



12 August 2020

NSW Productivity Commissioner  
Submitted via email to  
[ICReview@productivity.nsw.gov.au](mailto:ICReview@productivity.nsw.gov.au)

Dear Mr Achterstraat

## **Re: Submission to the Review of Infrastructure Contributions in NSW**

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Thank you for the opportunity to make a submission to the Review of Infrastructure Contributions by the NSW Productivity Commission (PC).

In particular, thank you for agreeing to our request for an extension to 12 August 2020, for SSROC to make this final 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 seeks to advocate for the needs of our member councils and bring a regional perspective to the issues raised.

The NSW Productivity Commission's review of the infrastructure contributions system (Part 7 of the Act) is welcomed and supported.

SSROC appreciates the opportunity to provide comment on the Issues Paper as the first stage of the Review of Infrastructure Contributions to help provide a clearer and more transparent, efficient and equitable contributions system.

Beyond some general comments this submission is primarily structured on the discussion questions from the PC Review Issues Paper.

### **General Comments**

SSROC welcomes the opportunity to make a constructive contribution to the Review of Infrastructure Contributions and has the following comments and feedback on the Issues Paper.

#### *The critical role of local councils*

Local councils, as the level of government closest to the community, play an important role in engaging with and planning for the needs of their communities. This includes an integrated

planning approach to ensure there is an appropriate supply, mix of housing and community infrastructure to meet the community's diverse and changing needs.

SSROC welcomes the holistic review of infrastructure funding in NSW being undertaken by the NSW Productivity Commissioner. We consider a framework that ensures equitable and efficient funding of local infrastructure is fundamental to achieving the liveability outcomes we seek. It is critical that housing growth is supported by equitable and efficient funding of infrastructure and so contributes positively to place-making and the safety and quality of our neighbourhoods.

“An effective infrastructure contributions system is important to delivering vital public infrastructure, unlocking new housing supply, supporting commercial development and boosting investment in New South Wales”.<sup>1</sup>

As noted in the Issues Paper, councils have significant responsibilities for infrastructure provision with very constrained resources. A realistic and sustainable funding model that effectively combines developer contributions and government funds will be critical. Communities are unable to thrive and liveability is diminished when housing supply is not matched with timely provision of infrastructure and services.

Infrastructure and services are vital to create healthy and liveable communities. This includes public transport, health and education facilities, local roads, pedestrian and cycle networks, local water, sewerage and stormwater facilities, parks, recreation, cultural and community services facilities and a high-quality public domain. Contemporary community expectations are that these essential services and facilities will be properly maintained for existing residents and have the required additional capacity as and when new residents move into an area.

The Infrastructure Review is an important opportunity to develop new ways to collaborate to deliver better housing outcomes for all. SSROC would welcome further dialogue about how this can be achieved.

### *Supporting a NSW Housing Policy*

To be fit for purpose, it is important that the Review of Infrastructure Contributions responds to and supports the emerging NSW Government policy directions which now include the intention to adopt a Housing Strategy for NSW. The Government's Discussion Paper flags a broad and inclusive vision<sup>2</sup> for the role housing needs to play in NSW, to help provide ...

“Housing that supports security, comfort and choice for all people at all stages of their lives, achieved through supply that meets the demand for diverse, affordable and resilient housing and responds to environmental, cultural, social and economic contexts.”

Key outcomes for the Strategy include:

- Housing supply in the right locations and at the right time
- Diverse housing for diverse needs
- Housing that is more affordable
- Enduring and resilient housing

Obviously housing and infrastructure are closely intertwined. Housing, the dwelling places where people live and where the workforce reside, is a major driver and shaper of much of a community's infrastructure needs. Considering one without the other would be the antithesis of good planning. It

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<sup>1</sup> NSW Productivity Commission Review of Infrastructure Contributions in New South Wales Issues Paper July 2020

<sup>2</sup> NSW Government, *Discussion Paper, A Housing Strategy for NSW* May 2020, page 10.

is therefore important to understand their relationship as a driver for effective infrastructure policy to support population growth and the nexus with improved economic productivity.

