide (ADG).</p> <p>Independent research should be carried out to inform any change in this area, rather than relying on industry lobby groups such as Urban Taskforce to lead policy development. Any movement to revise SEPP 65 to further lower the quality of development to that of 'minimum basic quality' is strongly opposed.</p>

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<p>7.3 Rationalise existing business and industrial zones in the Standard Instrument LEP to reduce the number of zones.</p> <p><i>Broaden the range of permissible activities to ensure prescriptions are reserved for genuinely incompatible land uses.</i></p> <p><i>Expand application of the complying development assessment pathway to the newly consolidated employment zones.</i></p>	
<p>The Paper suggests there is a strong case to consolidate existing zones to better suit the future of work and the way our cities function and this should be done by establishing a contemporary strategic intent for employment zones and broadening the range of permissible activities.</p> <p>New zones could consider land uses grouped along the following lines:</p> <p>B1 (Neighbourhood Centre) and B2 (Local Centre): councils should set out a hierarchy of local centres, with the vision for each individual local centre considered through merit assessment of development applications without the need for overly prescriptive controls.</p> <p>B5 (Business Development), B6 (Enterprise Corridor), B7 (Business Park) and IN1 (General Industrial): there is potential to merge uses within these zones into a single zone that allows a mix of business, light industrial, creative industrial, and retail activities.</p> <p>Industrial (IN) Zones: the IN2 (Light Industrial) and IN1 (General Industrial) zones could be merged, and permissible uses broadened. The distinction between IN3 and IN4 should be maintained for genuinely incompatible heavy industrial and waterfront uses.</p>	<p>Previous comments on the merging of the business zones still stand.</p> <p>The approach appears to take a step back in planning policy since the introduction of the Standard Instrument.</p> <p>In the past overly flexible zones prevented the effective clustering of businesses and employment uses, which diminished overall economic outputs of employment centres and reduce the opportunity of Local Government to establish hubs of a certain commercial activity.</p> <p>For example, the B5 Business Development Zone has allowed for a concentration of bulky good retailers establishing a thriving and attractive retail park within the traditional light industrial area of Castle Hill. Apart from meeting demand and providing a convenient single location for shoppers, the clustering of these uses complements the range of goods and services available at nearby Castle Hill strategic centre and also ensures surrounding industrial zoned land remains available for necessary urban support uses such as car repairs.</p> <p>Concern is raised over the merging of the B1 Neighbourhood Centre and B2 Local Centre zones. The suggested changes could result in a scale of development which is inconsistent with the objective and function of the zone or centres hierarchy.</p> <p>The current B1 and B2 zoning provides an effective tool in prescribing a hierarchy of centres.</p> <p>Outlining the permissible uses in a local strategy would be counterintuitive to reducing the complexity of zoning, compared to a LEP which clearly states what is and isn't permissible with consent in a certain zone. Likewise, any permissible use contained in a local strategy would be difficult to enforce without statutory weighting provided by the LEP.</p>

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7.4 Require councils to prepare economic strategies (including commercial centre strategies) with the aim of increasing employment and productivity outcomes when updating Local Environmental Plans.	
<p>The Green Paper recommends that councils be required to undertake economic assessments based on a standard framework set by the NSW Government and economic development strategies should identify commercial centres, with pathways for delivery of targeted employment outcomes.</p>	<p>Council is currently planning and preparing an Economic Growth Plan, as identified in its Local Strategic Planning Statement. There is no objection in principle to the requirement to prepare such strategies, subject to realistic timeframes and resources being available.</p> <p>However the full implications of this recommendation are not able to be considered without detail on proposed legislation or implementation mechanisms.</p> <p>Noting there are currently various departments and agencies sharing the responsibility for facilitating economic development and undertaking their respective programs and activities to promote growth, investment and business support (Treasury, Planning Industry and Environment, Transport and Customer Service) a coordinated and collaborative approach to guide the preparation of strategies is the preferred outcome rather than a legislated requirement.</p>
7.6 Continue to implement measures to reduce red tape and complexity in the planning system. Bring NSW approval assessment times into line with other jurisdictions' times by the end of 2023.	
<p>A number of initiatives are identified to streamline approvals some of which have already been announced (Appendix 3):</p> <ul style="list-style-type: none"> • Establish a new class of appeals for planning proposals • Rationalise statutory times with issues raised about stop the clock provisions causing delays and confusion and unnecessary layer of complexity 	<p>In general, the timing of development assessments is primarily dependent on the complexity of proposal, and its compliance with the various Local and State Government policies. A compliant development which accords with local and state planning controls is unlikely to experience delays.</p> <p>Planning controls should not be viewed as a barrier to development but rather as facilitating development which has the least possible negative impacts and guides the development of livable neighborhoods in vibrant and productive cities and towns. The following comments are provided on the specific measure outlined:</p> <ul style="list-style-type: none"> • This will add time and red tape to the process and discourage working with proponents to achieve suitable outcomes. • Further investigation should be sought to expand the provisions of Clause 51 of the EP & A Regulation 2000 in regard to rejection of DAs. Council's use of stop-the-clock or requests for additional information is generally due to the quality of the information provided.

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<ul style="list-style-type: none"> • Introduce deemed approval provision similar to Queensland to improve assessment timeframes • Improving the concurrence and referral process • Streamline approval processes for certain development types • Evaluate the impacts of Local Planning and Regional Planning Panels 	<ul style="list-style-type: none"> • A broader set of criteria with which to reject a DA at the time of lodgement would allow for DAs to be rejected quickly and re-lodged at a later date with better or additional information to support the DA. The broader criteria could include a survey plan (where large scale construction works are proposed) or reference to specialist reports (where required). • The deemed approval pathway in Queensland relates to 'code approvals' which refers to a 'code assessment' against assessment benchmarks. • The use of such a system would require the Act, Regulations and Council LEPs (assumed to be a categorising instrument) to be rewritten to provide assessment criteria and allow a deemed approval. • This appears to be a similar assessment criteria to the Complying Development Certificate criteria, and would not necessarily result in a better development outcome. • Reasonable timeframes for all integrated, concurrence and general referrals may be of benefit for reducing DA assessment times. However the suggestion that a 'deemed approval' provision be incorporated does not recognise the complexity of the referrals or the need for involvement from Government agencies. • An expansion of the Complying Development Certificate (CDC) criteria should be limited to minor types of development within business and industrial zones as specified. • Further clarification is required regarding increasing CDCs for State and Regional significant development. Given the scale and importance of these developments the use of a CDC would appear counterintuitive and unable to address the complexity of larger applications. • At the time of formation of the Independent Hearing and Assessment Panels (IHAPs) (and Local Planning Panels (LPPs)), The Hills Shire Council played a leading role in advocating for their removal. Council have consistently expressed concerns and the necessity of LPPs, which add considerable delay to the development assessment process and add no demonstrable benefit, while also removing democratically elected representatives from important decisions that directly impact their communities.

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	<ul style="list-style-type: none"> • Development Applications which would have previously been dealt with internally by Council's Development Assessment Unit (DAU) under delegation are now required to go to either of the Panels. • Given Council's Development Assessment Unit (DAU) meets on a weekly basis, compared to the panels which meet monthly, this has resulted in significant delays. The reduction of LPPs oversight is consistent with the previous position of Council, and should be further investigated by the NSW Productivity Commission.
<p><i>7.7 Develop a consistent approach to measuring benefits to community welfare from the provision of open and green space to help inform government business cases involving development.</i></p> <p><i>Develop better options for taking into account green infrastructure and public space in strategic land use planning.</i></p>	
<p>This section of the Green Paper talks about making the most of our open and green spaces.</p> <p><i>'While there is clearly strong community support for quality open space, what is not clear is how much open space is the right amount, and what the benefits of open space are compared with the costs. A consistent approach should therefore be developed to quantify the benefits of open and green space. This would assist with making the case for the need to ensure its provision in government business cases involving development' (Page 250)</i></p>	<p>The Green Paper does not reference the recently exhibited draft 'Greener Places Design Guide' prepared by the NSW Government Architect. This document attempts to quantify 'how much open space is the right amount' for different urban settings including greenfield and urban renewal development sites, as well as considering a 'performance based approach' to open space provision.</p> <p>Council's submission to the exhibition (Attachment A) generally supported a performance based approach in greenfield development areas, but raised concern about how such an approach might be applied in urban renewal areas where more weight should be placed on the quality of open space over the quantity.</p> <p>It is noted that the guide is intended for use across government agencies including the Department of Planning, Industry and Environment. Planning for the Showground Station Precinct was led by DPIE, which in its approved form does not meet the performance criteria recommended in the guide. Shortfalls in the provision of open space in state led precincts have been justified (incorrectly in our view) on the basis that other precincts undergoing renewal also have a low provision of open space.</p> <p>Council's own experience in the Castle Hill North Precinct is that the appropriate provision of open space in infill areas is prohibitively expensive.</p>

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<p>7.8 Progress reforms to the infrastructure contributions system after the Productivity Commissioner's current review, to deliver a principles-based, transparent and certain system</p>	
<p>This section of the Green Paper cross references the separate review of Infrastructure contributions and identifies notable issues including:</p> <ul style="list-style-type: none"> • The Local Infrastructure Growth Scheme (LIGS) and inequities created by caps on contributions because they shift costs onto the taxpayer that are more suitably borne by developers. • Planning agreements and issues with time and resources involved in negotiation — lack of nexus between the infrastructure delivered and the development for which it is negotiated — a general lack of transparency. • Contributions funds and delays in spending with mismatch between service demand and delivery undermines community confidence in the planning system. 	<p>Council has provided substantial commentary on the recent review of the Infrastructure Contributions being undertaken by the NSW Productivity Commission, and continue to generally support the intention of the reforms (Attachment B).</p> <p>The reforms should be completed as a matter of urgency to avoid any further delays in Council's infrastructure planning and the progression of policy matters which are currently being held up pending the outcome of the review and potential legislative changes.</p> <p>The current system of developer contributions, and in particular the unreasonably restrictive essential works list, duplication of public exhibition by IPART, inconsistency of IPART advice between different reviews, conflict between State Government imposed precinct plans and funding provisions, and delay in gap funding payments is contributing to the misalignment of development and infrastructure.</p> <p>Removal of caps is viewed as a positive change, however we reiterate the need for an increase to the thresholds of contribution rates which trigger a review by IPART. This process adds an unnecessary delay to the development of local infrastructure, and results in inferior outcomes for the future community.</p> <p>It is also open to the State Government to consider a more active role in early land acquisition and bulk infrastructure roll out to achieve lower prices and greater certainty.</p>
<p>8. A BETTER MIX OF STATE AND LOCAL TAXES CAN ENCOURAGE GROWTH</p>	
<p>8.2 Use the Review of Infrastructure Contributions to find ways to deliver a more sustainable system of rates and infrastructure contributions, so that councils can provide the infrastructure and services required to accompany development and growth.</p>	
<p>Evaluate reforms within three years and if reforms do not provide sufficient funds to deliver services, councils should hold a plebiscite of ratepayers to test support for abolishing the rate peg.</p>	
<p>This section of the Green Paper outlines key issues raised by stakeholders in relation to local government and the current government rates system including:</p> <ul style="list-style-type: none"> • Increasing demand for better quality 	<p>Whilst greater flexibility is needed over rate setting to reflect changes in costs, any suggestion that abolishing the rate peg will resolve infrastructure funding issues is inequitable, noting that much of the existing development has already paid a fair share towards local and regional infrastructure.</p>

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<p>and more services</p> <ul style="list-style-type: none"> • Lack of autonomy for councils on rate setting • Controls placed on councils' ability to raise revenue (essential works list and rates peg) • Population growth drives demand and the peg does not allow sufficient revenue to meet demand (and can be a disincentive to growth and renewal) • Alternative funding sources are limited and developer contributions are seen as an unfair burden by many stakeholders. 	<p>Expanding communities in greenfield areas are already subject to proportionally more indirect taxation than those living in existing brownfield areas due to increased developer contributions, higher commuting costs through fares, tolls and vehicle expenses and the time taken to commute to employment centres. These factors need to be acknowledged and resolved across areas subject to uneven development outcomes and housing targets.</p> <p>Any abolition of rate pegging should not be tested by Councils holding plebiscites. It is unlikely that every Council would undertake a plebiscite, especially if the associated costs are being borne by Councils.</p> <p>It is suggested that the need assessment be driven by the State Government in consultation with Councils and be addressed at the State level across all LGAs.</p>



THE HILLS
Sydney's Garden Shire

THE HILLS SHIRE COUNCIL

28 August 2020

Department of Planning, Industry and Environment
12 Darcy Street
PARRAMATTA NSW 2123

Our Ref: [REDACTED]

Dear Sir/Madam

SUBMISSION ON THE DRAFT GREENER PLACES DESIGN GUIDE

Thank you for the opportunity to provide comment on the Draft Greener Places Design Guide. It is understood the guide will inform the new Design and Place State Environmental Planning Policy (SEPP) being developed in 2020.

