



17 December 2021

Ms Kate Speare
Director, Infrastructure Funding Policy
Department of Planning, Industry and Environment
Locked Bag 5022
Parramatta NSW 2124

By email: infrastructure.contributions@planning.nsw.gov.au

Dear Ms Speare

Re: Submission regarding the Infrastructure Contributions Reforms on exhibition

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.

Thank you for the opportunity to make a submission to the NSW Department of Planning Industry and Environment (DPIE) on the infrastructure contribution reforms placed on exhibition. Thank you too for providing a short extension so that this submission could be made.

SSROC notes that the Minister has recently advised LGNSW of a range of changes to the proposed infrastructure contributions reforms and that there are now plans for these changes to be implemented. SSROC recognises that there is now scope to improve these areas of major concern but cannot support the recommended changes until the Ministerial commitments are fully translated and incorporated into the Bill, the Regulation and supporting Ministerial directions and policy papers.

As part of this consultation, we also seek to make some recommendations about more detailed matters as part of this feedback on elements of the reform package.

SSROC and its members were very concerned about the lack of broad consultation in the first stage of these reforms, when the *Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021* was introduced into NSW Parliament cognate with the NSW Budget Appropriation Bills. We welcomed the Inquiry and its recommendation that the Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021 not proceed until the draft regulations have been developed and released for consultation and the reviews into the rate pegging system, benchmarking and the essential works list have been published by the Independent Pricing and Regulatory Tribunal.

SSROC welcomes the Minister's subsequent commitment¹ to modify the reform package and work with local councils to ensure that the detailed commitments made around the package of reforms

¹ Minister Stoke's Media Release dated 24 November 2021 (attachment 1)

on behalf of the NSW Government will form part of the legislative amendments currently before Parliament and that this occurs as part of the Bill progressing in the Legislative Council.

It is wholly appropriate that all the proposed regulatory changes, Ministerial Directions and subordinate legislation that will give effect to the Government's infrastructure contributions reform agenda are available for public scrutiny and comment prior to the Bill being progressed.

Councils were given to 10 December 2021 to make a technical submission and to March 2022 to make Council endorsed submissions.

Nevertheless, SSROC appreciates the opportunity to provide comment on the proposed Infrastructure Contribution reform package to help provide a clearer and more transparent, efficient and equitable contributions system at this stage.

Infrastructure Contribution reforms currently on exhibition

As the first step of the reform legislation was introduced to the NSW Parliament. This enabling legislation aims to provide the foundations for an improved infrastructure contributions system. It is proposed that it will be supported by amendments to the Environmental Planning and Assessment Regulation, policy instruments and practice notes. Together these form the framework for a reformed contributions system.

The key elements of the exhibition documents for consultation include:

New framework for state infrastructure contributions

- The exhibition materials set out the Regional Infrastructure Contribution Framework including where it applies, applicable development types, charge rates, the form of the contribution, indexation and timing of payments. The Regional Infrastructure Contribution components include the Base Contribution, Strategic Biodiversity Component and Transport Project Component.

Local contributions

- Proposed changes to the *Environmental Planning and Assessment Regulation 2000* and an Explanatory Paper
- Practice Note Review
- Land Value Contribution.

Land use planning

- Contribution Plans will be prepared upfront (when needed) and exhibited at the same time as the rezoning proposal; and
- Direction will be given to think about how opportunities for dual use and shared use of open space.

1 Overview

In principle, SSROC welcomes reforms to this complex system with the aim of reducing complexity, improving transparency and equity and relieving the financial burden placed on councils providing local infrastructure to support population growth and/or the changing needs of communities.

However, the proposals contained in this far-reaching reform agenda pose significant change to the existing system, and so the impacts need to be considered judiciously and supported with modelling and test cases before the reforms are finalised. It is essential that councils and communities individually and collectively are not left worse off as a result of the changes.

Analysis of the exhibition material and modelling being undertaken by individual councils and Regional Organisations of Councils (ROCs) finds that unless certain amendments are made and provisions guaranteed, many councils will be negatively affected.

Accordingly, SSROC opposes the draft Bill that is currently in the NSW Parliament pending further amendments. This legislation was introduced on the premise of enabling the State Government to implement the recommendations of the NSW Productivity Commissioner Review of Infrastructure Contributions (PC Review). In addition to local government's legitimate concerns that the changes could leave councils worse off, SSROC, LGNSW and the entire local government sector also hold reservations that the Bill provides the Government with powers to implement other reforms, that are outside the scope of the PC Review, without further parliamentary scrutiny.

Notwithstanding these fundamental concerns, SSROC also acknowledges recent commitments by the Minister, made on behalf of the NSW Government, which include:

1. a guarantee that councils and their communities are not left worse off as a result of the reforms; and
2. that the details will be embedded in the legislation to ensure Parliamentary oversight of any future proposed changes.

It is wholly appropriate that all the proposed regulatory changes, Ministerial Directions and subordinate legislation that will give effect to the Government's infrastructure contributions reform agenda should be available for public scrutiny and review by the newly elected councillors prior to the Bill being progressed.

