



26 June 2020

Executive Director Planning Policy  
Department of Planning, Industry and Environment  
Locked Bag 5022  
Parramatta NSW 2124

Dear Sir or Madam

**Re: Draft special infrastructure contributions (SIC) guidelines submission**

Thank you for the opportunity to make a submission and provide feedback on the special infrastructure contributions (SIC) guidelines.

In particular, we want to note our thanks for agreeing to our request for an extension to 26 June 2020, for SSROC to make this submission.

The Southern Sydney Regional Organisation of Councils Inc (SSROC) is an association of eleven local councils in the area south of Sydney Harbour, covering central, inner west, eastern and southern Sydney. SSROC provides a forum for the exchange of ideas between our member councils, and an interface between governments, other councils and key bodies on issues of common interest. Together, our member councils cover a population of about 1.7 million, one third of the population of Sydney.

SSROC welcomes the opportunity to provide comment on the draft special infrastructure contributions (SIC) guidelines. SSROC seeks to advocate for the needs of our member councils and bring a regional perspective to the issues raised.

**General Comments**

SSROC welcomes the opportunity to make a constructive contribution to the Special Infrastructure Contributions (SIC) guidelines and provides the following comments and feedback.

**Overview of strategic directions**

Special Infrastructure Contributions (SICs) are a key part of the State developer contributions framework and operate under Division 7.1 Subdivision 4 of the Environmental Planning and Assessment Act 1979.

It is therefore important to consider reforms to these guidelines for Special Infrastructure Contributions as part of a larger modernised NSW policy and funding framework for infrastructure.

A SIC is paid by developers to help fund key elements of state and regional infrastructure in growing areas of Greater Sydney and NSW.

The Greater Sydney Commission's *Supported by Infrastructure* Place-based Infrastructure Compact Pilot (PIC), 2019) offers some help in putting the SIC within this larger policy context.

The PIC Pilot considered the fundamental question of who should pay for and/or contribute to the infrastructure identified under a variety of scenarios. The report identified multiple funding sources that are drawn together for providing new infrastructure in NSW. Five funding categories were identified in the PIC Pilot. They are:

- NSW Government consolidated revenue
- Developer contributions – state and regional
- direct customer charges
- 'other' (mostly from local sources)
- combination of NSW Government and developer contributions.

It is this second category of developer contributions – state and regional that SICs correspond to.

“The scale of necessary infrastructure requires a clear understanding of costs, and of who should be contributing to them, in order to guide better decisions and achieve the most effective use of resources.”<sup>1</sup>

Due to natural overlaps that occur between state, regional and local infrastructure and their users, a more comprehensive and collaborative policy framework is now required that recognises the multiple parties and interests engaged in place-based planning.

The review of the existing infrastructure contributions system by the NSW Productivity Commission is therefore fully supported.

Attention is drawn to the Planning Institute of Australia's recommendations for Infrastructure Funding and Delivery (NSW) August 2019. In particular, it would be desirable that the review investigate and consider PIA's suggestions for:

- *Holistic infrastructure planning, funding and sequencing* e.g. developing single comprehensive district or precinct infrastructure plans which fully ascertain what infrastructure is required to be provided; whose responsibility it is to provide the infrastructure; and by what means is the funding to occur.
- *Tackling the life cycle costs of infrastructure* e.g. “Contribution plans are generally limited to meeting the up-front capital costs of infrastructure, but there should be funding and delivery plans that address the whole life cycle of the asset.”
- *Value Capture* e.g. “...the concept that some of the value that is created by planning and infrastructure decisions should be captured and reinvested in infrastructure to support growth. Landowners who receive a windfall because of a planning decision should share that windfall with the community so that it can be reinvested in infrastructure projects.”

These fundamental issues also have immediate resonance and added importance for shaping the direction of the suite of DPIE reforms and the SIC Guidelines in particular.

The need for additional infrastructure to meet local, regional and state needs is driven in large part by demand as NSW population grows. With almost two-thirds of Australia's population growth

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<sup>1</sup> Greater Sydney Commission, *Supported by Infrastructure*, Place-based Infrastructure Compact Pilot, page 38  
[https://gsc-public-1.s3.amazonaws.com/s3fs-public/gpop\\_pic\\_-\\_a\\_city\\_supported\\_by\\_infrastructure\\_web.pdf](https://gsc-public-1.s3.amazonaws.com/s3fs-public/gpop_pic_-_a_city_supported_by_infrastructure_web.pdf)

occurring as a result of net overseas migration,<sup>2</sup> Australia has had one of the fastest population growth rates in the developed world.