We generally support the intention of the guide, and believe the proposed changes align with Council's existing strategic framework. Council's current provisions consider a combination of the hierarchy and catchment area of each park, similar to the proposed approach from DPIE.

Open Space Performance Indicators

The guide indicates a shift in public open space provisions towards a performance-based approach. While the proposed performance indicators may be appropriate for greenfield development, it will be a significant challenge to implement in urban renewal areas and brownfield development sites. In these scenarios, more weighting should be placed on the quality and accessibility of public open spaces rather than quantity. The guide recognises that larger, higher quality parks within a longer distance may be appropriate if easily accessible, however this is not represented in the proposed performance indicators. Accordingly, it is recommended further refinement is pursued of the performance indicators to recognise the level of service available in each public open space within established urban areas.

It is recognised the guide is intended for use across government agencies including the DPIE. Planning for the Showground Station Precinct was led by DPIE, which in its approved form does not meet many of the performance criteria suggested in the guidelines. In a submission made to DPIE's exhibition of the Showground, Bella Vista and Kellyville Station Precincts Plans from Council dated 26 February 2016, it was raised that the extra 4,000-8,000 dwellings for the Showground Precinct and 4000 dwellings for the Kellyville Precinct could not be adequately serviced with recreational space. It is understood the open space and community infrastructure assessments sought to justify a shortfall in provision on the basis that other precincts undergoing renewal also have a low provision of open space.

Whilst the intention of the guide and potential new SEPP is a step in the right direction, confidence and certainty is needed that the State Government will take the lead in implementing changes as part of future precinct planning.

The Hills Recreation Strategy (see Attachment 1) establishes an alternative performance indicator of 1 playing field per 2,000 people in a low density setting, or 1 playing field per 4,000 in a high density setting. Catchment areas for each public open space are based on their level of service and availability of amenities for residents. This formula allows for a higher degree of flexibility in our established urban areas, that maximises field utilisation. This approach is much more consistent with the Premier's priority, identifying that all residents should be within 10 minutes of a public open space. It is recommended that DPIE consider a similar approach to addressing open space provisions in established areas to inform more robust and effective performance indicators.

Planning Considerations for Recreation Types

The accessibility, diversity and better use of existing public open spaces should be encouraged, however community expectations need to be managed. It would be unsustainable for instance to install a playground, or outdoor gym or dog off-leash at every park just to enable access. Encouraging a hierarchy of public open spaces will allow for a variety of different spaces to address residents demands. In addition, Local and State levels of Government should be encouraged to explore opportunities for joint use arrangements of existing infrastructure, such as school open space areas being available for community use outside of school hours at the Bella Vista Public School.

Fit for Purpose

The guide indicates that land must be free of hazards and constraints. Whilst we are in agreement with this statement, a number of the identified hazards can, and have, been managed across Greater Sydney to provide high value public open spaces, including the following:

- **Known or suspected to be contaminated** – In many developed areas, old creek lines have been filled overtime with uncontrolled fill, some of which will no doubt be contaminated. Any indication of contamination will need to be the subject of detailed investigation and identification of its potential impacts on the site. Many existing parks in Sydney are former landfill sites such as Brennan Park in Smithfield, Holroyd Gardens in Holroyd. While these spaces are contaminated, provided they are appropriately capped and managed, this has not prevented the effective use of this land as open space.
- **High voltage powerlines** – It is common for high voltage powerlines to be located along open space corridors which may also support cycleway paths for example along the Cooks River in Strathfield south and Powells Creek in Homebush. It is also common in western Sydney for powerlines to be positioned in parkland for example Mason Park in Homebush, Whalan Reserve/Boronia Park in Whalan, particularly parks that are located along open space corridors.
- **Where community use is constrained by easements** – Many open space corridors that have high voltage powerlines, gas, and oil pipelines also have associated easements. While they restrict inappropriate development, these easements can be managed and do not necessarily require sterilisation of land.
- **Constructed Drains and Flooding** – A number of public open spaces within the Shire and across Sydney are located within overland flow paths identified in a 1:100 year flood level. These spaces are typically left as unimproved open space due to the limited development potential from the ongoing flood risk, and as such have become parkland. Establishing low-impact public open space within these spaces allow for the utilisation of otherwise unnecessarily sterilised land. In addition, constructed drains and overflow paths are suitable

for parkland provided they can be managed appropriately with fencing, grates to prevent entry into drains, flood warning signage etc.

While it is not ideal to have high voltage powerlines, contamination, flooding and easements in open space areas, if land must be free of these hazards a number of high quality existing open space areas would be unnecessarily impacted. Consideration for new open space areas and the acceptable balance of the identified hazards, below ground services and their associated easements should be further investigated to allow appropriate use of otherwise underutilised land.

Urban Tree Canopy

We recognise the importance behind increasing urban tree canopy and reducing the impacts of the urban heat island effect, however request further investigation into resourcing and financing such programs. Additional partnerships and Local and State government ventures may be required to ensure the effective implementation of any tree canopy planting program.

Should you have any enquiries in relation to this submission, please contact [REDACTED]

Yours faithfully

[REDACTED]

[REDACTED]

Attachment 1: Recreation Strategy (Supporting Document of the approved Local Strategic Planning Statement)



THE HILLS
Sydney's Garden Shire

THE HILLS SHIRE COUNCIL

7 August 2020

Peter Achterstraat AM
NSW Productivity Commissioner
NSW Productivity Commission
ICReview@productivity.nsw.gov.au

Our Ref: [REDACTED]

Dear Mr Achterstraat

EXHIBITION – ISSUES PAPER ON THE REVIEW OF INFRASTRUCTURE CONTRIBUTIONS IN NEW SOUTH WALES

Thank you for the opportunity to provide feedback on your Issues Paper on the Review of Infrastructure Contributions in New South Wales.

The Issues Paper raises some valid and important questions with respect to the contributions framework within NSW and Council looks forward to being further involved as part of your review and as part of the preparation and implementation of any future reform to the infrastructure contribution system.

The comments provided herein are principally based on previous submissions and resolutions of the Hills Shire Council. Unfortunately the deadline for submissions has not provided sufficient time for the Elected Council to consider the questions or formulate detailed responses. In order to obtain more formal input from Council, it is recommended that as part of any future engagement, the Commission allows for a longer timeframe to provide submissions. Notwithstanding this, comments on the Issues Paper are included as Attachment 1 of this letter.

Please also find attached Council's recent submission to the Department of Planning, Industry and Environment on their Review of the Contributions Framework.

We would be happy to meet with the Productivity Commission to discuss any of the matters raised within this submission, and the operation of the contributions framework based on Council's extensive experience with Greenfield release areas and infill developments. If you have any questions in relation to this matter please contact [REDACTED]

Yours faithfully

Attachment 1: Responses to Discussion Paper Questions
Attachment 2: Submission to DPIE – Review of Contributions Framework

Issue 1.1: Striking the right balance

There can be difficulty in reconciling the competing principles of efficiency, equity, certainty, and simplicity. Failure to strike the right balance can undermine confidence in the planning system.

- *Is a 'one size fits all' approach appropriate or do parts of the State require a bespoke solution?*

Whilst a one size fits all approach would be simpler to administer, it is not considered to be practical. Areas undergoing substantial growth generally require a bespoke solution. The extent of growth, availability of infrastructure, demand for new and augmented facilities, deliverability of infrastructure and land costs vary greatly depending on the location.

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

Site specific (precinct specific) calculations have regard to the population growth, infrastructure demand and delivery, uptake and land value. This is especially relevant for areas undergoing mass urban transformation where substantial development and infrastructure delivery will occur. Within these locations nexus between demand and supply of infrastructure can be more easily established. However, it is noted that within urban infill locations which are transitioning to high and medium density transit centres, the identification and delivery of infrastructure is quite difficult as it requires substantial retrofitting of existing infrastructure. For locations which are not subject to substantial development pressure, where development is more gradual and sporadic, average rates could be considered, although under the current legal framework a nexus giving rise to the contribution would still need to be demonstrated.

It is also noted that within locations undergoing substantial urban growth, such as land release areas and urban infill locations, the delivery of essential infrastructure requires considerable land acquisition for roads, parks, playing fields, water management and community facilities. The cost of acquiring this land forms a substantial portion of the overall cost of a contributions plan. These land costs are extremely variable, even between adjoining local government areas, and can escalate quite quickly, depending on market conditions. Quite often when Council prepares a contributions plan the land value assumptions which underpin the plan are already out of date before the plan has been finalised. Applying average rates, such as land values would not be practical or reasonable and would ultimately impact on the end of plan balance.

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

Council does not have a position on this matter.

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

A reformed contributions system should endeavour to strike a reasonable balance between the competing goals of certainty and flexibility. Ultimately, this balance can be improved by delivering the following:

- **Contribution Rates are Fair, Reasonable and Justifiable (Clear Nexus and Apportionment)**
There should be an appropriate level of transparency with respect to the determination of contribution rates. This will facilitate greater industry and community acceptance of infrastructure charges. Areas undergoing high population growth require substantial investment in infrastructure (both local and regional). The provision of this infrastructure is essential to ensuring an appropriate quality of life of future residents. Contributions

rates are frequently a source of aggravation for developers who see these contributions as an excessive and unreasonable cost to development. The broader community also incorrectly perceives these levies as Government gouging. Greater community understanding of the importance of local infrastructure, especially within land release and urban infill locations, would assist in addressing this confusion.

- **Align Infrastructure Delivery and Population Growth**

Council receives frequent complaints from residents about the slow delivery of infrastructure within growth precincts. Early in the life of a contributions plan most of the funds are allocated toward the acquisition of land. This results in a substantial delay in the delivery of capital infrastructure. This often causes extreme frustration for residents who move into a precinct without key infrastructure being available such as playing fields, parks and upgrades roads. Early acquisition of land and delivery of key infrastructure would address this issue, albeit this will further increase the cashflow requirement at the start of a plan which needs to be considered as a separate matter. However it is noted that under the current framework there are restrictions on Council's capacity to undertake this scale of forward funding as it places a substantial cashflow burden on Council. Forward funding of infrastructure requires Council to borrow funds which is difficult for Councils which have a 'no debt' position.

- **Certainty of Infrastructure Costs**

The cost of infrastructure delivery (including capital and land cost) increases considerably over time. In the absence of actual costs, the cost estimates within a plan are only ever estimates and are subject to significant variation. Development contribution rates could become much more certain and less prone to variation over time if infrastructure could be cash-flowed to occur early in the development phase, rather than after sufficient contributions have been received. This would also ensure increased value for money with land acquisition and construction costs and promote orderly development by ensuring infrastructure is delivered prior to, or in line with development (rather than after the development has occurred).

Direct contribution plans are underpinned by a substantial number of assumptions such as uptake, land and capital costs, indexation, and delivery timeframes. These assumptions, whilst necessary, create uncertainty. By having actual costs, this provides administrators and the community with certainty as there is a clear link between the contribution amount and the infrastructure which has been delivered. It would also reduce incidences of substantial end of plan deficits and/ or surpluses.

- **Timely Preparation and Review of Contribution Plans**

In order to ensure that the system can adapt to changing economic circumstances, the timeframe for preparing and reviewing contributions plans needs to be substantially reduced.

The length of the IPART and Ministerial review process is lengthy and can make plan review a slow and arduous process which limits flexibility. The Hills Council has had a number of plan amendments reviewed by IPART, with an average timeframe of 8 months (for the IPART review process) and a further 9 months following this to receive directions from the Minister. These timeframes, in addition to the time taken for Council to prepare, report and publicly exhibit a Plan, means that a simple review of a contributions plan can now take in excess of 1-2 years. This is simply too long and limits the ability for a plan to respond quickly to changing economic circumstances.

There is also currently an over-emphasis on perfect technical outcomes and apportionment which hinders the timely and efficient preparation of contributions plans and certainty for stakeholders, with very minimal difference resulting in subsequent contribution rates. Feedback should be obtained from industry bodies to determine

whether their preference is for absolute technical perfection or simplicity, transparency and timeliness.

It is suggested that councils be permitted to update IPART reviewed contribution plans to reflect actual costs of items, without having to go through an IPART review/ approval process. These updates would not change the scope of infrastructure being delivered, the yield projections or financial assumptions within the plan. Rather, the update will ensure that the in-force plans include the most up-to-date and accurate information without unnecessary delay. It is noted that this would not replace periodic whole of plan reviewed which ultimately would need to be reviewed by IPART.