While the Minister's commitments and changes are appreciated, SSROC cannot support the recommendations until the Ministerial commitments are fully translated and incorporated into the Bill, the Regulation and supporting Ministerial directions and policy papers.

SSROC supports progressing the population growth rate reforms independently from any reforms to the infrastructure contributions system.

The Minister's commitments go some way towards allaying councils' fears, but as councils work through the exhibition material and model the financial impacts under the proposed new framework, questions remain, and a series of amendments and key provisions will be needed before councils can be satisfied that the legislation and the other reforms will not leave councils worse off.

Some SSROC councils are also examining the implications for their current Infrastructure Contribution plans, which have been carefully developed to align with District Plans and deliver the vision for particular precincts, after detailed community consultation and years of negotiations with DPIE. There will be a need to provide transitional and grandfathering provisions, so that these plans and the principles underpinning them are not undermined by these latest changes.

The exhibited documents go some way to addressing the concerns raised by local government, but they will still curtail councils' ability to fund planned infrastructure works that they and their communities see as being necessary to accommodate growth.

The reforms are likely to force councils to move away from reliance on S7.11 contributions from residential flats and instead use S7.12 to generate contributions of up to \$12,000 for all dwelling types plus a per metre contribution for commercial and industrial floor space.

Under the new framework there is a concern that the burden of the levy has shifted from large-scale developers to small-scale “mums and dads” carrying out knockdown rebuilds and dual occupancy. Increasingly such contributions would be coming directly from the pockets of homeowners, rather than from development profits.

New State Regional Infrastructure Contributions (RICs) are also proposed for all dwellings to fund state infrastructure. Together the S7.12 and RIC represents a significant impost on residents and communities. Its expenditure needs to be clearly linked to infrastructure that supports growth in the region where the contributions were raised.

2 The Minister’s Commitments

SSROC acknowledges the Minister’s recent commitments, made to LGNSW on behalf of the NSW Government, to:

- Undertake further modelling and consultation with stakeholders including with councils and the public.
- Provide a guarantee that councils and their communities are not left worse off as a result of these reforms.
- Embed the details in the Act rather than rely on regulations, to ensure Parliamentary oversight of any future proposed changes.
- Progress the population growth rate reforms independently from any reforms to the infrastructure contributions system.

These being in addition to the modifications to the package noted in the Minister’s Media release of 24 November 2021, including:

- Allowing councils that currently fund community infrastructure from developer contributions to continue to do so;
- Ensuring that state contributions are spent in the region where they are collected;
- Re-setting the blanket rate councils can charge, known as 7.12 plans; and
- Increasing the maximum amount councils can charge for infrastructure associated with solar and wind farms.
- The Minister will seek financial assistance for councils that can demonstrate cash flow problems due to directions about the payment of contributions at the construction certificate stage.

Some of these issues are explored further below.

2.1 No council left worse off

SSROC welcomes the Minister’s agreement to make changes to the reform package to ensure that no council will be worse off under these reforms.

Importantly, the Minister’s pledge to work with local government and LGNSW to deliver these commitments must be upheld. A range of councils are modelling the impacts to confirm whether the reforms will leave them worse off. To ensure that Minister’s guarantee that no council will be left worse off can be met, SSROC urges the Department to actively review this modelling information and work with the councils to adjust the settings and provisions where necessary.

Recommendation 1: *That the Minister's commitment that no council will be left worse off remains independent of population growth rate reforms and is reinforced by:*

- *the NSW Government arranging access to councils' updated modelling of the effects of the reforms; and*
- *the Department of Planning, Industry and Environment working with LGNSW, ROCs and councils to adjust the settings to uphold the Minister's guarantee.*

2.2 Key reform commitments to be in primary legislation

Given the far-reaching impacts of these reforms, it is critical that the NSW Parliament is provided the opportunity to scrutinise and oversee key reform elements, and that Ministerial powers and discretion are limited.

It is understood that the Minister for Planning's commitment to adjustments to the reform package made on behalf of the NSW Government will form part of the legislative amendments currently before Parliament.

We also acknowledge the Minister's undertaking to work with LGNSW to ensure these key reform adjustments are included as part of the Bill progressing in the Legislative Council. SSROC is a current member of LGNSW.

SSROC notes that the NSW Government tabled proposed amendments to the Bill in the Legislative Council on 25 November 2021². These amendments do not fully address all of SSROC's and LGNSW's concerns and if adopted fail to embed all of the Minister's commitments in the legislation.

In summary, amendments to the Bill need to be made in the following areas:

- a. Amend the Bill to lock in the Minister's commitment regarding no change to the current settings for the timing of payments and limit the Minister's discretion to determine the development thresholds this direction will apply to.
- b. Amend the Bill to include appropriate transparency and public scrutiny of regional infrastructure contributions.
- c. Amend the Bill to include provisions that allow existing contributions plans to be grandfathered.
- d. Amend the legislation to recognise the principle that infrastructure contributions should capture both the land and capital costs of providing core community facilities.
- e. Delete the provision (Schedule 1[4]) that proposes to change the timing for LSPS review from 7 to 5 years.
- f. Amend the Bill to introduce a provision to guarantee payments of local contributions for SSD (where there is a contributions plan in place).