### *Key Implications*

- The provision of non-market housing supply is equally important as private market housing supply, if the goal is to house everyone well is to be achieved.
- Affordable housing is essential local infrastructure along with roads and parks for supporting inclusive communities, reducing congestion and enabling essential workers to efficiently provide their labour.
- Infrastructure contributions (made currently through SEPP 70 and the Affordable Rental Housing SEPP) are an important funding source to be retained and enhanced if the chronic shortfall in affordable rental housing supply is to be effectively addressed.
- The intention to introduce a new Housing Diversity SEPP needs to be supported by the recommendations arising from the Review of Infrastructure Contributions, if they are to be fit for purpose.

### *Affordable housing*

The current SEPP 70 Affordable Housing Contributions Scheme system, as outlined in the NSW Government Guideline, limits contributions to affordable housing equivalent to a nominated percentage of floorspace (i.e. 5-10% dependent on viability) only in areas where up-zoning occurs. They are therefore only a partial mechanism for affordable housing and is not likely to be established in many regional areas where rezonings will be limited.

Inclusionary zoning, which would typically require a contribution from all development in an identified precinct or local government area, represents a more comprehensive approach that could and should be used as the primary mechanism in NSW, complemented by funding from a value capture approach such as a Development Licence Fee (see section 4.1 about value capture for further explanation). A relatively low inclusionary zoning rate of say 5%, gradually imposed to allow for land values to adjust, and broadly applied could generate significant funds for affordable housing (though still unlikely to be sufficient to meet the supply gap, suggesting a critical and continual role for funding and subsidies from state and federal government). The inclusionary zoning requirements operating in City West Pyrmont-Ultimo (City of Sydney) currently reflect many of these elements.

### *Value Capture*

SSROC objects to the policy position that VPAs should not explicitly be used for value capture. Value uplift associated with changes to planning controls is the value of the new property rights that allow for that development to take place which are, until the, n conceptually community property owned by the community. The uplift is not earned by the proponent and frequently the rezoning is enabled by public infrastructure investment.

Accordingly, our submission includes a focus on value capture. SSROC considers that the recently exhibited draft Practice Note from the Department of Planning Industry and Environment did not provide a sufficiently balanced and meaningful discussion on value capture.

The proposed changes will result in more of the costs of growth being borne by existing residents, while the benefits accrue to a few landowners in the form of a windfall gain. This is clearly unsustainable, and the community has a legitimate claim to the benefits created by planning decisions.

The NSW Productivity Commission's review should look to proposing a statewide value capture policy related to development uplift, in addition to the existing development contributions system.

Until the Government introduces a scheme which returns to the community a fair share of any unearned land value uplift resulting from planning decisions that currently flows fully to landowners, it is reasonable and valid for Planning Agreements to be a mechanism to achieve this purpose.

## Responses to Key Issues and Discussion Questions from the Issues Paper

### 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?

A clear conceptual framework can and should be applied consistently across the state, although its implementation, relevance and impact will differ between locations and council areas. For example, in regions without significant development activity there may be few opportunities to implement value sharing mechanisms.

Site specificity is fundamental to a user pays approach which aims to account for site specific development cost differentials between different areas to establish a price signal. A more standardised, average approach might provide greater simplicity and certainty, particularly for development in greenfield areas, which do not differ significantly in their infrastructure needs. However, infrastructure needs in urban infill or regional locations are largely context dependent, undermining the validity of standard rate charges in these locations.

Land value is a large but less predictable element in determining the infrastructure costs in contributions plans. Greenfield concentrated urban renewal sites and dispersed urban infill each need different approaches to manage the different local dynamics at work such as supply and demand interactions. This should stand even if there is a move to remove land costs/contributions from the threshold for IPART review of contribution plan rates.

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

There is a clearer nexus and fairer apportionment based around a site specific calculation. It enables a more precise market signal and the ability to charge more accurately – however 7.11 plans carry a high administrative burden.