- **Promote Innovative Infrastructure Solutions**

The contribution framework should promote innovation and cost efficiency and not restrict or undermine Council's capacity to put in place creative solutions to meet the demand for infrastructure. Comments raised with respect to the restrictive nature of the essential works list are discussed under Issue 3.6.

- **Early Identification of Infrastructure**

Infrastructure planning (both regional and local) should occur early in the master planning process. By the time that land is rezoned, the required infrastructure should be known, with a funding mechanism clearly identified. This will ensure that by the time that development occurs there is clarity on infrastructure requirements, infrastructure costs and contributions. It has become normal practice for the Department of Planning, Industry and Environment to rezone precincts in advance of completing adequate infrastructure planning and analysis. This leads to lag time between rezonings occurring and contributions plans taking effect (often in excess of 12-24 months), which results in infrastructure deficits, uncertainty with respect to infrastructure outcomes and locations, uncertainty with respect to contribution rates, higher costs for infrastructure delivery and inability for developers to proceed with development, despite rezonings being finalised.

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

- *Are there any potential funding avenues that could be explored in addition to those in the current infrastructure funding mix?*

Government funding or infrastructure agency to forward fund or deliver all infrastructure, with contributions plans simply reimbursing actual costs over time. Absolute certainty of contribution rate, most cost efficient method of delivering infrastructure, best planning outcome as infrastructure delivered on time and in-line with new communities arriving in the area.

Consideration should also be given to the recurring costs of infrastructure delivery, maintenance and replacement. The Issues Paper notes that '*Rates revenue funds service delivery for the existing community including recurrent costs that cannot be recovered through infrastructure contributions. The rate peg, however, acts as a financial disincentive for councils to accept development. In its presence, their rates revenue does not rise as population and land values increase. This contrasts with the both State and the Commonwealth, which are both able to expand their revenue with rising population and asset prices*'. This position is strongly supported.

As was mentioned within Council's submission on the NSW Productivity Commission's Discussion Paper - 'Kick-starting the Productivity Conversation', the rationale of rate pegging to ensure costs are controlled and to manage local government costs within limits is recognised. However greater flexibility is needed to better reflect the costs being borne by councils and respond to challenges in delivering the service levels sought by residents. In the long term Council will continue to face challenges in funding increased levels of service in new areas unless an adjustment to Council's income base is achieved with certainty. For any Council, the process of seeking a Special Rate Variation is onerous and time consuming with no certainty that favourable consideration will be given by IPART.

Each council has unique efficiency levels and clearly any removal of pegging would require careful management and accountability which, is ultimately provided by local government elections every 4 years. The Hills Shire Council is one of the most competitive, financially responsible and high performing in the State and would welcome the opportunity to contribute our expertise to progress this conversation, we would also encourage a critical examination of the costs shifted onto local government by other levels of government.

Issue 2.2: Integrating land use and infrastructure planning

The Greater Sydney Region Plan provides the overarching vision and infrastructure needs, which is translated into separate District Plans and Local Strategic Planning Statements. These are used by councils for land use and infrastructure planning.

- *How can the infrastructure contributions system better support improved integration of land use planning and infrastructure delivery?*

Land should not be rezoned without a contribution plan or infrastructure funding mechanism being in place. The current framework under the Environmental Planning and Assessment Act 1979 permits a precinct to be rezoned without a contribution plan or DCP being adopted. Whilst provisions can be included in planning instruments to ensure that consent cannot be granted until a DCP is in place, the same arrangement does not apply to Section 7.11 contribution plans.

All precincts undergoing substantial urban growth should be subject to a special infrastructure contribution. The need to consider regional infrastructure, along with local infrastructure, early in the life of the master planning process is absolutely essential. Once a precinct is rezoned, it is very difficult to identify solutions and funding mechanisms for regional infrastructure, such as schools and regional road upgrades.

There also needs to be increased cooperation between State and Local Government to acquire land and deliver infrastructure early in the life of contributions plan. This will result in substantial costs savings within the plan, will provide certainty of costs, and will ensure that adequate infrastructure is available when residents move into a growth precinct.

The current system is setup to defer payments until as late in the process as possible, to assist with developer cash flows. While this may assist in development delivery, it means that councils are in a position of needing to either forward fund infrastructure using general revenue or delay delivery of infrastructure until contributions income has been received. This outcome is detrimental to existing communities who in-effect are being asked to subsidise the cost of money flowing into new developments out of which they will receive no dividend in return. The latter option means that new communities will already be living within a release area, without the infrastructure which has been planned to service them.

Issue 3.1: Principles for planning agreements are non-binding

The Planning Agreements Practice Note is currently non-binding on councils, although the Ministerial Direction exhibited by the Department aims to change this. There are no equivalent guidelines for use when negotiating planning agreements with the State. Additionally, there is little agreement between stakeholders on what the principles should be for either local or State planning agreements and there is no consensus on the appropriateness of value capture through planning agreements.

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

It is generally preferred for infrastructure contributions to be established through an adopted contributions plan which accounts for the overall growth within a locality, infrastructure requirements, projected land and capital costs, and apportionment. However, there are circumstances where this is simply not practical, such as site specific rezoning within locations

where master planning has not been completed or development applications which propose an outcome which was not anticipated under an applicable contributions plan. In these circumstances a site specific funding mechanism (VPA) is required. This is not the preferred approach as it generally pre-empts the outcome of the broader precinct-wide master planning. However, as long as the planning system permits and encourages site-specific developer-initiated planning proposals to proceed in advance of adequate precinct planning and infrastructure analysis, there will be a need for a VPA mechanism (or similar) to address infrastructure demands.

Negotiating contributions through planning agreements is not an exact science and often requires planning authorities to make numerous assumptions on broader growth, infrastructure requirements and costings, to ensure that a developer is making a fair and reasonable contribution. This ultimately creates uncertainty in the planning system as it enables certain development to bypass broader precinct planning process based on a contribution which may, or may not, be adequate.

Nevertheless planning agreements do have a role in the planning and development system. In order to ensure that confidence in the planning system is not undermined, the negotiation of these agreements needs to be transparent and needs to follow clear processes, procedures and considerations to ensure all parties act in an appropriate and accountable manner. VPAs also provide a mechanism to deliver critical but 'non-essential' infrastructure such as community buildings and/or libraries.

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

When establishing a fair and reasonable contributions there should be a demonstrable connection between the public benefit being offered (whether work, land or monetary contribution), the projected increase in demand for infrastructure, and the apportionment of this demand attributed to the development under assessment. When this connection is established a planning authority, and the broader community, can clearly establish whether an offer is appropriate.

Contributions which are based on 'value capture' may create an artificial incentive for planning authorities to maximise the achievable density on a site in an effort to maximise contributions, without establishing an adequate connection between the increased demand and additional infrastructure required to service the growth.

Even where 'value capture' mechanisms are applied, it is critical that the 'user-pays' approach to infrastructure contributions is maintained, with the value of contributions captured relative to the demand for additional infrastructure which results from a particular development, upzoning or event.

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

The nexus requirements for planning agreements should not need to be as strong as the requirements which underpin 7.11 contributions plans. However there should be some connection between the increase in demand resulting from a development, the contribution (public benefit) being offered, and the likely infrastructure to be delivered to meet the demand. The reason for this is that planning agreements often support proposals which pre-empt broader precinct planning, or simply propose a development outcome which was not anticipated within any applicable contributions plan. Accordingly, establishing a clear and definitive connection between demand and infrastructure items may not be possible, as broader precinct planning has not been completed.

Any review of this section of the contribution framework should ensure that VPAs continue to be a tool to facilitate the delivery of public and community benefits which are 'outside-the-box' (i.e. not previously anticipated). Completely removing this option from the contribution system could restrict opportunities for innovative outcomes. Additionally, in a competitive marketplace, a developer/

proponent should be entitled to be able to access a mechanism which allows them to distinguish their development from others.

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

Determination of State planning agreements should be subject to the same level of transparency as local planning agreements. Accountability and transparency should not only be restricted to the negotiation of local planning agreements.

Issue 3.2: Transparency and accountability for planning agreements are low

Reporting and accounting requirements for planning agreements are low, although proposed changes to the Regulation may improve this. Differing practices between councils and the State in maintaining separate planning agreement registers and public notice systems is confusing and reduces transparency and accountability.

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

The State Government's recent draft changes to the Environmental Planning and Assessment Regulation to require planning authorities to provide additional reporting and accounting information for planning agreements are considered to be reasonable. As it stands, all Council VPAs are publicly exhibited and reported to open meetings of Council.

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

There is merit in the State Government maintaining an online planning agreements register. However, there must be clear quality control over this centralised register to ensure that it is current and up-to-date and that this does not become another cost and compliance burden shifted to Local Government.

Issue 3.3: Planning agreements are resource intensive

Planning agreements are a resource intensive mechanism but have potential to deliver unique and innovative outcomes.

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

The practice note should provide examples of when planning agreements could be considered. However it should not be definitive. Each Council should retain discretion as an elected planning authority and could clearly articulate within a Voluntary Planning Agreement Policy when a Voluntary Planning Agreement will be considered.

Issue 3.4: Contributions plans are complex and costly to administer

Contributions plans can be opaque, making it hard for developers to calculate a potential contribution liability and the community to know what infrastructure it can expect and when. Many plans are not updated in a timely manner, leading to issues with cost escalation, outdated assumptions, and difficulty meeting community infrastructure needs. Some councils have significant contributions balances, indicating there may be barriers to timely expenditure.

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

The current IPART review process is quite cumbersome and can substantially increase the overall timeframe for preparing and implementing a contributions plan. The Hills Council has now had 11 plans/amendments reviewed by IPART, with an average timeframe of 8 months (for the IPART review process) and a further 9 months following this to receive directions from the Minister. These timeframes, in addition to the time taken for Council to prepare, report and publicly exhibit a Plan

amendment, means that a simple review of a contributions plan can now take in excess of 1-2 years, which is simply too long.

It is recognised that the intended objective of IPART's involvement in the review process is to ensure that infrastructure identified within contributions plans is appropriate and that cost estimates and subsequent contribution rates are reasonable. However, based on past experience, the length of the process only serves to create uncertainty for Council, landowners and the community and hinder Council's ability to progress with the delivery of local infrastructure to support development. Council's experience is that IPART's assumptions of costs, particularly early in the life of the Plan, end up resulting in an underestimation of actual costs. This creates additional risk to providing the necessary infrastructure to support new communities.

The scope and level of detail involved in the IPART review process has incrementally increased over the past 5 years, to the point where it is now a significant resource and cost impost to Council. In part, this is due to IPART duplicating existing auditing and quality control processes, despite Council already complying with extensive legislative requirements under the EP&A Act (relating to nexus, reasonableness of contributions and the process for preparing a contributions plan) and financial auditing and reporting requirements under the Local Government Act.

Quite often the turnover of staff and IPART's process of undertaking a holistic review of a Plan each time it is submitted (rather than just receiving a specific amendment) has resulted in significant delays in the review process. It requires Council to allocate a substantial amount of staff time to respond to the same/similar questions from IPART on multiple occasions. It also results in inconsistent findings and recommendations from IPART (often with IPART making different recommendations with respect to elements of a plan which were unchanged between subsequent IPART reviews).

Improving the IPART review and Ministerial assessment process should address the following matters:

- **Assessment Timeframes:** The current IPART and Ministerial review process can add between 12-24 months to the time taken for a Council to prepare and finalise an amendment to a contribution plan, which is simply too long.
- **Time lag for Council to update plans to reflect accurate costs:** During the IPART/Ministerial Review process, it is difficult for Council to make further changes to costs in the Plan without significantly prolonging (or restarting) the assessment process. This creates a scenario where Council may be unable to reflect critical factors such as updated land acquisition rates/cost, updated actual costs incurred or more detailed cost estimates for capital works items within an updated and adopted contributions plan (and adjust the contribution rate accordingly), for a period of up to 4 years. This is particularly problematic with respect to escalating land values, with evidence from Council's Balmoral Road Release Area indicating that over some periods of the development cycle, the cost for Council to acquire land has more than doubled over a 4 year period. For this reason it is recommended that Council be given the power to update the plan to reflect actual costs as discussed in 1.1 above.
- **Targeted Reviews:** Where a Plan has already been assessed by IPART and endorsed by the Minister, IPART should focus only on the elements of the Plan which are being amended, rather than holistic review of every element of a contributions plan each time it is submitted;
- **Assessment Criteria:** IPART should have a consistent set of criteria for assessing contribution plans. Inconsistency in the assessment process and the resulting recommendations complicates the assessment process and extends the assessment timeframe. Where IPART releases guidelines or technical advice for Councils, it is imperative that IPART then stands by this advice and applies it consistently. For example,

IPART's Local Infrastructure Benchmark Costs (April 2014) recommends that 'Councils use the benchmark costs as a guide in developing cost estimates for the purposes of levying infrastructure contributions. The onus is on councils to justify any deviation from the benchmark costs'. However, IPART's recommendations now frequently dispute Council's use of IPART's own benchmark costs, instead requiring Councils to fund and prepare more accurate cost estimates from Quantity Surveys or comparable actual costs simply to pass through the IPART review process.