² [Proposed amendments to Environmental Planning and Assessment Amendment \(Infrastructure Contributions Bill 2021](#)

Recommendation 2: *That the NSW Government, and any Minister with carriage of this legislation through Parliament, honours Minister Stokes' commitment to work with LGNSW, the ROCs and local councils to ensure key reform adjustments are included in the primary legislation.*

2.3 Infrastructure Contributions and Rate Reform

Councils have objected to the Government's decision to tie reform of the rate peg to cater for population growth to reductions in infrastructure (developer) contributions.

We note that the Minister for Local Government has endorsed the recommendations of the Independent Pricing and Regulatory Tribunal (IPART) for reforms to council rates, and we welcome the Planning Minister's commitment, on behalf of the Government, that it will proceed separately from infrastructure contributions reform. SSROC notes recent amendments to the *Local Government Act 1993* which will allow councils to review their general income to include population growth.

Viewing rates as an alternative or replacement for infrastructure contributions, is highly problematic in part because one of the key purposes of rates is to help maintain existing infrastructure and services rather than to fund new infrastructure associated with new and increased demand generated by development.

SSROC welcomes changes that will incrementally improve the operation of the rate pegging system and is supportive of the proposal to link the rate peg to population growth, which is currently being reviewed by IPART.

Recommendation 3: *That legislative amendments reflect the Minister's commitment that reforms to council rates are not linked to infrastructure contributions reform and will proceed separately from these reforms.*

2.4 Commencement, Transitional Arrangements and Grandfathering

These are once-in-a-generation reforms that cannot afford to be hastily conceived and their implementation rushed through.

SSROC notes that the Government expects the new infrastructure contributions system to be in place by 1 July 2022. Given the various delays in finalising the package and taking into account the cumulative impacts of this and many other major planning reforms for all stakeholders, SSROC considers that January 2023 is a more realistic date for commencement of the infrastructure contributions package.

It is also understood that councils' existing contributions plans will continue to apply until transitioned into the new system, and that councils are expected to review their existing contributions plans by 1 July 2024. SSROC notes the Department's advice³ that "there will be flexibility" and councils will be able to apply for an extension to the 1 July 2024 deadline. However, there are no details of these arrangements.

³ [DPIE FAQs](#)

A commencement date of mid-2022 gives councils only two years to review and finalise their contributions plans under this entirely new scheme and is an unrealistic timeframe. Unless this timeframe is extended, it is likely we will see this “flexibility” being taken up in the form of requests for extensions from many councils. A more realistic period would be 3 years to 1 July 2025.

Transitional arrangements and grandfathering are a real concern for many councils in SSROC especially for precincts undergoing rapid growth.

SSROC councils have carefully developed Infrastructure Contribution plans to align with District Plans, meet the vision for particular precincts, after detailed community consultation and years of negotiations with DPIE. There will be a need to provide transitional and grandfathering provisions, so that these plans and the principles underpinning them are not undermined by these latest changes. For example:

- As a merged Council, Canterbury Bankstown Council has drafted a consolidated development contributions plan to help fund the delivery of \$900 million in essential local infrastructure by 2036, to accommodate the residential and employment growth expected in the City.
- Randwick Council’s local infrastructure schemes for the Kensington and Kingsford Town Centres (K2K) comprises three components: a new s.7.12 Plan (2.5% of capital investment value), a Community Infrastructure Contribution (CIC) (based on a per square metre rate on the proposed uplift) and an Affordable Housing Plan based on 3% (rising to 5%) of new residential floor space. This three-tiered approach has been underpinned by rigorous modelling and feasibility testing to ensure equitable outcomes in terms of infrastructure funding and delivery to support expected growth, while ensuring a reasonable profit margin for proponents. The combined CIC and s7.12 plan for K2K amounts to 4.5% whereas the proposed new s7.12 regime is understood to amount to approximately 3% of the total development cost. This highlights that Council would be financially worse off should the new s7.12 framework replace the K2K infrastructure funding framework.

Savings and transitional provisions will also be critical to ensuring the continued funding and roll-out of critical infrastructure. Councils will need certainty to ensure that funding allocations under the current SIC program are honoured once the changes come into effect.

In light of the Minister’s commitment, on behalf of the NSW Government, that no council will be left worse off by the reforms, it is critical that DPIE also works closely with all councils to understand the implications of the reforms and the unique circumstances of individual councils in regard to their existing plans and transitional arrangements.

The Bill should therefore include provisions to grandfather existing plans in perpetuity or until they lapse where a council opts in to such an arrangement.