Migration levels are outside state and local governments' control, being driven by Commonwealth policies. This points to major structural infrastructure planning and funding imbalances that local councils and the NSW State Government have imposed upon them and cannot unilaterally resolve. This will undoubtedly require some long term planning and fiscal partnering with the Commonwealth Government to meet localised infrastructure funding shortfalls that are distributed very unevenly across the Federation and concentrated in capital and global cities like Sydney. By 2041, it is expected that there will be 1 million new homes in Greater Sydney<sup>3</sup>. All these new households will require some additional infrastructure and some of which will be required to serve unmet regional and state needs.

Accordingly, as noted in the paper, the principles of nexus and apportionment constrain the capacity of SICs to fully recover the full cost of new infrastructure even in areas of high growth. The SIC is therefore not a commitment to the delivery of any infrastructure item.<sup>4</sup>

Recognition of these parameters must inform any policy reassessment and shape reform measures regarding the fair and reasonable apportioning costs between developers, councils, ratepayers and state governments. The current framework for apportioning infrastructure costs was developed in an earlier and perhaps less challenging funding context.

This long standing structural imbalance should also inform the State Government's policy position on value capture as a mechanism that is responsive to the very local demands and pressures on specific places and communities of growth.

## Special Infrastructure Contributions (SICs) Guidelines:

As a consequence of the multiple funding sources and responsibilities, the guidelines need to include a clear coordination mechanism between State Agencies and council in at least the following areas:

- Determining 'infrastructure needs' and timing of infrastructure delivery.
- Calculating and apportioning infrastructure upgrade costs.
- Collaborating from the master planning phase of a renewal project until the infrastructure is delivered.
- Aligning the SICs with the existing contributions plans to avoid doubling up of items.

## Detailed Comments

The proposed draft Special Infrastructure Contributions Guidelines are supported in principle and the additional guidance welcomed subject to the following comments.

### **3 The Purpose of SICs in the planning system**

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<sup>2</sup> Prior to the Coronavirus pandemic the government is expecting population growth, currently 1.5 per cent or almost 372,000 people a year, to halve because of the coronavirus pandemic, taking it to a level last seen during the Second World War. Sydney Morning Herald, *Population growth flatlines as students, tourists leave*, Shane Wright, 17 June 2020  
<https://www.smh.com.au/politics/federal/population-growth-flatlining-as-visa-holders>

<sup>3</sup> NSW Government Media Release, Melinda Pavey, Minister for Water, Property and Housing and Rob Stokes, Minister for Planning and Public Spaces, *Have your say on The Future of Housing in NSW*, 13 June 2020  
<http://www.urbanaffairs.com.au/downloads/2020-6-14-3.pdf>

<sup>44</sup> Department of Planning Industry and Environment, Draft *Special Infrastructure Contributions Guidelines*, April 2020, page 13

#### *A link to Local Strategic Planning Statements (LSPSs)*

The focus on creating great places through collaborative engagement and integrated design is welcomed. The stated collaboration with local councils, utility providers and partnering with the private sector as they prepare long term land use and infrastructure plans could usefully add ‘the intention to align SICs with Councils’ *Local Strategic Planning Statements* as integrated visions for places and communities, endorsed by their communities and approved by the NSW Government.’ Linking to LSPSs will help to ensure infrastructure projects funded by SICs are perceived as having a genuine social licence and community acceptance.

#### *A clearer policy landing on and support for the principle of Value Sharing*

The Guideline notes (page 1) “Ensuring that new growth makes a contribution to infrastructure is a key concept of planning system in NSW”. “The purpose of SICs is leveraging place outcomes when building new infrastructure.” (page 3.)

SSROC’s submission on the draft *Planning Agreements Practice Note* argues for the appropriateness of engaging in value capture. However, some of the arguments posited against using value capture in the Practice Note clearly do not hold for SIC as they apply to an entire designated special contribution area and avoid the potential distortions associated with an individual development or planning proposal.

Recent research<sup>5</sup> has highlighted the potential \$8 billion a year in revenue that a betterment levy, similar to that used in the ACT on rezoned land, could produce in NSW. The report noted that the tax system failed to capture value from land rezoning. The levy could be applied on the increase in land value when it is rezoned for more lucrative use or benefits from new public infrastructure, such as a metro trainline or airport.<sup>6</sup>

In response the NSW Treasurer said that the NSW Government ‘already used value sharing for projects where it made sense to do so, such a Sydney Metro. For example, the government raised more than \$1 billion by selling air rights above stations at Martin Place, North Sydney, Waterloo and Pitt Street’. According to a DPIE spokesperson the Western Sydney Growth Area SIC is expected to raise \$278 million over the next four years.<sup>7</sup>

A clear statement about the role and benefits of value sharing as part of SICs would improve the transparency and policy clarity of section 3.