For new contribution plans, Councils should be able to establish strategic cost estimates which utilise IPART's published benchmark rates, without being questioned by IPART on the application of these rates. It is simply not reasonable for IPART to expect Councils to have detailed cost estimates for items within new contribution plans.

- **Nexus within State Government Release Areas and Precincts:** Council has a number of contribution plans that service release areas where the precinct planning was undertaken and implemented by the Department of Planning, Industry and Environment. In these cases, Council is essentially provided by the Government with a list of local infrastructure to be provided, as an outcome of the Department's Precinct Planning process. The contributions plan then seeks to deliver this infrastructure list. It is completely unreasonable in such circumstances for IPART's assessment to then recommend that Council delete infrastructure items from a plan, as this directly contradicts and prevents the achievement of the planning, development and infrastructure outcomes established through the extensive and in-depth Precinct Planning Process completed by the Department. This places Council in the unreasonable position of needing to justify outcomes already established by the State Government, in order to progress through a State Government-imposed review process, or being unable to implement the planning outcomes expected by the Department (and the community).
- **Strategic Cost Assessments:** For new contribution plans IPART frequently raises concern with Council's strategic cost estimates for infrastructure items, and recommends revised costings which are unreasonably low, without any real justification for why the lower costs proposed by IPART are reasonable or accurate. In order to demonstrate that these recommended costings are unreasonable and that they would result in a substantial shortfall in the funds required to deliver the infrastructure, Council is then required to procure detailed concepts (often 80-100%) and Quantity Surveys which, as a result of the need for Council to submit additional information (or accept unreasonably low costs which will result in a funding deficit), can extend the IPART assessment process by 6-12 months. Even once these documents are prepared, Council continues to receive questions on individual line items within the independent Quantity Survey.

Furthermore, IPART often recommend much lower contingency rates than what is contained within Council's procured costings. This once again results in a substantial underestimation of infrastructure costs. It is recommended that should IPART recommend Council to engage a consultant for detailed costings, it should also accept costing in full including contingency, not just the base cost plus IPART's own contingency rates.

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

Greater use of assumptions, benchmarks and simpler averaging and apportionment of costs may result in marginally higher rates and less technically optimal calculation of apportionment between individual development sites. It would however lead to shorter timeframes, greater certainty for stakeholders and most likely, lower infrastructure delivery and resourcing costs (which could then be reflected in actual costs and flow through to lower contribution rates).

Simpler plans with more frequent, faster and simpler reviews would likely protect against the potential consequences of reduced complexity. For example, a standard/typical contribution plan review process takes in excess of 24 months from start to finish. If this could be shortened

to potential a maximum of 6 months, then reviews could be undertaken frequently (annually or bi-annually) with the most accurate information being included within a plan at least every 24 months.

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

Increase the amount of costs within a contributions plan which are based on actual/known outcomes. For example, acquire land and deliver infrastructure early in the life of the plan or as part of precinct planning rezoning. This will enable Council to include actual costs within the plan and would mean that land costs were as low as possible and not subject to market increase/fluctuations over time (this would flow into the same impacts on the contribution rate). The current framework limits Council's capacity to do this. However, as mentioned previously, under the current framework there are considerable restrictions on the capacity of local government to undertake this scale of forward funding as it places a substantial cashflow burden on councils.

Certainty will also be increased if Council can undertake more frequent and streamlined reviews of plans. In order for this to occur, the IPART and Ministerial review process needs to be reduced, and become far less resource intensive.

Simpler plans, potentially at the expense of the most technically optimal apportionment and cost estimate outcomes, will greatly assist as it will enable plans to be prepared/ reviewed in a timely manner and reviewed simply and frequently. Consideration could be given to removing IPART from the process and put the released resources back into the Department of Planning, Industry and Environment to assist councils plan for and deliver infrastructure. A process could be implemented with the Department quality checking and the Land and Environment Court dealing with inappropriate conditions.

Issue 3.5: Timing of payment of contributions and delivery of infrastructure does not align
Developers want to delay the payment of contributions to the occupation certificate stage to support project financing arrangements. This would delay receipt of funds to councils and, in the absence of borrowing funds, may delay infrastructure delivery.

- *What are the risks or benefits of deferring payment of infrastructure contributions until prior to the issuing of the occupation certificate, compared the issuing of a construction certificate? Are there options for deferring payment for subdivision?*

Ideally the delivery of infrastructure should roll-out in-line with population growth. However, in practice there is a lag between when contributions are paid and when infrastructure is ultimately delivered. The reason for this is that it takes time for sufficient funds to be collected, and for the infrastructure to be designed, approved and constructed. To address this most plans require contributions to be paid at the construction certificate or subdivision certificate stage. This ensures that contributions are paid slightly before the population moves into the Precinct.

It is also noted that early in the life of a contributions plan most of the funds are allocated toward the acquisition of land. This ultimately impacts on Council's capacity to deliver capital infrastructure for new residents which can cause extreme frustration for residents who move into a precinct without key infrastructure being available such as playing fields, parks and upgrades roads. The broader community do not care about land ownership, titling arrangements, the restrictive nature of 7.11 financial reserves, availability of funds or competing infrastructure priorities, nor should they. Once residents move into a precinct, if the expected infrastructure has not been provided/ upgraded, then the community will raise concern. These issues are generally not experienced within landowner initiated precincts, such as the Box Hill North ('Gables') Precinct, as the principal developer has secured the land early and is able to roll out infrastructure as future development lots are released.

From the developer's perspective there will always be a desire to pay contributions as late as possible. However from an infrastructure delivery perspective the occupation certificate stage is too

late. If this approach continues it will result in demand for the infrastructure being created well before the infrastructure is delivered which will cause extreme frustration for residents, will result in substantial administrative issues for Council and would be inconsistent with the priorities of the Region and Central City District Plan which seek to align population growth and infrastructure delivery.

It is noted that the Government has recently issued a Direction which delays payment of contributions for some development until the Occupation Certificate stage, with no consultation with Council. This will have the obvious effect of delaying the receipt of contributions income until the point in time where the Occupation Certificate is issued (effectively, when new residents move in). As a result, new residents will be moving in well in advance of when a Council can fund and deliver the infrastructure which was identified as necessary to service those residents. The current system for delaying payments makes it near impossible for a Council to deliver infrastructure in line with growth, as the funding source for the necessary infrastructure is not available until the point in time where the growth has already arrived within the Precinct (or is imminent). As noted above, it requires a Council to either forward fund from other sources (which may not be available) or simply delay the provision of infrastructure until after growth has occurred (and contributions are received). This could be alleviated through forward funding all infrastructure, which would mean that contributions income is simply a reimbursement for actual costs, with the actual cost of infrastructure and the time value of money factored into contributions upfront.

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

Yes, if the deferred payment was repaying the initial bulk funding of infrastructure provision. The certainty of actually receiving the deferred payment is only one part of the problem. The main issue is that it makes it impossible to deliver infrastructure in line with growth if the receipt of contributions income is delayed to the point of that growth actually moving in.

- 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?

From a planning perspective, the ability to access low cost loans to forward fund infrastructure would mean that these facilities can be provided early, at the cheapest price and in the most efficient way. This would then give absolute certainty for future developers with respect to future contribution rates, as contributions income would essentially just be reimbursing actual costs (with known/agreed interest rates). This would remove all uncertainty associated with changes to land costs, interest rates and construction costs over the development period (often in excess of 20 years).

However, from a financial perspective, it is important to recognise that whilst loan access for Council may provide cashflow support in the short term, it does not guarantee that contributions received at the end will be sufficient to cover the repayment of principal plus interest. The risk then falls on Council to utilise general income to cover for such potential shortfall. Additionally, many councils, as a policy setting, will not incur debt and do not want the liability on their balance sheet.

It is difficult to estimate the amount of borrowing required especially for Council that manages multiple greenfield plans. The upfront cashflow burden could result in the need for Council taking on significant amount of borrowing in order to keep development moving along. Such borrowings will have impact on Council's debt service cover ratio and its ability to take on further debt on other non-contributions plan funded projects. Contributions plans are already complex in nature and this adds an extra layer of complexity as it involves on-going monitoring of loan repayment versus contributions received and could make contributions recovery process more difficult.

It could be perceived that developers are the biggest beneficiaries in this change compared to the community as Council is the entity going out to borrow and any cash shortfall at the end will be

borne by Council. This is similar to the previously imposed contributions cap where house prices continued to soar despite its introduction. In both cases Council is the 'middle-man' bearing most risks.

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

As an alternative method of reducing the cost of infrastructure provision, consideration should be given to the establishment of a Government Agency (such as Infrastructure NSW) to manage the acquisition of land and the delivery of road, drainage and utility-related infrastructure in a coordinated manner, early in the development period for areas of growth. Key benefits of such an Agency would include:

- The ability to acquire all land for a public purpose early in the development period or as part of the precinct planning process, at the lowest possible cost. This would eliminate the effect of rising land values increasing contribution rates and remove a key variable factor from Contributions Plans;
- Ability to forward fund the delivery of new infrastructure, prior to or in line with development, allowing for greater efficiencies and savings in the delivery of infrastructure and removing impediments to growth and development associated with delayed and piecemeal delivery of infrastructure; and
- The ability to forward fund acquisition and infrastructure delivery in a coordinated manner would mean that the cost of infrastructure to service development is both reduced and fixed. As a result, Contributions Plans would be able to recover known actual costs which are unchanging over time, reducing the need for lengthy IPART assessment processes and providing absolute and long term certainty with respect to contributions rates payable for development.

Issue 3.6: Infrastructure costs and contributions rates are rising

Infrastructure costs are rising—particularly for land acquisition—as are contribution rates. Caps and thresholds introduced to encourage sector activity have, however undermined important market signals for development efficiency and are now likely to be reflected in higher land values. The application of the essential works list can put councils' finances under pressure given their current inability to expand their rate base in line with population growth.

- Currently IPART reviews contributions plans based on 'reasonable costs', while some assert the review should be based on 'efficient costs'. What are the risks or benefits of reframing the review in this way?

IPART principally sees its role as reducing costs within plans, without any real regard as to how this will impact on level of service or whether it will negatively impact the end of plan balance. Whilst applying the term 'Efficient Cost' rather than 'Reasonable Cost' may enable councils to better justify alternative/ creative solutions the infrastructure provision, which may reduce overall, cost of the plan. However, the cost estimates within the Plan still need to be realistic. As stated previously, for new contribution plans IPART frequently raises concern with Council's strategic cost estimates for infrastructure items, and recommends revised costings which are unreasonably low, without any real justification for why the lower costs proposed by IPART are reasonable or accurate.

- 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?

The Essential Works List currently limits Council to only funding the following infrastructure through contributions plans:

- Land for open space (for example, parks and sporting facilities);
- Base level embellishment of open space;
- Land (only) for community services (for example, childcare centres and libraries);
- Land and facilities for transport (including road works, traffic management and pedestrian and cyclist facilities but excluding car parking);
- Land and facilities for stormwater management; and
- The costs of plan preparation and administration.

Unfortunately this list is extremely restrictive and does not cover the range of infrastructure and services which are considered to be essential and are expected by the community. As a result it is resulting in a looming deficit in indoor recreational venues, libraries and community meeting centres. This is especially true for Precincts which are experiencing substantial growth and where Government-led Precinct Planning processes have identified certain infrastructure outcomes, only for these to be removed from the relevant contributions plan as a result of the IPART assessment process.

As an example, the list includes the cost of acquiring land for libraries and community centres, however does not allow Council to collect contributions towards the capital cost of constructing the facility. This means that in the absence of a Council opting to fund this infrastructure through other sources of public funds (which is fundamentally contrary to the user-pays and nexus principles which underpin the contributions planning framework), significant areas of new residential development will be delivered without any adequate community facility infrastructure.

In addition, limiting open embellishment to 'base-level' only hinders Council's capacity to deliver flexible and creative solutions to address infrastructure demands. For example, Councils are unable to collect contributions towards indoor recreation facilities, despite these having substantial capacity to service large catchment areas with insufficient open space and despite the potential overall cost savings such facilities could bring to a contributions plan (as the equivalent recreation capacity delivered in the form of standard/'base level' facilities would have significant greater land acquisition requirements and costs).