Recommendation 4: *Transitional and grandfather provisions for current infrastructure contribution plans be developed in collaboration with local councils to ensure no council is left worse off.*

- *The NSW Government should give due consideration to delaying commencement of the new infrastructure contributions framework until January 2023.*
- *Amend the bill to include provisions that allow existing contributions plans to be grandfathered.*
- *The 1 July 2024 timeframe for councils to review their existing contributions plans should be extended to 1 July 2025.*

2.5 Regional Infrastructure Contributions

SSROC does not support the Regional Infrastructure Contribution arrangements as they are currently proposed.

The *Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021* (the Draft Bill) and the *Environmental Planning and Assessment Amendment (Infrastructure Contributions) Regulation 2021* (the Regulation) propose to establish Regional Infrastructure Contributions (RIC).

The Draft Bill (section 7.23(4)) states: *a regional infrastructure contribution may be imposed to provide regional infrastructure outside the region or the State.*

The reforms propose to replace the existing 'special infrastructure contributions' framework (SICs), with a new regional infrastructure contributions framework (RICs) to fund regional infrastructure such as public open space, affordable housing, public transport, and roads.

SSROC acknowledges the Minister's commitment on behalf of the NSW Government that:

- *There will be no reduction in council contributions caused by the new regional infrastructure contribution.*
- *The RIC is paid by developers separately to local infrastructure contributions and will be spent in the region it is charged from.*
- *RICs will be spent in the region they are collected from, and the funding priorities will be determined based on the applicable strategic planning framework (which includes LSPSs based on district and regional plans.)*

SSROC also notes the Government has proposed amendments to the Bill to reflect this commitment to expenditure within the region in which the development is located.

The RIC (Base Contribution) has been determined by the property type and the region that the development occurs in, with all new development in the Greater Sydney region required to contribute \$12,000 per dwelling house, \$10,000 for other types of residential development (e.g., per unit in a residential flat building) and \$30 per m² for commercial floor space).

SSROC welcomes the commitment that RIC funding priorities will be determined based on the applicable strategic planning framework which includes LSPSs based on district and regional plans. SSROC also welcomes that the Department will work with State agencies and local councils to assess the infrastructure and service needs of growing communities and identify priority projects for RIC funding required to support development.

Nevertheless, the design of the proposed RIC arrangements has a number of problems:

- The RIC is a regressive flat tax, which would have a disproportionate and unfair impact on economically disadvantaged communities. Potentially the RIC framework constitutes a transfer of income from local communities to the State, to the detriment of the delivery of local infrastructure.
- The RIC fund is not proposed to be necessarily spent in the local government area where it is collected or on regional facilities that will benefit the community that pays the contributions. Nor is there any certainty that the funds would be spent in the districts in which they are collected. Given the broad geographic spread of the Greater Sydney region, the RIC framework could result in the dispersal of valuable infrastructure funding from areas of great demand (such as increasingly dense inner-city areas) to undefined 'regional projects' that have little or no correlation with the development area where contributions are collected.

- The RIC fails the NSW Productivity Commission's principles of making the contributions system more consistent. The RIC is proposed to be levied without satisfying the nexus, apportionment or reasonableness principles which apply to Councils' section 7.11 contribution plans.
- The RIC infrastructure works schedule is likely to be determined through a reactive process. The preparation of the RIC infrastructure schedule is likely to be a reactive process as it does not propose to apply the same level of rigor of strategic planning used by Councils developing works schedules.
- The RIC does not enable councils within the various Greater Sydney Districts to guide expenditure. Districts and their councils within the Greater Sydney Region are best informed and attuned to community infrastructure needs and should help guide how contributions within their districts are spent. There are limited opportunities for councils and local communities to influence how and where RIC funds are allocated. Although the latest changes provide clarity that councils can nominate regional infrastructure projects for RIC funding, there is no certainty that these identified projects would be approved. Moreover, the nomination process would be resource intensive for local councils.

To ensure that Regional Infrastructure Contributions (RIC) genuinely support regional growth, it is important that the planned process for introducing RICs includes provision for improved planning rigour and transparency in the legislation. The collection of funds for regional infrastructure must be allocated and delivered within the district and or city in which they are collected, in accordance with the district infrastructure priorities outlined in the relevant district plans as well as local plans and strategies. These matters must be embedded in legislation so there is certainty for both proponents and the community that regional infrastructure levies are directed appropriately on a district basis.

Regional infrastructure contributions should be subject to the same high level of scrutiny as local infrastructure contribution plans where councils are required to detail the type, location, estimated cost and timeframe for local infrastructure delivery, together with public exhibition requirements. The State Government should be required to meet the same level of transparency, and accountability as Local Government with respect to how it plans on spending regional contributions.

A more strategic and collaborative approach is also required to address the deficits of the current arrangements.

Clearly, the overall RIC process appears to be missing a key strategic planning element: the development of integrated strategic regional **infrastructure** plans. These plans now need to be developed to complement the Greater Sydney Region and District Plans. These infrastructure plans could potentially mirror the Greater Sydney Commission Compact for Greater Parramatta to Olympic Peninsula (GPOP) and operate contiguously across the new Greater Cities Commission regions.