Nexus and fair apportionment are the foundational principles of the development contributions system. They are also the basis for establishing an effective market signal for the location or size of new development. While there is an administrative burden in calculating contributions plans on this basis, it is a necessary burden without which allocation of infrastructure costs would be arbitrary and not offer a clear market signal.

Where nexus and fair apportionment are traded off for simplicity and certainty there is a high risk that the contributions that can reasonably be collected from development are reduced. However, SSROC supports the application of a simple lower range fixed rate of development contribution (i.e. S7.12) in areas of urban infill when the contribution component for infrastructure is lower due to apportionment among multiple beneficiaries.

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

*Requiring early and direct dedication of lands.* Under Victoria's subdivision act, 5% of land must be set aside upfront as a contribution for a range of infrastructure / public purposes. (Measures would be needed to ensure appropriate land is dedicated – not just undevelopable and/or heavily constrained areas).

While early dedication represents a cost in the development process, it improves certainty and addresses the issue of subsequent land cost inflation. The clear and early expectation for land dedication would push the cost burden back towards the original landowner.

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

*A reformed contribution system requires a multi-pronged strategy*

- *It is critical to establish an agreed funding mix early on.* The GSC's attempt at this through the GOPP Place Infrastructure Compact (PIC) pilot provides a useful model of how to approach the task, bringing together developer, State and local government contributions. The funding mix approach deals with infrastructure funding and delivery holistically. It requires a long term plan that involves a comprehensive infrastructure funding and delivery plan for a place where significant change is expected and brings together delivery agencies to commit to a prioritised schedule of infrastructure.

This approach strikes a balance between consistent, certain and reasonable infrastructure, contribution obligations from developers and certainty that new communities will be provided with an acceptable standard of infrastructure.

- *Redesign the development contributions as part of holistic reform of the infrastructure funding and delivery system* with a focus on the timing of contributions and infrastructure delivery. This would result in:
  - Developers making reasonable up-front investment towards infrastructure that serves their developments.
  - Landowners in growth areas contributing by special local rates or additional land taxes reflecting the intergenerational benefits provided by new infrastructure.
  - Governments allocating consolidated revenue to growth infrastructure.
- *Tackle the rising cost of infrastructure* by requiring the early dedication by developers and acquisition of lands by government needed for infrastructure.
- *Reform of Local Government rate pegging*  
 SSROC agrees with the Productivity Commission statement that "Local government rate pegging creates a financial disincentive for councils to accept growth and increases their dependence on other revenue sources such as infrastructure contributions. The recently announced reforms to the rate peg to include a population growth factor is supported as an important step to providing councils with a funding source to further support their growing communities. It is also complementary to reform of the infrastructure contributions system."

## **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?

There is merit in exploring betterment levies (such as in the form of development licence fees), special local rates, regional rates and other land taxes.

### **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?

A key to integration of land use planning and infrastructure delivery is funding place outcomes. The current siloed approach means that land use planning and infrastructure funding sources are rarely considered together in a sequenced and integrated way. A single system resulting in a comprehensive infrastructure funding and delivery program for each Planned Precinct and Growth Area would help to remedy this problem.

The Place Infrastructure Compact GPOP Pilot demonstrated how these two elements can be harnessed to optimise outcomes. This process needs to be supported by a single comprehensive system for infrastructure funding and delivery in Planned Precincts and Urban Renewal Areas. To be successful it is critical that integrated plans are adopted at the time land is rezoned or up zoned.

Empowering a single agency within government will help to resolve disagreements between agencies about infrastructure priorities so that coherent funding plans can be recommended to Cabinet.

### **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?

VPAs currently serve to fill gaps in the development contributions system in the absence of a comprehensive approach. They add value and are necessary to tailor a solution for one off up zoning – however there is a proliferation via ‘satisfactory arrangements’ clauses which should be reduced.

- Is “value capture” an appropriate use of planning agreements?

Yes. However, VPAs can undermine confidence in the planning system in certain situations, if they are not clearly separated from the development approval process. Following the establishment of a comprehensive more systematic approach that incorporated value capture there would be a much diminished role for VPAs, thereby reducing uncertainty and increasing the efficiency of the development process.