While it is acknowledged that the 'Essential Works List' seeks to limit and place downward pressure on contribution rates and development costs, the current application of the list is at the expense of providing adequate infrastructure outcomes that are required to support development. This, in part, gives rise to the community view that the list serves only to reduce the cost to the developer rather than provide for appropriate infrastructure.

- *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?*

There is considered to be validity in obtaining early review and in-principle support for infrastructure items within a contributions plan early in the planning process to avoid the need to further justify the inclusion of items through the IPART review process. However this process should not simply be an additional layer of assessment and duplicate processes which will continue to be undertaken by IPART. This would result in an additional administrative burden on councils. This early review could also involve engagement with TfNSW whose input relies substantially on population warrants and traffic activity being observed, rather than concept projections.

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

Section 7.12 local infrastructure levies are low and do not reflect the cost of infrastructure.

- *Given that the rationale for these low rates reflects the lower nexus to infrastructure requirements, what issues might arise if the maximum percentages were to be increased?*

The existing maximum percentage is considered to be reasonable. Council's current Section 7.12 Plan applies Shire-wide and is used to capture contributions wherever a Section 7.11 Contributions Plan is not applicable to a development. This Plan typically captures contributions from small incremental developments in established urban areas and rural areas. The Section 7.12 Plan functions differently to a typical Section 7.11 Plan (such as those applicable to land release areas), in that it accumulates smaller amounts of development contributions over a longer period of time, with a view to supplementing existing infrastructure networks and providing infrastructure that services a broader catchment and region within an LGA. Levies paid are typically applied toward the provision, extension or augmentation of public facilities, or towards recouping the cost of their provision, extension or augmentation.

Whilst the standard percentage is considered to be appropriate there are certain circumstances where a higher levy percentage may be appropriate, such employment areas and centres. As stated within Council's submission on the Department of Planning, Industry and Environment's review of the contribution framework, the current process of seeking a higher fixed percentage for Section 7.12 contributions lacks transparent criteria. In the past, Council's well-reasoned arguments and evidence established to support a request for a higher percentage levy for the North Kellyville Precinct ultimately failed. Rather than simply increasing the standard maximum percentage levy, adopting a series of consistent criteria to assist with the assessment and determination of submissions to increase maximum percentage levies in specific areas would be more appropriate.

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

Application of a rate which is higher than the existing 1% maximum levy should be established on a case by case basis, rather than being applied broad-brush. Within any strategic centre, local centre or economic corridor, the need for a higher percentage would principally be dependent on the relationship between the cost of infrastructure required to support growth and the projected revenue resulting from future contributions. Where the projected revenue based on the 1% levy is insufficient to cover the infrastructure costs, a higher rate would be required.

Issue 3.8: Limited effectiveness of special infrastructure contributions

Special infrastructure contributions were introduced to strengthen delivery of state infrastructure. They can be an efficient and equitable mechanism for modest infrastructure cost recovery, while helping to ensure that development is serviced in a timely way. Over time, incremental changes and ad hoc decisions have, however, led to inconsistencies in their application, which may have limited their effectiveness.

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

Special infrastructure contributions should not be used to permit out of sequence rezoning. These contributions are simply a funding mechanism for funding regional infrastructure. Currently, there is a major backlog of items which are identified for SIC funding and are needed to support growth that has already occurred / is happening now, with limited funds available for their delivery. The SIC seems to be problematic to apply as it is too slow in its application and opaque in its delivery. Despite this, a mechanism for regional infrastructure delivery remains critical.

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

SIC should be applied to growth precincts which are undergoing substantial urban growth/transformation which will generate demand on the following regional infrastructure:

- Transport (State/Regional roads, bus infrastructure and active transport);
- Open space and green infrastructure (regional open space and links);
- Education facilities;
- Health facilities;

- Justice and emergency service facilities;
- Biodiversity;
- Public space such as community and cultural facilities (regional libraries and sporting facilities);
- Bus infrastructure.

Given the Department's recent approach to permitting increased densities in existing urban areas through the implementation of the low rise housing diversity code, there may be a need to introduce SIC's more broadly to ensure that funds are collected from development which results in increased density (residential yield and non-residential floor space) to ensure that adequate regional infrastructure can be provided to support the growth. However, careful consideration would need to be given to the relationship between the revenue collected and infrastructure which is delivered. As growth would be more dispersed, this will make it difficult to establish clear nexus. In this regard, for locations which fall outside of a growth precinct, a funding mechanism, such as an indirect contribution system could be considered for regional infrastructure (similar to the way in which 7.12 contributions plans apply for local infrastructure).

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

It would be beneficial for there to be greater clarity from the early planning phases, of what infrastructure will be funded through SIC, what SIC costs will be, what SIC rates will be and what other infrastructure will need to be funded through local infrastructure plans.

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

The SIC program has historically lacked adequate coordination. Accordingly, having a central Agency who will be responsible for the program is considered to be reasonable, however this agency should be focussed on delivery on delivery and not administration.

There also needs to be greater transparency in the preparation and administration of SIC. Council is subject to an extremely regulated and transparent framework as part of the preparation of its local contribution plans. Accordingly, it is considered reasonable that similar transparency apply to state and regional infrastructure funding. This should include a public register which identifies where and how much SIC has been collected from particular Local Government Areas and release areas. This should enable appropriate scrutiny to ensure that the delivery of infrastructure generally aligns with the increase in demand, and also ensure that those who are paying the contributions are receiving the benefit of timely delivery of infrastructure.

- **Locations where the SIC applies**
Determination of potential new SIC areas should occur early in the master planning process. As an example, the Hills Showground Precinct was rezoned as part of the Planned Precinct Program without any SIC established for the Precinct. As a result there is no mechanism to secure funding from development for the delivery of certain state and regional infrastructure required to meet the additional demand, such as schools. To avoid such situations from occurring in the future, planning authorities and Government Agencies should be encouraged to plan for state and regional infrastructure, including possible funding mechanisms such as SIC, as part of the master planning process for any Precinct which is subject to substantial urban transformation.
- **Method of calculating SIC**
There needs to be a broad range of SIC calculation methods, depending on the circumstance of the Precinct. The determination of the value of SIC payable for any development should ideally be linked to the level of increase in demand for infrastructure, to ensure equitable distribution of the cost. With respect to the North West Growth Area SIC it has become quite apparent that there is no relationship between the projected yield, the infrastructure items to be delivered and the contribution rate being applied. As a result there

is likely to the insufficient funds to deliver the program. Council has a number of critical items within the release areas which need to be delivered as a matter of urgency. However, Council is required to compete with other Councils and State Agencies for limited funds.

○ **Approach to SIC feasibility**

While economic feasibility is an important consideration, it should not be the primary consideration in determining the appropriate value of a SIC levy. Rather it is recommended that nexus, costings and apportionment should be the key considerations. As part of the preparation or review of any SIC, detailed analysis should be undertaken with a view to ensuring that the levy:

- Has been calculated having regard to the likely cost of the infrastructure funded; and
- Generally accords with 'user-pays' principles, whereby the levy applicable to different areas is proportionate to the cost of infrastructure which directly benefits those areas.

○ **Expending SIC revenue**

If the Government identifies certain infrastructure within a SIC, and progressively levies development on the basis of funding the delivery of this infrastructure item, then landowners, developers, Council and the community should have some degree of assurance that the infrastructure will be delivered. Where the cost of infrastructure needs to be apportioned, measures need to be put in place for Government to commit to necessary funding to cover the shortfall in cost.

○ **Review of SIC**

It is noted that development within growth areas is occurring rapidly. Accordingly review of SIC programs and the SIC priorities needs to occur more frequently and quickly. Council and the community need funding certainty around major regional infrastructure projects and as such funds need to be collected from development equitably.

Issue 3.9: Difficulty funding biodiversity through special infrastructure contributions

Biodiversity offsetting is a key part of the plan for developing Greater Sydney and requires a secure source of funding. The application of special infrastructure contributions to support this has been inconsistent.

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

Special infrastructure contributions should not be funding biodiversity offsets.

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

Special infrastructure contributions are not an appropriate mechanism for biodiversity offsetting. It is already extremely difficult to secure sufficient funding for the delivery critical infrastructure such as open space and regional road upgrades. The funding of biodiversity offsets would make this task even more difficult. Accordingly, separate framework should be established for biodiversity offsets. Council has consistently lobbied for biodiversity certifying across entire local government areas. This would streamline the development assessment process.

Issue 3.10: Affordable housing

Affordable housing contributions are made on top of other infrastructure contributions. The percentages are determined individually, and each scheme must demonstrate the rate does not impact development viability.

- *Is provision of affordable housing through the contributions system an effective part of the solution to the housing affordability issue? Is the recommended target of 5-10 per cent of new residential floorspace appropriate?*

State Environmental Planning Policy No 70 – Affordable Housing (Revised Schemes) gives councils the option of entering into affordable housing contribution schemes, where developers contribute to the cost of affordable housing.

There is not considered to be a ‘one size fits all’ solution to affordable housing and managed affordable rental housing is only one response and should not be considered in isolation. Council’s Local Strategic Planning Statement and draft Housing Strategy do not commit to the establishment of a target at this time. Rather it is noted that any scheme must be considered in conjunction with a diverse supply of housing, movement within existing affordable rental stock and supply and vacancy rates.

It is important that an evidence based approach is taken in modernising schemes and responding to the affordable housing task. At the local level, consideration is needed of the effective housing demand, the housing type and mix needed to satisfy future need, specific groups that need to be prioritised and how to distribute the supply of affordable housing to households that actually require it. Only after such investigations can appropriate tailored local responses be determined.

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

Council does not have a formal position on this.

Issue 4.1: Sharing land value uplift

If investment in public infrastructure increases land values, then the benefits are largely captured by private property owners. ‘Value capture’ mechanisms can return a share of the value created by public investment to the taxpayer. There are several ways a ‘value capture’ mechanism could be applied, including land tax, council rates, betterment levy, or an infrastructure contribution.

- *Where land values are lifted as a result of public investment, should taxpayers share in the benefits by broadening value capture mechanisms? What would be the best way to do this?*

The greatest beneficiaries within growth areas are the existing landowners who ultimately move away from the area prior to any development occurring. These stakeholders benefit from substantial increases in their property value, as a direct result of the Government investment in the delivery of key infrastructure. These owners often sell their property to developers at inflated values which ultimately impacts on development viability, increases housing prices and substantially reduces the capacity of developers to make appropriate contributions toward infrastructure required to meet the needs and expectations of future residents.

The Hills Shire Council does not have a formal position with respect to value capture associated with increases in land value as a result of public infrastructure investment. This is ultimately a matter for Government to consider, as the major investor in public infrastructure, with particular regard to the ability for the Government to fund and deliver subsequent state-level infrastructure required to service the growth which follow.

Issue 4.2: Land values that consider a future infrastructure charge

When land is rezoned, there is often an increase in land values as a result of the change in development potential.

- *Should an “infrastructure development charge” be attached to the land title?*

This could be a reasonable approach however there would be administrative difficulties with its implementation as the charge would need to be in-lieu of other developer charges such as local or

regional contributions so as to avoid double dipping. Furthermore these charges may simply get added to the sale value and further inflate land values. In this regard a more sustainable approach would be to forward fund land acquisition required for public infrastructure as part of the precinct planning process, prior to a precinct rezoning being finalised. If a charge was to be added it should be to repay the forward funding of infrastructure on a bond or security basis.

Issue 4.3: Land acquisition for public infrastructure purposes

Requiring the direct dedication of the land that is needed for infrastructure purposes is an option that aims to address the problem of rapidly increasing land values.

- *If supported, how could direct dedication be implemented? How could this be done for development areas with fragmented land ownership?*

Unfortunately there is not adequate time to consider fully this option or enable our elected Council to consider a position. However, noting that rapidly increasing land values is the major driver of high contribution rates, there may be merit for the Government to undertake further discussion with councils to work up ideas/solutions which would combat this issue. It would also be useful to reconsider the role of Landcom as a master developer on behalf of Government.

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

As mentioned previously, early in the life of a contributions plan most of the funds are allocated toward the acquisition of land. This ultimately impacts on Council's capacity to deliver capital infrastructure for new residents which can cause extreme frustration for residents who move into a precinct without key infrastructure being available such as playing fields, parks and upgrades roads. Once residents move into a Precinct, if the expected infrastructure has not been provided/upgraded, then the community will raise concern. Pooling of contributions is an option. However this ultimately impacts on Council's capacity to deliver items within other infrastructure categories.

It is suggested that as an alternative method of reducing the cost of infrastructure provision, consideration should be given to the establishment of a Government Agency (such as Infrastructure NSW) to manage the acquisition of land and the delivery of road, drainage and utility-related infrastructure in a coordinated manner, early in the development period for areas of growth.