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. It includes an integrated strategic planning approach, established through LSPs and LEPs, that has been designed to ensure there is an appropriate supply, mix of housing and community infrastructure to meet the community's diverse and changing needs.

The proposed integrated place-based infrastructure plans should be the location for conducting the key trade-offs in terms of funding, competing priorities and sequencing of works and land development. This approach would enable a transparent process for integrating and coordinating local and regional infrastructure needs, planning and delivery. They would include affordable housing along with open space, schools and transport infrastructure. Their development would

facilitate the collaboration of state government agencies with local councils who are and need to remain the key place-makers. This integrated infrastructure planning would help to ensure that RIC expenditures are essentially growth related rather than an alternative source of Government funding for maintenance backlogs and recurrent expenditure.

This approach will also help avoid a Treasury led process primarily focussed on budgetary considerations, political and state agency priorities that are not related to a place and its growth.

Recommendation 5: *The new Greater Cities Commission in conjunction with the Department be charged with developing city based infrastructure compacts for the 6 cities of the greater metropolis as part of its strategic review of the Greater Sydney Region Plan.*

These infrastructure plans will then drive needs-based allocations of RIC funds and provide a transparent frame for outcomes reporting of the funding allocations. The development of these plans would become a key focus and point of collaboration for State and Local council place making endeavours.

The RIC Fund Investment Prioritisation Guidelines be amended to include place-based infrastructure plans as the core mechanism for the Department to work with State agencies and local councils to assess the infrastructure and service needs of growing communities and identify priority projects for RIC funding required to support development.

The development of city-based infrastructure plans will involve local government in decisions about how and where Regional Infrastructure Contributions are spent, especially if the contributions are not spent in the local government area where collected.

2.6 Ministerial Direction limiting the local infrastructure which may be levied under contributions plans.

The Draft Bill (section 7.17(1)(a)) proposes to permit the Minister to direct the type and value of local infrastructure, which may be levied under local contributions. The Ministerial Direction is to relate to the IPART essential works list, which is the subject of a separate exhibition.

SSROC does not support this proposal for the following reasons:

- SSROC does not support the related proposal to apply or defer until July 2025, the IPART essential works list to section 7.11 contributions plans.
- Council contribution plans would be unfunded if the IPART essential works list applied.
- An infrastructure deficit could occur, resulting in under provision for our high growth LGAs
- Local councils are best placed to identify the needs of their growing and changing community.

Recommendation 6: *Amend the Draft Bill to:*

- *Delete section 7.17(1)(a) of the Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021 for the reasons outlined above.*
- *Allow councils to identify the needs of their growing and changing community*

3 Specific Concerns and Detailed Comments

3.1 Timing of infrastructure contributions payments

SSROC objects to the Government generally seeking to extend temporary provisions made in response to the pandemic and to make these permanent.

In correspondence to LGNSW⁴, the Minister committed, on behalf of the NSW Government:

- not to expand the Ministerial Direction about when local contributions are to be paid “beyond the current settings”; and
- to “seek financial assistance for councils that can demonstrate cash flow problems resulting from my directions about the timing of local contribution payments”.

In its current form, the Bill proposes to replace current temporary provisions – which apply only during the prescribed COVID-19 pandemic period – with new and permanent provisions that place no limitations on the Minister’s discretionary powers regarding these directions.

Recommendation 7:

Remove the provisions in the Bill that seek to make the temporary measures relating to timing of payments permanent and allow the current Ministerial Direction to lapse in March 2022 as intended.

Short of amending the Bill as recommended above, the Bill must limit the Minister’s discretion to determine the development thresholds this direction will apply to (to projects of \$10 million or greater in line with the Minister’s commitment).

In light of the Minister’s commitment to provide financial assistance to councils experiencing cash flow problems as a result of the permanent application of this Ministerial Direction, the Department should develop guidelines to explain how this will work.

SSROC opposes any reform at any stage in the future that would expand this direction to apply to all development.

3.2 Appeal rights – s 7.11 and s 7.12

SSROC notes the Minister’s commitment, on behalf of the NSW Government, that there will be no change to existing section 7.11 and section 7.12 appeal rights.

3.3 Section 7.12 levies

SSROC acknowledges changes made in the exhibited material in response to feedback from councils regarding s 7.12 levies. It is noted that these commitments are reflected in the exhibition package and summarised on DPIE’s website⁵ as follows:

- *We will apply ‘differential’ rates based on geographical boundaries (Regional NSW and Greater Sydney divided using the three-cities district boundaries).*
- *To allow for “knock down rebuilds” to be levied, the charging units have shifted to apply to development instead of “additional” dwellings and “additional” gross floor area.*

⁴ Correspondence from Minister Stokes to LGNSW President, dated 27 October 2021 & 8 November 2021

⁵ DPIE webpage [‘how we have listened’](#)

- *s7.12 levies will apply to residential and non-residential alterations and additions with separate rates proposed.*
- *s7.12 rates have been expanded to include charging units and rates for land uses that could not be levied a per dwelling rate. The land uses include boarding houses, group homes, student accommodation, hotels, motels, serviced apartments, residential care facilities, hostels, backpacker's accommodation, caravan parks and manufactured home estates.*

There are still many questions about how these levies will work.