#### *Inclusion of Aboriginal Land Councils*

Further consideration should be given to including references to collaboration with Local Aboriginal Land Councils and the Metropolitan Local Aboriginal Land Council (in particular) as major stakeholders and landholders in certain Special Contribution Areas.

## **4 Governance, Oversight and Program Assurance**

### *Governance and oversight*

It is suggested that in line with the spirit of partnership and infrastructure planning with councils noted in Section 3, this section on Governance and Oversight should read, ‘Where appropriate other infrastructure and service agencies along **with local councils** be invited to advise on proposals.’

### *Needs analysis and outcomes tied into existing planning instruments*

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<sup>5</sup> Submission to the NSW Productivity Commission from Sydney University academic Cameron Murray

<sup>6</sup> Sydney Morning Herald, *NSW missing out on \$8 billion a year from failure to tax land -rezoning, inquiry told*, Michael Koziol, 7 June 2020.

<sup>7</sup> Ibid

It is recommended that this section be amended as follows, “Strategic land use plans, **such as the Greater Sydney District Plans and approved LSPs**, will form the basis of needs analysis and define outcomes to be achieved by future infrastructure investment”. As noted, the SIC will “support the objectives of the broader planning system such as... council led rezoning”<sup>8</sup>.

#### *Co-ordinated Delivery*

A clear coordination mechanism between State Agencies and Council is required. It is recommended that this section be amended to reflect the responsibilities noted in Guidelines section 3 and is suggested to read as follows<sup>9</sup>, “**Collectively Agencies and councils will have responsibilities** for the delivery of SIC funded infrastructure including managing risk, budget, schedule **and delivery coordination.**”

The SIC guidelines should also be amended to show the indicative timeframe for the preparation and finalisation of a SIC.

#### *Improved Accountability and Transparency*

Section 9 Expending SIC revenue notes that information about SIC revenue and funds will be published annually on DPIE’s website<sup>10</sup>.

Improving accountability and transparency measures proposed in the other reform papers should similarly apply to SICs, noting the large sums involved and the complexity of multiple long-term infrastructure projects can make tracking the expenditure opaque. The public transparency will assist with the overall Program Assurance. This discipline on DPIE’s practice and its public reporting should help to ensure that the design of reporting remains fair, streamlined, effective and efficient for all parties.

SICs should be the subject of independent pricing review – potentially through IPART – and contingencies should be reduced to be more in line with industry standards.

In the interests of transparency and creating credibility in the SIC program, the Government should announce a timeline for removing ‘satisfactory arrangements’ provisions in LEPs and other environmental planning instruments (and replacing them with Special Contribution Areas with SIC determinations).

SIC records and expenditure obligations should be subject to the same transparency and accountability requirements as local contributions through amendment of the EP&A Regulation.

#### **5 Steps to implementing a SIC**

No comment on the three instruments (SIC Determination, Ministerial Direction, and Ministerial Order) giving the powers to implement a SIC.

While the Guidelines note that these instruments will be supported by the Department, it may be useful to have a model agreement for use by the Department, the Agencies and Councils outlining a collaborative and transparent agreement to work together to deliver the State and regional infrastructure in accordance with the SIC framework, as well as to provide: key communication contacts; mechanisms for reprioritising investment of SIC funds; agreeing the sequencing of interdependent local and regional infrastructure; and for troubleshooting the inevitable delivery issues that will arise. Collaborative integrated land use and infrastructure planning requires this level of clarity to streamline and coordinate delivery.

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<sup>8</sup> Department of Planning Industry and Environment, Draft *Special Infrastructure Contributions Guidelines*, April 2020, page 6

<sup>9</sup> Ibid page 4

<sup>10</sup> Ibid page 14

The proposed monetary threshold of \$30 million upon which the Planning Minister will consult with the NSW Treasurer on the proposed level and nature of the contribution may benefit from further consideration, given that the threshold trigger can apply to areas of considerably different scale. As noted, where possible, a SIC should support multiple high growth areas<sup>11</sup>.

Given Councils' role in strategic land use planning (updating LSPS and LEPs) the proposed periodic reviews of the SIC Determination should be undertaken in collaboration with, and with advice from, local councils. This will help to avoid unnecessary duplication of infrastructure expenditure.

## **6 Key principles of the SIC framework**

The five key principles are supported.

For Principle 2 – The SIC will support the achievement of place objectives, it is suggested that the third dot point refer 'to local planning strategies such as LSPS.'