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

Higher indexation of the land component means that contribution rates are adequate to cover land costs. It is noted that Council currently applies indexation rates on land acquisition costs within its NPV modelling. However issues arise as a result the significant time taken to prepare and review the plans, due to the IPART review process. By the time a plan is adopted and in-force the valuation in the base year of the plan can be incorrect. As a result the plan simply ends up indexing an incorrect value.

Nevertheless, in order to properly address the issue of escalating land acquisition costs, there needs to be a more practical/genuine solution to acquire land early, rather than the current process of buying land after a rezoning, when fragmented land-owners are ready and when sufficient development contributions have been received to fund the acquisition. It would be appropriate to review the compulsory acquisition process in line with this item.

Issue 4.4: Keeping up with property escalation

Land values (particularly within the Sydney metropolitan area) can increase rapidly and often increase on early signs of land being considered for future development; well ahead of the rezoning process.

- *What approaches would most effectively account for property acquisition costs?*

The impact of property speculation on land value will ultimately impact on land acquisition costs. The best approach to address this is to acquire land early in the life of the plan to ensure that actual costs can be reflected in the plan and equitably distributed among future development within the precinct.

Issue 4.5: Corridor protection

Early identification of corridors has the potential to result in better land use and investment decisions. Without funds available to facilitate their early acquisition, it is likely that being 'identified' would encourage speculation and drive up land values, making the corridor more expensive to provide later.

- *What options would assist to strike a balance in strategic corridor planning and infrastructure delivery?*

Early identification and preservation of corridors is essential for proper land use planning. Even without speculation land costs will escalate over time. In growth areas the rate of increase is exacerbated. However this should not be used as a reason for not identifying and preserving critically important transport corridors. If a strategic transport corridor is needed to support the growth of the District and Region, then it needs to be identified and acquired. Where acquisition is not possible in the short term, development controls such as setbacks need to be put in place, to ensure orderly development. Corridor planning should also acknowledge the current trend towards tunnelling.

Issue 4.6: Open space

While the seven-acre open space standard is not based on evidence, it nevertheless continues to be relied upon. Open space provision is moving towards a performance-based approach.

- *How can performance criteria assist to contain the costs of open space?*

Benchmarking assists in the equitable distribution of resources. It minimises duplication and over-servicing and enables areas that are underserved, or which are likely to be underserved as the population grows, to be identified. Broadly, benchmarks assist in:

- Enabling more efficient decision making about development proposals and external requests for facility improvements.
- Informing asset management plans, and helping to establish appropriate maintenance regimes.
- Forecasting accurate costs.

Whilst standard benchmarks provide a reasonable indication of the overall quantity of open space required or supplied, it does not account for efficient access to open space, quality of the open space, improvements provided, or demand from the local community. Quite often this level of provision is not always possible due to limitations on available land or cost. Where the overall quantity of open space falls short of the standard benchmarks, councils should aim to provide well distributed and high quality open space to support a higher number of people.

Whilst open space forms a large portion of the cost of most contribution plans, this infrastructure plays an integral role in ensuring an adequate quality life of residents. The critical nature of this infrastructure is recognised in the Region Plan, District Plans and local strategic framework.

Reducing open space standards and provision, in an effort to reduce short term development costs and contributions is extremely short sighted as it will reduce the quality of life of residents which will have longer term negative social impacts on the population.

Whilst performance criteria can be used to assist councils in the planning of open space, any determination on level of service and provision should be determined by councils as the ultimate service providers.

Within the Shire's urban release areas, the acquisition of land for open space has been considerably impacted by the substantial escalation in land costs over recent years. This has reinforced the need for Council to acquire land early in the life of the plan. Furthermore, the cost of delivering playing fields has also increased substantially which has resulted in capital costs estimated within applicable contributions plans which are well in excess of what was previously estimated. As part of the plan preparation process strategic cost estimates are applied. However it is only when the fields are subject to detailed design prior to their delivery that the actual cost is becoming evident. This is often late in the life of the applicable contributions plan, when there is limited remaining development potential to enable the cost increase to be equitably distributed.

Within the Shire's urban infill areas such as the Precincts surrounding the Sydney Metro Northwest Stations other challenges have become apparent. The cost of land within these precincts is extremely high. This means that the quantum of open space required is not feasible. In these locations measures to improve the quality and distribution of open space have been pursued.

In order to address these challenges the contribution system needs to be flexible. As mentioned previously, the essential works list limits open space embellishment to 'base-level' which hinders Council's capacity to deliver flexible and creative solutions to address infrastructure demands.

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

Councils are the most appropriate authority to determine levels of service provision for open space and specifications for individual open spaces should respond to the demographics, needs and expectations (within reason) of the community which will use these spaces. As part of the planning of growth precincts and preparation of subsequent contribution plans, the location, quantum and quality of both active and passive open space should be identified in accordance with the relevant benchmarks contained within applicable local strategies and recreational strategies of each council.

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

Infrastructure contribution plans are considered to be an appropriate mechanism for funding local open space, as are VPAs or WIKs.

Issue 4.7: Metropolitan water charges

Currently, costs of new and upgraded connections for Sydney Water and Hunter Water are borne by the broader customer base rather than new development.

- *How important is it to examine this approach?*

Council does not have a formal position on this.

- *What is the best way to provide for the funding of potable and recycled water provision?*

Council does not have a formal position on this.

Issue 4.8: Improving transparency and accountability

There are limited infrastructure contributions reporting requirements.

- *What would an improved reporting framework look like? Should each council report to a central electronic repository?*

The recent Review of the Contributions Framework by the NSW Department of Planning, Industry and Environment proposed a number of amendments relating to reporting on development contributions plans. These proposed amendments would require the following:

- Council to not only report on monetary contributions but also land, works, services or facilities accepted in part or full satisfaction of contribution obligations;
- Require more detail on specific infrastructure contributions including specific project and location; and
- Require Councils to publish contributions plans, indexed Section 7.11 contribution rates, annual statements and contributions registers on council's website or planning portal.

Within its submission on the Review of the Contributions Framework, Council raised no objection to the proposed reform to increase the reporting requirements for planning agreements. However the following points were recommended:

- The Department undertake further consultation with Council as part of the preparation of future reporting guidelines; and
- Council be given sufficient time to prepare its systems and processes to ensure that the requirements of the Regulation are satisfied.

Additionally, if increased compliance and reporting is required, councils should be entitled to increase the administrative component within the Contributions Plan.

- *What elements should be included? How much has been collected by contributions plan and other mechanisms? How much council has spent, and on what infrastructure items?*

Increased reporting on these matters may be appropriate, however further consultation should be undertaken as part of the preparation of any future reporting guidelines.

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

See response above.

Issue 4.9: Shortage of expertise and insufficient scale

The ability of the local government sector to efficiently deliver contributions plans are impaired by shortages of skilled professionals and lack of scale for smaller councils.

- *What can be done to address this issue?*

The Hills Shire Council is currently sufficiently staffed with skilled professionals to manage and deliver contributions plans. However this would be an understandable issue for smaller and more regional councils and for the State Government and its agencies.

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

It should be simplified to increase transparency, efficiency, certainty, and the ability to deliver infrastructure efficiently. Simplifying the framework to achieve these objectives would assist with resourcing requirements more generally. Notwithstanding, management of contributions plans, particularly around IPART's review process, requires Council to allocate a substantial amount of resources.

Issue 4.10: Current issues with exemptions

Exemptions from contributions are complex as they are set out across a range of planning documents and are inconsistent across contribution mechanisms.

- *Given that all developments require infrastructure, should there be any exemptions to infrastructure contributions?*

There should be exemptions, however only in exceptional circumstances. The reason for this is that as most development generates demand on infrastructure and should make a fair and reasonable contribution, so long as there is a demonstrated nexus. Where an exemption is granted, the lost contribution is simply borne by the remaining development within the Precinct. The reasonableness of this should be balanced with the reasonableness of exempting certain development.

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

In any scenario the cost/burden of an exemption is shared across a larger group of the population. Either the cost is shared across other development in the precinct (which also requires the same infrastructure) or it is shared across the broader community or taxpayer. It would seem more fair and reasonable to share that cost more specifically across development in the precinct.

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

There are not considered to be neutrality issues as the development types that may benefit from an exemption would generally be unique types that provide a service to residents living within an area, rather than a development type that is a direct competitor in the same sales/product market.

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

Works-in-kind agreements can realise savings and efficiencies, but they can result in infrastructure being provided out of the planned sequence and prioritise delivery of some infrastructure (such as roads) at the expense of other infrastructure (such as open space and biodiversity offsetting).

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

Developers should be able to provide works-in-kind in lieu of infrastructure contributions, so long as the infrastructure being provided is listed on an adopted and in-force contributions plan, and so long as certain criteria can be met (for example, where agreeing to a WIK does not hinder the delivery of other infrastructure which a Council has scheduled for higher priority/earlier delivery). Where the work is in excess of the applicable monetary contribution, then the developer should be reimbursed. Any reimbursement arrangements should be agreed between the developer and Council prior to commencement of such works. The developer should also then carry the maintenance obligation for that item until the scheduled date of delivery as per the Contributions Plan.

- *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?*

There may be some value with this approach, however it would be extremely difficult to administer, especially if credits were able to be traded between different developers (rather than used by the same developer on different developments within an area). Where works-in-kind credits exceed their monetary contribution, then the developers should be eligible for reimbursement, subject to the agreement of Council and meeting certain criteria (see above).

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

Amending the system to permit the trading of credits to other contribution areas will substantially increase the complexity of contribution planning, it will be extremely difficult to administer, and could have unintended consequences in terms of hindering the ability of a Council to deliver infrastructure under one contributions plan, as a result of a WIK under another Plan.

If this approach is pursued there would need to be definitive analysis to show that this would actually be of any benefit, compared to an approach of having a WIK (up to value of contribution credit) plus reimbursement to a developer (for any remaining unclaimed value). The industry needs to be careful in finding the right balance between ensuring the system is clear, transparent and easily administered.



THE HILLS
Sydney's Garden Shire

THE HILLS SHIRE COUNCIL

11 June 2020

Planning Policy Team
Department of Planning Industry and Environment

Our Ref: [REDACTED]

Dear Sir/Madam

EXHIBITION – REVIEW OF CONTRIBUTIONS FRAMEWORK

Thank you for the opportunity to provide feedback on the review of the contributions framework. Comments on the exhibition of the following matters are attached to this letter:

- Improving the process for the review of Contributions Plans by IPART;
- Establishing principles and criteria to be used by Councils and the Department when preparing and considering requests to apply a Section 7.12 percentage levy in excess of the standard 1%;
- Draft Practice Note and Ministerial Direction relating to Planning Agreements;
- Guidelines and procedures for the Department's management of the Special Infrastructure Contributions program; and
- Proposed amendments to the Environmental Planning and Assessment Regulation 2000 with respect to development contributions.

If you have any questions in relation to this matter please contact [REDACTED]

Yours faithfully

Attachment A – Comments on the Review of Contributions Plan by IPART – Discussion Paper
Attachment B – Comments on the Criteria to Request a higher 7.12 Percentage – Discussion Paper
Attachment C – Comments on the Draft Planning Agreements Practice Note and Ministerial Direction
Attachment D - Comments on Special Infrastructure Contribution Guideline
Attachment E – Comments on Draft Amendments to the EP&A Regulation

REVIEW OF CONTRIBUTIONS PLANS BY IPART – DISCUSSION PAPER

Update the thresholds that trigger the review process

The proposal to increase the contribution rate thresholds is appropriate and supported. The existing thresholds are restrictively low and out-of-date, resulting in the need for nearly every contributions plan to be subject to the IPART assessment process. This is both costly and inefficient. Whilst the IPART review process provides independent assessment which creates some confidence in the plan's assumptions, which is necessary for plans that levy rates which are higher than expected, the process has to be more certain and timely. In this regard, it is recommended that the Department implement Option 3 within the Discussion Paper which would result in one single threshold of \$45,000 per dwelling/lot.

It is also recommended that this threshold be indexed annually in accordance with Sydney CPI, to ensure that the threshold increases broadly in line with contribution rate increases and infrastructure delivery costs. This will avoid instances where existing plans trigger the requirement for IPART assessment simply as a result of annual indexation of rates over time.

Having a single threshold for both urban in-fill and greenfield areas will result in a simple and consistent approach for all contribution plans and reflect the high cost of providing infrastructure within urban infill locations. While greenfield areas are typically subject to a higher contribution rate cap, Council's recent experience indicates that the high cost of land acquisition within urban infill areas (such as the Sydney Metro Northwest Precincts) places significant upward pressure on contribution rates. Additionally, the capital cost of delivering infrastructure in these locations is also high as it often involves service relocation and augmentation of existing infrastructure that was not previously designed to cater for the extent of growth being proposed.