Councils are modelling the proposed s 7.12 changes to determine whether the proposed s 7.12 framework will achieve the Minister's overarching commitment that no council will be left worse off by the reforms.

Two particular matters require further consideration and consultation with local government. The first is the question of whether the proposed s 7.12 levy should be set as specified dollar amounts for development (as proposed in DPIE's exhibited material) or a fixed percentage rate (as is the current system). As councils assess and model variations of these approaches, concerns are being raised by some that they will be left worse off. There is also a risk that the s 7.12 framework, while currently a straightforward percentage calculation, becomes overly complex, harder for councils to calculate and to administer, which does not align with the principle that the new system should be simple to administer.

This proposed move away from a fixed percentage levy has also drawn questions for some councils about changes and limitations to the type of development that can be charged. The treatment of educational establishments, particularly non-government private schools and tertiary education facilities is one example that has been highlighted. While the proposed regulation exempts public schools from the local levy⁶, it appears to be silent on the treatment of non-government private schools and tertiary education facilities. These are not included in the list of commercial development that could be charged a local levy under s 7.12⁷. As commercially run businesses that place additional load on local infrastructure (additional traffic, parking demand, footpath use, etc) it is questionable whether non-government schools should be exempted from paying these levies. Such an exemption could constitute a further impact on loss in contributions revenue for some councils, leaving them potentially worse off.

A second question relates to the proposal for alterations and additions to be charged on a per bedroom rate. Councils anticipate this will lead to proponents labelling new and existing rooms on plans as something other than a bedroom (e.g., 'study', 'sunroom', 'formal lounge', 'formal dining') to avoid paying the required contributions. This will not only create uncertainty during assessment, but it has the potential to leave councils short of many thousands of dollars in contributions owed for each additional bedroom. Councils have also raised concerns that existing issues regarding the enforcement of contributions conditions on complying development certificates (involving private certification) could also be exacerbated, if the bedroom count is in any way unclear. Councils have offered various approaches to address this concern.

It is clear from councils' feedback on both these issues that further consideration is needed before councils can be satisfied that the proposed changes will not leave councils worse off. SSROC therefore urges DPIE to engage further with councils to consider their feedback on:

⁶ Clause 25J(1) of [draft Regulation](#)

⁷ Clause 25T(5) of [draft Regulation](#)

- the merits of percentage levy rates versus the proposed set dollar charges, and
- possible options that would give greater clarity around what could be counted as a bedroom or propose other ways to approach residential alterations and additions rates (such as additional square metres).

Recommendation 8: *That DPIE ensure it obtains and reviews modelling information and other advice prepared by councils determining the impacts of proposed changes to s 7.12 and work with the councils to adjust the settings and provisions where necessary.*

That DPIE clarifies whether commercially run non-government (private) schools and tertiary education facilities will be required to pay new local levy (s 7.12).

3.4 Affordable housing supply

A key issue of concern with the RICs is the way the provision of affordable housing will be managed. Affordable housing will always be subordinate to other infrastructure needs in the absence of published strategic regional plans for affordable housing. This is in large part because all other types of infrastructure currently have well developed costed and endorsed plans, based on the future needs of regions/ metropolis cities as well as priorities that are properly linked to population and usage projections.

In comparison, affordable housing infrastructure does not have any official robust regional needs-based planning or even numerical affordable housing district targets. In this context, allocations of funds to affordable rental housing can only expect to receive funding remnants in any rigorous competitive process involving multiple trade-offs between the major portfolio stakeholders.

This glaring service gap is despite the Committee of Sydney's recent *Benchmarking Sydney's Performance 2021* highlighting the finding that Sydney remains one of the third least affordable cities in the developed world.

Recommendation 9: *Regional strategic plans and affordable housing targets are urgently developed and adopted for affordable housing based upon the compiled data in councils' local housing strategies and supported by place-based regional affordable housing targets.*

The provision of non-market housing supply is equally important as private market housing supply, if the goal of housing 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. Affordable housing contributions (made now through the new 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 introduction of the new Housing SEPP needs to be supported by the recommendations arising from the reform of infrastructure contributions, if they are to be fit for purpose.

The current Housing SEPP Affordable Housing Contributions Scheme (AHCS) system, as outlined in the NSW Government Guideline, broadly constrains contributions to affordable housing equivalent to a nominated percentage of floorspace (i.e., 5-10% dependent on viability) and only in areas where up-zoning occurs.