Nevertheless, under the current system value capture is a wholly appropriate use of planning agreements. It is important that the infrastructure or public benefits to be funded are clearly identified, and the negotiation of agreements occurs separately from the development approval

process. This can be accommodated through clear guidelines and accounting and administrative provisions at the state and local government level. A comprehensive policy on the appropriate use of value sharing schemes should be developed to support its use.

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

Yes, for the infrastructure contributions component but not necessarily for a value capture component.

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

Yes, in a similar way to local government is subject to using transparent, principle-based guidelines.

### **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?

Planning agreements should be prepared and implemented in line with a clear adopted planning agreement policy.

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

Planning agreements should be maintained in a centralised online register which is publicly accessible to ensure transparency and accountability is maintained.

### **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?

Yes. They are not conceptually clear.

In the absence of broad system-wide reform, the practice note for VPAs should be clear about the type of contribution being raised i.e.:

- contributing towards planned infrastructure in line with projected share of usage,
- making good unanticipated off-site effects, including infrastructure impacts
- paying for additional development capacity above any 'as of right' (value sharing), potentially set out in the LEP
- meeting development standards related to inclusionary requirements (e.g. affordable housing and open space) on site or pay for these off site to meet a requirement for cumulative sustainability.

This clarity will help to demonstrate where planning agreements are not needed or are not appropriate and avoid contributions being imposed or required where they do not meet one or more of these reasons.

#### **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?

A contributions regime needs to adopt principles of nexus and fair apportionment. The design of the contributions scheme should then reduce the administrative burden of implementing these principles with a view to delivering simplicity and certainty.

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

There needs to be special recognition that demand for infrastructure from dispersed urban infill will result in complexity.

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

The Department of Customer Service could pilot an electronic State and local contributions management system project including a contributions calculator tool appropriate for diverse urban and regional locations and typologies endorsed by, and developed in collaboration with, councils.

#### **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?

Not reviewed.

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

Not reviewed.

- 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?

While only a partial answer, the National Housing Finance and Investment Corporation (NHFIC) and NSW Land and Housing Corporation (LAHC) have finalised a deal that will see \$100 million in loans and grants provided through the \$1 billion National Housing Infrastructure Facility (NHIF). “By delivering the roads, water, sewerage, electricity, and telecommunications



these developments need, 781 new social and affordable homes will be built at significant development sites throughout Sydney.”<sup>3</sup>

A similar funding facility for accessing low cost long term finance could be established for councils.

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

Not reviewed.

### **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?

User pays charges should be based on economic efficiency rather than on some concept of ‘reasonableness’ or ‘feasibility’. If development is discouraged based on transparent price signalling then this is an appropriate risk to the development proceeding. Clarity as to ‘prices’ (i.e. pre-scheduled notification of contributions) is important so that developers have appropriate information when making bids for and purchasing land for development.

- 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?

A redesigned expanded essential works list should be adopted. A fully calibrated, user pays based contributions plan should be contained to necessary development infrastructure i.e. infrastructure required to allow development to occur and which contributes to a functioning neighbourhood and community, where the nexus is with development occurring within that neighbourhood or community. This infrastructure may go beyond that currently on the essential works list.

The list of prescribed infrastructure for both greenfield and urban renewal areas should be expanded to include a wider range of infrastructure. This will address a significant issue in the current operation of the essential works list, which excludes the construction of community facilities. In practice, this means that community facilities and open space often form part of masterplans in urban renewal areas but remain unconstructed as it is difficult for the Council to secure the required funds for their delivery.

- 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?

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<sup>3</sup> Joint media release Michael Sukkar and Melinda Pavey, 9 August 2020  
<https://ministers.treasury.gov.au/ministers/michael-sukkar-2019/media-releases/national-housing-and-infrastructure-facility-deliver>

This has merit for major transformative place based developments and should exist as a normal part of City Deals and Place-based Infrastructure Compacts.