Review of the IPART Terms of Reference

The current IPART review process is quite cumbersome and can substantially increase the overall timeframe for preparing and implementing a contributions plan. The Hills Council has now had 11 plans/amendments reviewed by IPART, with an average timeframe of 8 months (for the IPART review process) and a further 9 months following this to receive directions from the Minister. These timeframes, in addition to the time taken for Council to prepare, report and publicly exhibit a Plan amendment, means that a simple review of a contributions plan can now take in excess of 1-2 years, which is simply too long. It is acknowledged that the Department's discussion paper has identified some of the major flaws with the current process and Council is supportive of reducing these impediments to the efficient operation of the Contributions system.

It is recognised that the intended objective of IPART's involvement in the review process is to ensure that infrastructure identified within contributions plans is appropriate and that cost estimates and subsequent contribution rates are reasonable. However, based on past experience, the length of the process only serves to create uncertainty for Council, landowners and the community and hinder Council's ability to progress with the delivery of local infrastructure to support development. Council's experience is that IPART's assumptions of costs, particularly early in the life of the Plan, end up resulting in an underestimation of actual costs. This creates additional risk to providing the necessary infrastructure to support new communities.

The scope and level of detail involved in the IPART review process has incrementally increased over the past 5 years, to the point where it is now a significant resource and cost impost to Council. In part, this is due to IPART duplicating existing auditing and quality control processes, despite Council already complying with extensive legislative requirements under the EP&A Act (relating to nexus, reasonableness of contributions and the process for preparing a contributions plan) and financial auditing and reporting requirements under the Local Government Act.

Quite often the turnover of staff and IPART's process of undertaking a holistic review of a Plan each time it is submitted has resulted in significant delays in the review process. It requires Council

to allocate a substantial amount of staff time to respond to the same/similar questions from IPART on multiple occasions. It also results in inconsistent findings and recommendations from IPART (often with IPART making different recommendations with respect to elements of a plan which were unchanged between subsequent IPART reviews).

Having regard to Council's extensive experience with the IPART review process, the proposal to review the IPART Terms of Reference is strongly supported and it is requested that Council be provided with the opportunity to be further involved and consulted in the drafting and preparation of any new Terms of Reference. It is recommended that the following key factors be considered in a review of the Terms of Reference:

- **Assessment Timeframes** – As detailed above, the current IPART and Ministerial review process can add between 12-24 months to the time take for a Council to prepare and finalise an amendment to a contribution plan, which is simply too long.
- **Time lag for Council to update plans to reflect accurate costs** – During the IPART/Ministerial Review process, it is difficult for Council to make further changes to costs in the Plan without significantly prolonging (or restarting) the assessment process. This creates a scenario where Council may be unable to reflect critical factors such as updated land acquisition rates/cost, updated actual costs incurred or more detailed cost estimates for capital works items within an updated and adopted contributions plan (and adjust the contribution rate accordingly), for a period of up to 4 years. This is particularly problematic with respect to escalating land values, with evidence from Council's Balmoral Road Release Area indicating that over some periods of the development cycle, the cost for Council to acquire land has more than doubled over a 4 year period.
- **Targeted Reviews** – Where a Plan has already been assessed by IPART and endorsed by the Minister, IPART should focus only on the elements of the Plan which are being amended, rather than holistic review of every element of a contributions plan each time it is submitted;
- **Assessment Criteria** – IPART should have a consistent set of criteria for assessing contribution plans. Inconsistency in the assessment process and the resulting recommendations complicates the assessment process and extends the assessment timeframe. Where IPART releases guidelines or technical advice for Councils, it is imperative that IPART then stands by this advice and applies it consistently. For example, IPART's Local Infrastructure Benchmark Costs (April 2014) recommends that 'Councils use the benchmark costs as a guide in developing cost estimates for the purposes of levying infrastructure contributions. The onus is on councils to justify any deviation from the benchmark costs'. However, IPART's recommendations now frequently dispute Council's use of IPART's own benchmark costs, instead requiring Councils to fund and prepare more accurate cost estimates from Quantity Surveys or comparable actual costs simply to pass through the IPART review process.

For new contribution plans, Councils should be able to establish strategic cost estimates which utilise IPART's published benchmark rates, without being questioned by IPART on the application of these rates. It is simply not reasonable for IPART to expect Councils to have detailed cost estimates for all items within new contribution plans.

- **Exhibition of Draft Recommendation Reports** - Exhibition of draft recommendation reports is an unnecessary step in the process and results in engagement fatigue within the community. Each draft contributions plan is subject to its own public reporting and statutory exhibition process, which needs to be completed prior to the plan being submitted to IPART. A preferred and more efficient approach would be for IPART to simply provide its draft report to Council for comments. IPART has seemingly made its own decision to include discretionary consultation periods in its assessment process, increasing the length of the assessment period by at least 4 weeks, with no tangible benefit.

- Nexus within State Government Release Areas and Precincts – Council has a number of contribution plans that service release areas where the precinct planning was undertaken and implemented by the Department of Planning, Industry and Environment. In these cases, Council is essentially provided by the Government with a list of local infrastructure to be provided, as an outcome of the Department's Precinct Planning process. The contributions plan then seeks to deliver this infrastructure list. It is completely unreasonable in such circumstances for IPART's assessment to then recommend that Council delete infrastructure items from a plan, as this directly contradicts and prevents the achievement of the planning, development and infrastructure outcomes established through the extensive and in-depth Precinct Planning Process completed by the Department. This places Council in the unreasonable position of needing to justify outcomes already established by the State Government, in order to progress through a State Government-imposed review process, or being unable to implement the planning outcomes expected by the Department (and the community).
- Strategic Cost Assessments – For new contribution plans IPART frequently raises concern with Council's strategic cost estimates for infrastructure items, and recommends revised costings which are unreasonably low, without any real justification for why the lower costs proposed by IPART are reasonable or accurate. In order to demonstrate that these recommended costings are unreasonable and that they would result in a substantial shortfall in the funds required to deliver the infrastructure, Council is then required to procure detailed concepts (often 80-100%) and Quantity Surveys which, as a result of the need for Council to submit additional information (or accept unreasonably low costs which will result in a funding deficit), can extend the IPART assessment process by 6-12 months. Even once these documents are prepared, Council continues to receive questions on individual line items within the independent Quantity Survey.

Essential Works List

Concurrent with any review of the IPART Terms of Reference, it is also recommended that the Department review the Essential Works List, which currently limits Council to only funding the following infrastructure through contributions plans:

- Land for open space (for example, parks and sporting facilities);
- Base level embellishment of open space;
- Land for community services (for example, childcare centres and libraries);
- Land and facilities for transport (including road works, traffic management and pedestrian and cyclist facilities but excluding car parking);
- Land and facilities for stormwater management; and
- The costs of plan preparation and administration.

IPART can only determine plans against this list. It is resulting in a looming deficit in indoor recreational venues, libraries and community meeting centres.

Unfortunately this list is extremely restrictive and does not cover the range of infrastructure and services which are considered to be essential and are expected by the community. This is especially true for Precincts which are experiencing substantial growth and where Government-led Precinct Planning processes have identified certain infrastructure outcomes, only for these to be removed from the relevant contributions plan as a result of the IPART assessment process.

As an example, the list includes the cost of acquiring land for libraries and community centres, however does not allow Council to collect contributions towards the capital cost of constructing the facility. This means that in the absence of a Council opting to fund this infrastructure through other sources of public funds (which is fundamentally contrary to the user-pays and nexus principles

which underpin the contributions planning framework), significant areas of new residential development will be delivered without any adequate community facility infrastructure.

In addition, limiting open embellishment to 'base-level' only hinders Council's capacity to deliver flexible and creative solutions to address infrastructure demands. For example, Councils are unable to collect contributions towards indoor recreation facilities, despite these having substantial capacity to service large catchment areas with insufficient open space and despite the potential overall cost savings such facilities could bring to a contributions plan (as the equivalent recreation capacity delivered in the form of standard/'base level' facilities would have significant greater land acquisition requirements and costs).

While it is acknowledged that the 'Essential Works List' seeks to limit and place downward pressure on contribution rates and development costs, the current application of the List is at the expense of providing adequate infrastructure outcomes that are required to support development. It is suggested that as an alternative method of reducing the cost of infrastructure provision, consideration should be given to the establishment of a Government Agency (such as Infrastructure NSW) to manage the acquisition of land and the delivery of road, drainage and utility-related infrastructure in a coordinated manner, early in the development period for areas of growth. Key benefits of such an Agency would include:

- The ability to acquire all land for a public purpose early in the development period or as part of the precinct planning process, at the lowest possible cost. This would eliminate the effect of rising land values increasing contribution rates and remove a key variable factor from Contributions Plans;
- Ability to forward fund the delivery of new infrastructure, prior to or in line with development, allowing for greater efficiencies and savings in the delivery of infrastructure and removing impediments to growth and development associated with delayed and piecemeal delivery of infrastructure; and
- The ability to forward fund acquisition and infrastructure delivery in a coordinated manner would mean that the cost of infrastructure to service development is both reduced and fixed. As a result, Contributions Plans would be able to recover known actual costs which are unchanging over time, reducing the need for lengthy IPART assessment processes and providing absolute and long term certainty with respect to contributions rates payable for development.

Local Roads within Land Release Areas

Whilst not a matter raised within the exhibition material, a significant issue being faced by Council relates to the construction and dedication of local roads within greenfield release areas. The requirement for developers to construct and dedicate these roads, at no cost, as a condition of consent is a long-standing and typical requirement of all development within the Shire (especially within greenfield release areas). This requirement facilitates the delivery of new local road networks within release areas which are essential to providing adequate access to individual allotments within a development.

Council's contribution plans for release areas typically include funding for the delivery of major roads (higher order roads such as collector or sub-arterial roads). Council is unable to include the costs of acquiring and constructing local roads within its contributions plans as IPART requires that Council secure the delivery of these through conditions of development consent, where possible. It is acknowledged that the inclusion of local roads within contributions plans would result in prohibitively high contribution rates for development. Accordingly, the requirement for each individual developer to construct the portion of the local road network which adjoins their development site is considered the most reasonable and cost-effective method of ensuring new development is serviced by an adequate local road network. It also ensures that the burden of constructing local roads is shared between all developers within a precinct in the most equitable way possible within the current framework.

Despite this long-standing practice, there is increasing confusion with respect to requirements for the provision of roads which are not otherwise funded within a contributions plan. Council has been subject to legal action from developers who have attempted to demonstrate that it is unreasonable for Council to require them to construct local road on multiple frontages as they can access their property from one frontage only. This is despite the local road not having any alternative funding source within a contribution plan. This simply goes against the orderly development principle. Whilst individual roads may not directly benefit every person or site within a precinct, they do form part of the overall road network. Accordingly, it is considered fair and reasonable for individual developers to be responsible for the portion of the local road network which directly adjoin their individual development sites.

Within land release areas, and other areas undergoing substantial urban growth, the determination of nexus needs to be established on a precinct wide basis. Councils should not be subject to legal challenge from developers who feel that they should not be responsible for constructing a portion of a local road, despite it directly adjoining their development site. Whilst these developers do not believe that they should fund these roads, the future users of their developments will often access the site via other local roads which have been constructed and dedicated by developers who have accepted their responsibilities as a participant in land release precinct. In this regard, it is recommended that the Environmental Planning and Assessment Act 1979 be amended to enable Council to require, as conditions of development consent, developers to construct and dedicate (at no cost) local roads within land release areas which adjoin development sites and are not funded through a contribution plan, without the need to establish site specific nexus. Clear establishment of this framework will also ensure that associated development costs can be factored into land transactions and development feasibility considerations.

Re-exhibition requirements

Formalising the position that Councils are not required to re-exhibit contribution plans following receipt of the Minister's advice is supported as re-exhibition would be unnecessary. Once the Minister provides final advice to Council, any required changes must be made wholly in accordance with this advice. Public exhibition periods at this point in the process are tokenistic and would unnecessarily delay the finalisation of contributions plans, as Council is unable to make any changes to the Plan in response to any submissions received (without then completely restarting the IPART and Ministerial assessment process).

Whilst the proposal within the Discussion Paper is supported, it is questionable as to whether the current legislation strictly requires re-exhibition to occur following the issue of the Minister's advice. The Discussion Paper implies that any changes required by the Minister following IPART's review would be a new amendment to the Plan. However, this assumption is not supported. Following the formal exhibition of a draft Plan Council considers submissions and decides whether to forward the draft Plan to IPART for review. As the Council does not formally adopt the plan at this stage, the IPART review and Ministerial endorsement process is effectively occurring during the 'post-exhibition' phase of the amendment process. Council does therefore have the authority to adopt the amendments required by the Minister as part of their final post-exhibition consideration of the Plan and re-exhibition of the plan is not considered to be required. Nevertheless, any amendment to the Regulation to clarify this matter would be supported.