## **7 Key components of a SIC**

The key components noted in the guidelines are supported.

It is noted that SIC instruments will be applied to:

- Greenfield;
- Infill; and
- industrial and commercial developments.

### *a Location where the SIC applies*

Infill sites will typically represent locations where there is existing state and regional infrastructure, some of which may be at the end of its useful life. Local contribution plans managed by councils will also be in place. Some further guidance and criteria would be welcome to help better identify infill locations that demonstrate sufficient demand for new State and regional infrastructure to justify introducing a SIC.

### *b Detail of the supporting strategic land use planning context*

It is recommended that the Guidelines could usefully suggest mutually agreed pathways and procedures for SICs to be linked to and incorporated within a council's Integrated Contribution Framework.

### *c Types of development subject to a SIC*

Consideration should be given to making waste recycling facilities another exemption.

### *d SIC infrastructure list*

Table 1: SIC infrastructure list

The Transport category only includes examples of a few of the transport modes. If there is to be modal neutrality then other modes such as light rail, heavy rail and ferry transport infrastructure needs may need to be included, especially where they link to active transport infrastructure.

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<sup>11</sup> Ibid page 7

Key information used to identify the infrastructure to be nominated in a SIC needs to include Local Strategic Planning Statements and supporting local council studies of infrastructure needs including Local Housing studies.

#### *e Infrastructure costs and cost apportionment*

To improve transparency, it is recommended that the Guidelines include principles for determining how contributions are apportioned to the key categories of SIC infrastructure given that each circumstance will be different. Often there will be competing demands for funds for: transport; open space and green infrastructure; education facilities; and health facilities, within high growth areas.

This issue also relates to section 9, which notes that “investment programs will need to be prioritised according to the broader objectives for the area to which the SIC applies”.

#### *f Method to calculate the SIC*

A consistent charging approach across all SICs is welcomed.

The assumption that local developer contributions will be imposed by councils on developments to which the SIC applies is strongly supported and critical for funding local infrastructure that will be under pressure from growth.

Table 3 notes that affordable housing contributions (in place under State Environmental Planning Policy 70) is considered before setting a SIC rate. Provision should also be made for an affordable housing contribution scheme currently under assessment by DPIE and/or as indicated to communities in a Council’s LSPS and Local Housing Strategy.

This approach would then support the DPIE 20 year *Housing Strategy for NSW* discussion paper (2020). This paper notes that “Our partners must also be involved .... Councils can adopt Affordable Housing Contribution Schemes and demonstrate innovation on their landholdings”.<sup>12</sup>

Otherwise the SIC could unintentionally neutralise affordable housing provision for the life of the SIC.

SSROC strongly supports the SIC providing clarity on costs as early as possible in the development cycle.

#### *g Timing of payments and administration*

No further comments.

### **8 Public consultation and transparency**

The commitments to consultation and transparency are welcomed. No further comments.

### **9 Expending SIC revenue**

The commitments to transparency are welcomed. No further comments.

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<sup>10</sup> NSW Department of Planning Industry and Environment, A Housing Strategy for NSW, May 2020, page 68  
<https://www.planning.nsw.gov.au/-/media/Files/DPE/Discussion-papers/Policy-and-legislation/Housing/A-Housing-Strategy-for-NSW--Discussion-Paper-2020-05-29.pdf>

## 10 State Planning Agreements

With the recent shifts to improved long term strategic planning integrated with long term transport plans the need for State Planning Agreements should diminish. Notably the Greater Sydney Commission has driven a strategic planning focus for the Greater Sydney Region.

Many such instances involving spot rezonings for areas of major urban renewal and/or high growth areas could well be an indicator of the failure of the strategic planning process.

## Conclusion

SSROC member councils cover a large part of Greater Sydney and have a direct interest in supporting and advocating for changes to improve the implementation and operations of the special infrastructure contributions (SIC) guidelines. We welcome the consultation and recommend that the issues raised, and recommendations proposed in this submission be given further consideration.

In order to make this submission within the timeframe for receiving comments, it has not been possible for it to be reviewed by councils or to be endorsed by the SSROC. I will contact you further if any issues arise as it is reviewed. If you have any queries please do not hesitate to contact me or Mark Nutting, SSROC's Strategic Planning Manager on 8396 3800.

Again, thank you for the opportunity to comment on the draft Special Infrastructure Contributions (SIC) Guidelines and we are keen to participate in any further stages of a reform process, in particular consultations about changes that will particularly impact on local councils.

Yours faithfully



Helen Sloan  
**Acting General Manager**  
**Southern Sydney Regional Organisation of Council**