Recommendation 10: *It is critical the RIC framework does not undermine current and future local affordable housing contribution schemes. Accordingly, as a minimum RICs need to enable the AHRH targets (of 5-10%) to ensure the continuing viability of local Affordable Housing Contribution Schemes.*

3.5 Proposed Environmental Planning and Assessment Amendment (Infrastructure Contributions) Regulation 2021.

The Regulation⁸ contains new reporting requirements for affordable housing contributions from all NSW councils. A streamlined reporting process will help to promote the goal of establishing of new AHCS across NSW, in line with Housing 2041 Action Plan. (Action 5.2.1).

Councils are already required to collate and report on infrastructure contributions they receive, so they will already have similar processes in place. The requirements for recording and reporting on affordable housing should become a simple extension of this.

However, improved accountability should be balanced with steps to minimise red tape and the administrative burden for local councils and developers in line with government policy. The Department should prepare standardised reporting templates to support the new reporting requirements.

In the interest of efficiency and consistency and to negate the need for councils to develop their own reports, the Department should prepare standardised reporting templates to be applied by councils.

Recommendation 11: *Data should only need to be handled once by local councils and developers and collected in standard forms (reporting templates) to ensure easy aggregation by DPIE managing the Planning Portal on behalf of the multiple stakeholders (the Government, local councils, developers, certifiers, the general public, and households seeking to reside in affordable housing).*

Reporting templates should also be completed by private certifiers to capture data on affordable housing delivered through complying developments.

Longer-term reporting and accountability requirements for the housing should remain with the affordable housing asset owner. A council's accountability should largely be acquitted in the year that contribution funds, properties or land are transferred from council to a registered community housing provider.

3.6 An Affordable Housing Register managed by DPIE

The Department needs to upgrade the planning portal to make it easier for councils and the public to load and view the contribution details. The planning portal is currently confusing and loading material is far more complex than required if it is to be used as intended. The upgrade should occur prior to requiring contribution details to appear on the planning portal to make it easier to load and view the contribution details.

The proposal to publish each council's resultant affordable housing on the Planning Portal could and should be easily converted into a single affordable housing register available to the public. A register kept by DPIE would greatly improve transparency and accountability. This should form a key part of the upgrade.

⁸ [https://www.planningportal.nsw.gov.au/sites/default/files/documents/2021/GD1469 Infrastructure Contributions - Regulations and local contributions 211102 final.pdf](https://www.planningportal.nsw.gov.au/sites/default/files/documents/2021/GD1469%20Infrastructure%20Contributions%20-%20Regulations%20and%20local%20contributions%20211102%20final.pdf)

However, a register of council generated affordable housing would not capture all the affordable rental housing being generated by the NSW planning system. Significant amounts of affordable rental housing have been, and will be, generated on government owned land (e.g., Olympic Park, the Bays District, the Aerotropolis etc) and by NSW Land and Housing Corporation (LAHC) (Waterloo) and Landcom project developments.

Data collection obligations for State government agencies should mirror those of councils. The provision of affordable housing is integral to the developments and their planning consents.

Recommendation 12: *That a public affordable housing register be developed and made available on the Planning Portal to show all of the available affordable rental housing that is generated via council planning mechanisms as well as the affordable housing provided on government owned land. This register would compile individual council reports in any given year on affordable housing and be organised by LGA and the housing's ownership. Government agencies would report similarly to councils in their agency annual reports. This requirement would enable clear, fair, equitable and consistent accountabilities across the two levels of government.*

A second stage of this work should collect historic affordable housing data, so that obligations would be known and fairly distributed for the community's benefit.

The regulatory proposal does not appear to fully capture the dynamic nature of changes to affordable rental housing over time. Dynamism arises in part from the time limited provision of some affordable housing (e.g., 15-year use as affordable housing under VPAs) and that affordable housing like any housing will potentially be renewed, redeveloped, sold and replaced as part of a reinvestment plan when it reaches the end of its useful life, acknowledging the retirement of, and reinvestment in assets will be important for monitoring affordable housing supply trends.

Recommendation 13: *An LGA-based register of affordable housing on the Planning Portal receives annual updates from the owners of affordable rental housing, on an exception basis, when a significant change occurs. The owner could be a local council, a registered CHP, a private owner or an NSW Government agency. Potentially community housing updates for in-fill affordable housing would come from the NSW Community Housing Registrar. Councils should be able to pass this ongoing reporting obligation onto CHPs as part of any asset transfer.*

Increasingly affordable housing projects involving registered community housing providers using monetary contributions will attract of private finance through NHFIC and other lenders. This outcome is highly desirable and beneficial especially given the lack of affordable housing supply compared to the general level of housing need. Attracting additional resources to affordable housing provision is also a key government objective under the Housing Strategy 2041.

Recommendation 14: *The LGA register of affordable housing on the Planning Portal should include affordable housing projects that are funded by both monetary contributions and private finance and are managed and/or owned by registered community housing providers. The annual reporting regime needs to reflect this form of contemporary provision.*

Recommendation 15: *Council annual reports would provide details of the timing of monetary contributions being transferred to registered Community Housing Providers with anticipated yields for affordable housing projects and projected timeframes for the projects to be built. Often housing construction projects will take up to three years going from DA approval to occupation. Some projects may include a component of market housing that should not be counted. Completions would be reported to DPIE via the proposed annual reporting noted above.*

The Explanatory Paper on the proposed Regulation goes to getting the timing of contributions and the need to synchronise this with up zoning planning proposals (page 8). Preparing infrastructure contributions plans alongside rezoning makes sense. This work also needs to include planning for affordable housing contributions.