### **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.

Ideally s7.12 should be abolished in favour of a more formalised system of value capture (related to the change in land value, rather than to development costs), such as a Development Licence Fee system.

- 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?

There is room to increase the current arbitrarily set maximum percentages considerably before issues arise. Once the lower rate for s7.12 is benchmarked it should maintain parity with 'higher' S7.11 contributions.

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

An evidence-based benchmarking process needs to be used to determine a reasonable rate for a given context.

### **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.

Currently, special infrastructure contributions act effectively as a value-sharing mechanism though they are sometimes characterised as having user pays elements. SICs could be abolished and replaced by a comprehensive system of value sharing across all jurisdictions.

However, in any event, there is no reason why the contributions regime should have less accountability than that required and expected of local contributions plans prepared under S7.11. Further there is a distinct benefit in requiring the integration of local and state contributions within the framework of a S7.11 plan.

A single system should seek to remedy the following issues:

- The unnecessary duplication of work between state and local government in preparing contributions plans and the limiting factor of local government area boundaries.
  - The difference in transparency and reporting required from state and local government.
  - The lack of consideration of the range of funding sources available when delivering infrastructure for a Planned Precinct.
  - A level of uncertainty about the total quantum required in the contributions plan.
- Is it appropriate that special infrastructure contributions are used to permit out-of-sequence rezoning?

Yes - to maintain a price signal in favour of orderly land development and efficient infrastructure delivery.

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

Currently, there is duplication in the work being undertaken by local and state governments in preparing contributions plans. The resultant plans carry a significant amount of administrative burden without corresponding benefit in the delivery of infrastructure. Instead, both levels of government should undertake a coordinated approach, in which the required infrastructure is identified and planned for in collaboration. This should occur across local government area boundaries where necessary.

This would create one source of integrated approach and information for developers and the community, send the right price signals and promote a coordinated roll out of the required infrastructure where responsibilities for delivery are understood from the outset. A single infrastructure list which would be divided up between state and local government. S7.23(3A) of the EP&A Act specifically provides for SICs to be determined with both State and local council components.

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

Yes.

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

There is merit in empowering a single agency within government to resolve disagreements between agencies about infrastructure priorities so that coherent funding plans can be recommended to Cabinet is supported.

Contribution proceeds could be collected by NSW Treasury, completely separated from the approvals system, with a share redistributed back to Councils in line with, and to support, planned development and some retained for state infrastructure funded by the SICs.

### **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.

The preservation of biodiversity is not related to land economics principles which provide the basis for systems of value sharing, such as special infrastructure contributions. Furthermore, biodiversity offsets do not relate to infrastructure provision, and should therefore, be dealt with under a separate framework, where ecological considerations are paramount.

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

See answer above.

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

See previous answer.

### 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.

The provision of affordable housing through the SEPP 70 contributions system is not sufficient to address current and future unmet need for affordable housing. While it is appropriate that value sharing mechanisms should be enabled to assist in the provision of affordable housing, the current system only applies to areas where up-zoning occurs, and therefore, can only act as a partial mechanism. Inclusionary zoning which would typically require a contribution from all development in an identified precinct or local government area is not currently enabled by SEPP 70, and represents a more comprehensive approach that should be used as the primary mechanism in NSW, supplemented by a value capture approach as implied by SEPP 70.

A relatively low inclusionary zoning rate of say 5%, gradually imposed to allow for land values to adjust, and broadly applied would generate significant funds for affordable housing (though still not sufficient to meet the supply gap which should appropriately be addressed by funding and subsidies from state and federal government).

The currently recommended affordable housing target of 5-10% tested for 'viability' is arbitrary. The contribution rate should be calculated based on the change in Residual Land Value (RLV), to derive a % rate of floorspace if necessary. This would allow for a standard profit margin and uplift for the seller. The RLV rate expressed on a per sqm basis is likely to vary by precinct or location.

It is recommended that the Affordable Housing contribution rate be expressed as a percentage of the Gross Realisable Value. By definition this is 'feasible' and actually much clearer to a developer.