Concern is raised with IPART's practice of exhibiting draft Recommendation Reports. This is an unnecessary step in the process which is not required under the Regulations and appears to have been introduced by IPART at their discretion. Given IPART's 'community consultation' period occurs shortly after the completion of Council's own statutory public exhibition period, the benefits associated with this process are questionable, especially given the substantial delays caused to the already lengthy assessment process and the engagement fatigue and confusion likely to be created amongst the community. Each draft contributions plan is subject to its own public reporting and statutory exhibition process, which needs to be completed prior to the plan being submitted to IPART and there is no tangible benefit of IPART duplicating this.

CRITERIA TO REQUEST A HIGHER S7.12 PERCENTAGE – DISCUSSION PAPER

The current process of seeking a higher fixed percentage for Section 7.12 contributions lacks transparent criteria. In the past, Council's well-reasoned arguments and evidence established to support a request for a higher percentage levy for the North Kellyville Precinct ultimately failed. Also, levying a CIV alone does not reflect different costs of land in different areas.

Currently, the centres which are subject to a higher levy have certain common elements, for example being part of a strategic centre or facilitating significant employment growth. The proposed requirement of meeting certain criteria in requesting a higher maximum percentage is positive in that it clarifies the necessary criteria that must be met in order for a higher percentage to be considered or allowed.

Comments on the proposed criteria to seek a S7.12 levy of 2% are included below:

- C1.1 and C1.2: It is unclear why eligibility for a higher Section 7.12 rate should be linked to the proportion of employment growth within a precinct, or the ratio of employment growth to residential growth. Based on the Discussion Paper these criteria are based on a review of other locations where a higher rate has been permitted. Whilst it may be reasonable for these centres to be subject to a higher rate, this should not arbitrarily preclude other mixed use centres, which do not strictly comply with these numeric thresholds. Within any strategic centre, local centre or economic corridor, the need for a higher percentage would principally be dependent on the relationship between the cost of infrastructure required to support growth and the projected revenue resulting from future contributions. Where the projected revenue based on the 1% levy is insufficient to cover the infrastructure costs, a higher rate would be required.

However, if the Department applies employment targets as an eligibility criterion, then it is requested that the criteria include reference to targets within applicable endorsed Local Strategic Planning Statements.

- C1.3: The criterion should provide scope/flexibility for a Section 7.12 contributions plan with a higher rate to be adopted prior to finalisation of planning controls granting uplift within a Precinct. For example, where uplift is strategically identified but not yet reflected in planning controls for an entire precinct, a Section 7.12 Plan could continue to apply the standard levy of 1% to development up to a specified floor space ratio, with the higher percentage rate triggered only once planning controls for a given site are amended. This would enable a precinct-wide Section 7.12 contributions plan to be prepared and adopted in advance of the finalisation of planning controls, providing upfront certainty to developers and enabling site specific planning proposals within these precincts to be considered in the context of a contributions framework which accounts for the strategically identified uplift.
- C1.4: The infrastructure required to support growth within strategic centres, local centres and economic corridors is broad and will ultimately depend on the context of the Precinct, including the projected mix of future land uses. Concern is raised with the application of a maximum cap on roads for traffic and stormwater management infrastructure at 49% of the cost of plan. It is recognised that future plans should endeavour to provide a variety of infrastructure to improve amenity and level of service, and should not simply levy for a single infrastructure category. However, placing an arbitrary cap on an infrastructure category is considered to be unreasonable and of minimal benefit.

The infrastructure required to support traditional mixed use commercial/residential precincts will be very different to that required in precincts which primarily have an employment role such as business parks. When the primary focus of the precinct is for employment, it is entirely likely and reasonable that the infrastructure costs would be more heavily weighted towards traffic/transport upgrades, public domain improvements and plaza spaces. It is considered

more reasonable for the criterion to simply require a variety of infrastructure categories to service growth, with the final split ultimately to be determined on a case by case basis and having regard to the role and function of the precinct and cost of infrastructure at that location.

- C1.7: The requirement to justify why a Section 7.11 contributions plan should not be applied is not considered to be necessary. As 7.12 contribution plans are a fair and reasonable method of securing contributions for infrastructure, it is unclear why this criterion should be applied as a limiting factor if all other criteria can be satisfied.

Comments on additional criteria - 3% Maximum Levy:

- C2.1 and C2.2: It is unclear why additional criteria should apply when seeking a 3% levy. Ultimately the rate being applied should depend on the projected growth (cost of future development) within the Precinct and the total cost of the infrastructure being delivered. So long as there is a strong relationship between the future growth and the infrastructure being delivered, and so long as both the costs and projected revenue are appropriately justified, then having additional criteria to quarantine funds for district level infrastructure would not be necessary. Also, as higher rates will only apply to strategic centres, town centres and economic corridors, it stands to reason that the infrastructure being delivered to support the centre will likely always result in a broader community benefit.

DRAFT PLANNING AGREEMENTS PRACTICE NOTE AND MINISTERIAL DIRECTION

The revised Practice Note is substantially similar to the existing Practice Note and where new guidance has been included, it is considered to be a reasonable inclusion, which is consistent with the process, procedures and considerations already applied by The Hills Shire Council in the application of Planning Agreements.

It is noted that should the proposed revisions to the Practice Note be finalised by the State Government and associated Ministerial Direction issued, Council would then be required to further revise the draft policies on VPAs which had previously been prepared in order to reflect the requirements of the revised Practice Note.

Council is currently in the process of preparing, and progressing, a number of policies to guide the preparation and assessment of VPAs and Works in Kind Agreements. As part of the assessment and consideration of most planning proposals, arrangements are established for developers to make contributions toward the delivery of local infrastructure. This is usually by way of a VPA. Accordingly the outcome of the current review of the Contribution Framework and implementation of legislative amendments will update how Council considers and assesses offers to enter into VPAs. Given the comprehensiveness of the State Government's review (including, most notably, the VPA framework), it is difficult to progress work on these policies at this time, until the outcomes of the Government's review is finalise.

DRAFT SPECIAL INFRASTRUCTURE CONTRIBUTIONS GUIDELINES

Establishing guidelines to ensure transparency in the preparation and administration of SIC is appropriate. Council is subject to an extremely regulated and transparent framework as part of the preparation of its local contribution plans. Accordingly, it is considered reasonable that similar transparency apply to state and regional infrastructure funding. This should include a public register which identifies where and how much SIC has been collected from particular Local Government Areas and release areas. This should enable appropriate scrutiny to ensure that the delivery of infrastructure generally aligns with the increase in demand, and also ensure that those who are paying the contributions are receiving the benefit of timely delivery of infrastructure.

Locations where the SIC applies

Determination of potential new SIC areas should occur early in the master planning process. As an example, the Hills Showground Precinct was rezoned as part of the Planned Precinct Program without any SIC established for the Precinct. As a result there is no mechanism to secure funding from development for the delivery of certain state and regional infrastructure required to meet the additional demand. To avoid such situations from occurring in the future, planning authorities and Government Agencies should be encouraged to plan for state and regional infrastructure, including possible funding mechanisms such as SIC, as part of the master planning process for any Precinct which is subject to substantial urban transformation.

Method of calculating SIC

The Guideline highlights that it is important to ensure that a SIC can be applied to a range of land uses that generate infrastructure demand and this can require a range of SIC calculation methods to be utilised. The standard calculation methods identified within the Guideline are:

- A charge per net developable hectare in greenfield areas;
- A charge per dwelling and/or gross floor area in urban infill areas; and
- In some exceptional cases, a charge based on percentage of the capital investment value (CIV) will be considered to further simplify the calculation method.

Permitting a range of SIC calculation methods, depending on the circumstance of the Precinct, is considered to be appropriate. The determination of the value of SIC payable for any development should ideally be linked to the level of increase in demand for infrastructure, to ensure equitable distribution of the cost. However where a proposed SIC seeks to levy development based on non-residential floor space, clear direction should be provided as to what land uses and floor space will be included in the calculation. Similar clarity would also be required for residential development and the different types of residential uses and dwelling types.

Approach to SIC feasibility

The Guideline provides a general overview of the approach to SIC feasibility analysis and identifies various considerations including planning uplift, development/construction costs, affordable housing and local developer contributions. Whilst the Guideline identifies factors which could impact on feasibility, it does not articulate how each of these factors would be considered through the SIC preparation process. Furthermore, the Guideline comments that when undertaking feasibility analysis, the higher of the adopted local contributions charge or the rate cap will be used. However as the rate cap will be abolished in July 2020, the Guideline should be updated to reflect this.

When applying local contributions, it is recommended that the Guideline outline the following pathways:

1. Where an existing SIC is being reviewed by the Department - the feasibility analysis should account for the full contribution rates within the applicable local contributions plan. The Department should consult Council on which rates to apply; or
2. Where a new SIC is being prepared for an area which is proposed to be rezoned for increased density - it is likely that in these circumstances there will not yet be an adopted or in-force 7.11 contributions plans which accounts for the future growth within the relevant precinct. The Department should consult Council and apply the most recent rates from any draft contributions plan prepared for the precinct. Where a draft contributions plan is not available the Department, in consultation with the relevant Council, should apply contribution rates from comparable contribution plans.

While economic feasibility is an important consideration, it should not be the primary consideration in determining the appropriate value of a SIC levy. Rather it is recommended that nexus, costings and apportionment should be the key considerations. As part of the preparation or review of any SIC, detailed analysis should be undertaken with a view to ensuring that the levy:

- Has been calculated having regard to the likely cost of the infrastructure funded; and
- Generally accords with 'user-pays' principles, whereby the levy applicable to different areas is proportionate to the cost of infrastructure which directly benefits those areas.

Timing of payments and administration

Where the SIC levies development based on yield, the Department may end up being reliant on private certifiers to appropriately impose conditions requiring payment of the SIC levy and to ensure that the appropriate contributions are paid. As mentioned within Council's submission of the draft Western Sydney Growth Area SIC, in Council's experience, certificates are often issued without the private certifier imposing the appropriate conditions requiring payment under the applicable Section 7.11 or 7.12 contributions plan (where complying development is proposed) or verifying that the contributions owed have been paid. This results in considerable loss in contribution income for Council and a significant administrative burden to audit complying development certificates issued, and issue notices to the relevant private certifiers. As part of the implementation of changes to the SIC Scheme, it is recommended that the Guidelines clearly outline the responsibilities of private certifiers and how any breach of these responsibilities will be addressed.

Expending SIC revenue

The Guideline state that 'the principles of nexus and apportionment appropriately constrain the SIC's ability to fully recover the full cost of new infrastructure even in areas with the highest rates of growth. The SIC is therefore not a commitment to the delivery of any infrastructure item'. Concern is raised with respect to this statement. If the Government identifies certain infrastructure within a SIC, and progressively levies development on the basis of funding the delivery of this infrastructure item, then landowners, developers, Council and the community should have some degree of assurance that the infrastructure will be delivered. Where the cost of infrastructure needs to be apportioned, measures need to be put in place for Government to commit to necessary funding to cover the shortfall in cost.

Review of SIC

It is noted that development within growth areas is occurring rapidly. Accordingly review of SIC programs and the SIC priorities needs to occur more frequently and quickly. Council and the community need funding certainty around major regional infrastructure projects and as such funds need to be collected from development equitably.

DRAFT AMENDMENTS TO THE EP&A REGULATION 2000

Reporting on development contributions

No objection is raised to the proposed reform to increase the reporting requirements for development contributions. However the following points are recommended:

- The Department undertake further consultation with Council as part of the preparation of future reporting guidelines;
- Council be given sufficient time to prepare its systems and processes to ensure that the requirements of the Regulation are satisfied;
- The proposed reforms should not apply retrospectively due to the considerable administrative difficulties associated with tracing historic development applications and contributions; and

When expenditure is reported, Council should not be required to publish acquisition costs for individual parcels as this could impact on future land acquisition negotiations. Rather, it is requested that land acquisitions be reported in aggregate.

Reporting on planning agreements

No objection is raised to the proposed reform to increase the reporting requirements for planning agreements. However the following points are recommended:

- The Department undertake further consultation with Council as part of the preparation of future reporting guidelines; and
- Council be given sufficient time to prepare its systems and processes to ensure that the requirements of the Regulation are satisfied.

Streamlining the process for making a CP following receipt of Minister's advice

Matters relating proposed amendments to the Regulation are discussed in greater detail earlier in this submission under the attachment relating to the Discussion Paper on 'Improving the review of local infrastructure contributions plans'.