Recommendation 16: *To enable the timing of affordable contributions to be efficiently synchronised with up zoning Planning Proposals, along with other infrastructure contributions, councils would be encouraged to have an adopted Affordable Housing Contribution Scheme policy so that they are better positioned to add and implement new affordable housing precinct schemes at the time Planning Proposals are submitted.*

3.7 Resource councils to deliver the reforms.

The exhibited reforms are numerous and complex. Councils will need resourcing to interpret and efficiently apply reforms, along with a reasonable timeframe to implement the proposed changes.

If a reform package is to succeed it needs to recognise these resource needs of councils and offer:

- Funding
- Clear, easy to implement templates, software packages (and IT support)
- Plain English resources for the public.

Recommendation 17: *Provide a resource package for councils (comprising funding, processes, expertise and IT capacity building) to assist councils to implement the proposed changes.*

4 Conclusion

Thank you for the opportunity to comment on the infrastructure contribution reforms. The reforms have broad implications for councils, not the least being financial and the service standards to be delivered to communities, as well as resourcing implications during implementation and ongoing.

SSROC opposes the draft Bill that is currently in the NSW Parliament.

SSROC notes that the Minister has recently advised LGNSW of a range of changes to the proposed infrastructure contributions reforms and that there are now plans for these changes to be implemented. SSROC recognises that there is now scope to improve these areas of major concern but cannot support the recommend changes until the Ministerial commitments are fully translated and incorporated into the Bill, the Regulation and supporting Ministerial directions and policy papers.

In addition to local government's concerns that the changes could leave councils worse off, SSROC and local councils still hold reservations that the Bill provides the Government with powers to implement other reforms, that are outside the scope of the NSW Productivity Commission Review, without further parliamentary scrutiny.

The Ministerial commitments go some way to allay councils' fears, however as councils work through the exhibition material and model the financial impacts under the proposed new framework, questions remain, and a series of amendments and key provisions will be needed before our councils can be satisfied that the legislation and the other reforms will not leave councils worse off.

This submission has been drawn up largely during the caretaker period and is required before the new councils have been declared and before the councils have appointed their Delegates to SSROC. While it has been developed in close consultation with council officers, it has neither been reviewed by Councils nor 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 Strategic Planning Manager on 8396 3800 or ssroc@ssroc.nsw.gov.au.

Again, thank you for the opportunity to comment on the infrastructure contribution reforms. SSROC looks forward to participating in any further consultations on this important area.

Yours sincerely



Helen Sloan
Chief Executive Officer
Southern Sydney Regional Organisation of Council

Attachment 1

Local Government NSW agrees on infrastructure changes

24 November 2021

Ministerial Media Release

NSW Department of Planning, Industry and Environment

The NSW Government and the peak body representing the state's councils have agreed on improvements to reforms of the infrastructure contributions system.

Minister for Planning and Public Spaces Rob Stokes said the changes to the package addressed issues raised by Local Government NSW (LGNSW) and councils during extensive consultation.

"The changes we're making will build a simple, fair, consistent and clear system for delivering infrastructure to support more homes and jobs across the State," Mr Stokes said.

"I said that no council will be worse off under these reforms, and we will continue to work with LGNSW and councils to make sure that happens.

"We all want the same thing – great infrastructure and more investment in our local communities. That's what these reforms will deliver.

"I want to thank LGNSW President Linda Scott for her tireless advocacy on behalf of councils. She worked with me to make this a better package for the benefit of her community and others across NSW."

The reforms will unlock \$12 billion in productivity gains, create 2,600 jobs and attract new investment critical to the State's economic recovery.

President of Local Government NSW Linda Scott welcomed the NSW Government's commitment working with her to make changes to the package.

"The Minister has listened to the concerns of the local government sector and worked with local governments to make changes that address our concerns," Councillor Scott said.

"With the commitments made and changes to be made to the draft legislation, I am now confident that this is a package that will improve the infrastructure contributions system."

Modifications to the package include:

- Allowing councils that currently fund community infrastructure from developer contributions to continue to do so;
- Ensuring that state contributions are spent in the region where they are collected;
- Re-setting the blanket rate councils can charge, known as 7.12 plans; and
- Increasing the maximum amount councils can charge for infrastructure associated with solar and wind farms.
- The Minister will seek financial assistance for councils that can demonstrate cash flow problems due to directions about the payment of contributions at the construction certificate stage.

The Productivity Commissioner has confirmed that the changes to the package are consistent with the recommendations he made to reform the infrastructure contributions system.

Incoming councils will have until the week after their first ordinary meeting in February 2022 to make submissions on the policy package currently on public exhibition.