If affordable housing contributions are restricted to a share of the uplift in value created by rezonings, contributions should have a negligible effect on housing supply. However, this is predicated on the assumption that value-sharing and inclusionary zoning provisions are pre-signaled so that they can be factored into the residual land value (RLV) equation.

- [Is provision of affordable housing through the contributions system an effective part of the solution to the housing affordability issue?](#)

Yes. However, it is a second best solution - see discussion above.

- [Is the recommended target of 5-10 per cent of new residential floorspace appropriate?](#)

See discussion above.

- [Do affordable housing contributions impact the ability of the planning system to increase housing supply in general?](#)

No, not if designed carefully as outlined.

Housing supply is driven by market conditions. Changes in housing supply in Sydney have been driven by change to aggregate demand (influenced by investors including overseas,

interest rates, macroprudential controls / access to credit, taxation settings, sentiment, etc.) not by any issues with supply costs such as restrictive planning controls, slow process, or high contributions.

If affordable housing contributions were imposed immediately, then developers would absorb reasonable costs. If known affordable housing contributions are known in advance, the development sector would pass this cost on to the landowner and reduce raw land values. Ultimately, the recent house price boom across Sydney has increased land values in the order of 50%. A marginally lower price for land as a result of affordable housing contributions would be an 'equitable' impost on existing landowners.

#### 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?

Yes.

There are opportunities to consider betterment levies and other similar mechanisms.

Value capture is an important and well recognised approach to the delivery of public benefits. Value capture has been used widely across Australia at all levels of government and has also been employed by governments internationally. It is a justified mechanism which can be used to provide funding for the delivery of a variety of public infrastructure projects. Value capture is one of several funding mechanisms available to NSW councils to provide public amenities and services.

Recent research 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>4</sup>

In response to this research, 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>5</sup>

There are current examples of where value capture (via planning agreement) is encouraged:

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<sup>4</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>5</sup> Ibid

- Department's Developing an Affordable Housing Contribution Scheme for affordable housing.
- Randwick Council's Community Infrastructure Contribution (or value sharing).

Current methods of value capture (which are ad hoc, mostly via SICs and VPAs and where Affordable Housing Contribution schemes apply) should be broadened and consolidated into a single, comprehensively applied system of value capture through the implementation of Development Licence Fees or a betterment levy.<sup>6</sup>

#### **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?

An 'infrastructure development charge' linked to land title may be another way of describing a Development Licence Fee. However, a Development Licence Fee is intended as a means of purchasing development rights for a site (and is related to value capture). Conceptually it is not a tax or charge. This should also not necessarily be limited to rezoning but apply in the case of any changes to land title, such as the granting of additional FSR.

#### **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?

Yes. See response to 4.4 below.

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

Yes.

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

A higher indexation is supported.

#### **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?

This is an important and critical issue. PIA NSW and others have recommended a suite of approaches that could be employed to address this issue:

- *Requiring early and direct dedication of lands.* Under Victoria's subdivision act, 5% of land is required to be set aside upfront as a contribution for a range of infrastructure / public

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<sup>6</sup> SGS Occasional Paper, Value Capture through development licence fees, February 2017, Marcus Spiller, Andrew Spencer, Patrick Fensham

purposes. The clear and early expectation for land dedication would place the cost burden back towards the original landowner.

- *Reform to Land Acquisition (Just Terms) Act* to change the basis and / or point in time a just valuation is attained. There is an equity and efficiency argument for valuing land to be acquired for infrastructure / public purposes on the basis of its undeveloped value (according to those uses enabled under the pre-existing zone) – rather than its highest and best use post the provision of the infrastructure and any related up zoning. Given that the increase in land value is primarily achieved by orderly planning and delivery of infrastructure – it seems inappropriate and circular logic. The increased value presumes access to infrastructure.
- *Have a public authority purchase land for necessary drainage / water infrastructure up front.* Sydney Water is well placed to fund the upfront acquisition of the drainage component and other service corridors for water. This would be funded by their user charges.

Local Councils release funds to registered CHPs to acquire sites for affordable rental housing using monetary contributions from affordable housing contribution schemes. This would be in accordance with the council's Local Housing Strategy and LSPS well ahead of rezoning planning proposals. Broadly, this is the current practice of City West Housing.

- *Establish an 'equalisation scheme'.* This is a necessary companion reform where in a multi owner development precinct, one owner is disproportionately saddled with land take needed for infrastructure (such as provision of a new road) and suffers reduced potential yield. A mechanism for equitably sharing the loss of yield amongst participating landowners should be a prerequisite for all options considered.
- *Fund early acquisition of land needed for other infrastructure via a Regional Infrastructure Contribution and Fund* under a Place-based Infrastructure Compact (PIC)
- *Introduction of long term Growth Infrastructure Plans* to align land use planning decisions and infrastructure planning and delivery.
- *Introduction of a separate Regional Growth Fund* for the acquisition of land needed for public open space and drainage. This contribution would be charged on a regional basis.
- *Sydney Region Development Fund.* The use of a regional rate surcharge to fund open space acquisition (noting the role of the Sydney Region Development Fund in this regard). The amount of this rate should be reviewed and considered as an implementation tool for the Greater Sydney Region Plan and potentially PICs.
- *Use the proceeds of a future betterment levy* to support early land acquisition.
- *Remove the land cost when determining the threshold for IPART review of Contributions.*

#### **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?

If a Development Licence Fee system was effectively implemented, the changes to Residual Land Value (RLV) which would result from uplift on sites included in corridor identification will be minimised. This would serve to reduce the need for 'equalisation', where landowners seek compensation on the basis of their land's potential RLV and therefore, reduce speculation and land value escalation.

If value capture is not implemented, the constraints of early acquisition or dedication will apply.

#### 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?

Though not reviewed specifically, see 4.5 discussion.

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

Inclusionary zoning requirements also provide a potential means for ensuring land/funding for open space is secured. The Victorian Subdivision Act 1988 demonstrates the use of this mechanism for open space delivery, requiring a minimum 5% contribution for useable open space where sites are subdivided into three or more lots (including strata subdivisions). This is typically provided as cash in lieu of land, and may be used to embellish existing open space or purchase new sites. Councils may increase this inclusionary requirement based on an open space plan or strategy.

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

Yes – but alongside other measures (rates etc) where the broader community benefit.

#### 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?

Where costs of new and upgraded connections vary by location, a price signal should be present. This would require a user pays system, which would reduce the cost burden placed on the broader customer base and isolate it to benefitting development.

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

Where broader community objectives are served through the retrofit of existing systems for potable and recycled water provision, funding from the broader customer base would be appropriate.

#### 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?

A central electronic platform provided and maintained by the state government should be employed to ensure full transparency and accountability in reporting on development contributions.

- 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?

Not reviewed.

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

Not reviewed.

#### **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?

Financial and asset management and reporting within councils should be supported by appropriate industry standard software and state government guidelines and resource support.

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

Yes.

#### **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?

Exemptions should be minimised to maintain a price signal and applied on a fully transparent basis if granted.

Councils may reserve the right to grant exemptions from development contributions to facilitate certain development outcomes (such as affordable housing), provided they are fully transparent and accountable regarding this decision and the value of forgone revenue.

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

Not reviewed.

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

Not reviewed.

#### 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?

Yes, where there is a net public benefit, Works-in-kind agreements or cash in lieu payments may be appropriate where land cannot be provided.

- 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?

No – Works-in-kind should generally relate to the actual setting in order to retain the nexus.

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

Not supported.

#### Conclusion

SSROC member councils cover a large part of Greater Sydney and have a direct interest in supporting and advocating for changes to improve contributions system in NSW. 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 NSW Productivity Commission's Review of Infrastructure Contributions and we are keen to participate in any further stages of the reform process, in particular consultations about changes that will particularly impact on local councils.

Yours sincerely



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**Southern Sydney Regional Organisation of Council**