

Submission to NSW Department of Planning, Industry and Environment

Infrastructure Contributions Reforms

December 2021

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1. Introduction

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

LGNSW welcomes the opportunity to make a submission to the NSW Department of Planning, Industry and Environment (DPIE) on the infrastructure contribution reforms currently on exhibition.

LGNSW was 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 NSW Upper House Inquiry into the Bill and its recommendation that the Bill not proceed until draft regulations have been developed and released for consultation and the reviews into the rate pegging system, benchmarking and the essential works list were published by the Independent Pricing and Regulatory Tribunal (IPART)¹.

LGNSW welcomes the commitment² of the Minister for Planning and Public Spaces, the Hon. Rob Stokes, to modify the reform package and work with LGNSW and councils to ensure that what he has committed to on behalf of the NSW Government, in particular that no council will be worse off, 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.

It is unfortunate that the timeline for this consultation conflicts with the local government elections. The move into the caretaker period from 5 November has severely restricted the opportunity for elected councils to review and provide comment on the exhibition documents. As a result, the comments provided in this and other submissions largely reflect technocratic and bureaucratic perspectives, without the full benefit of democratic review. As demonstrated in councils' individual submissions, 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. These are core responsibilities of the elected body of councils. We do however acknowledge that DPIE will accept Council-endorsed submissions one week after the first meeting of the new councils in early 2022 (approximately early March 2022).

This submission was endorsed by the LGNSW Board in February 2022.

¹ Portfolio Committee No. 7 - Planning and Environment [Report](#), August 2021

² Ministerial [Media Release](#), 24 November 2021

2. Opening

LGNSW has supported reforms to this complex system with the aim of reducing complexity, improving transparency and equity and releasing the financial burden placed on councils providing local infrastructure to support population growth and/or the changing needs of communities.

The proposals contained in this far-reaching reform agenda pose significant change to the existing system and need to be considered judiciously and supported with modelling and test cases before the reforms are finalised. It is essential that councils and communities 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, some councils will be negatively affected. This is outlined in councils' individual submissions. LGNSW has been facilitating the provision of modelling scenarios data between councils and DPIE and requests that DPIE continue to assess these modelling results and modify the reform proposals as necessary to ensure that no council is worse off.

LGNSW opposes the draft Bill that is currently in the NSW Parliament. 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, LGNSW and the local government sector have also held 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.

In light of these fundamental concerns, LGNSW acknowledges recent commitments by the Minister, on behalf of the NSW Government as indicated in **Attachment 1**, which include a guarantee that councils and their communities are not left worse off as a result of the reforms and that the details will be embedded in the legislation to ensure Parliamentary oversight of any future proposed changes. We also welcome the Government amendments introduced into the Legislative Council on 25 November 2021³ that give effect to some of the Minister's commitments. The Minister's commitments are explored further below.

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

Some are also contemplating the implications for their current infrastructure contributions plans that have been meticulously developed to meet the vision for particular precincts, after detailed community consultation and years of negotiations with DPIE. There will be a need to address transitional and grandfathering provisions, so that these plans and the principles underpinning them are not undermined by these latest changes. This is discussed in further detail below.

³ [Proposed amendments to Environmental Planning and Assessment Amendment \(Infrastructure Contributions Bill 2021 – c2021-248B \(Contains Amendment No's 1, 2, 3 & 4\)](#)

3. General comments

3.1 No council left worse off

LGNSW welcomes the Minister's agreement to make changes to the reform package, in particular the commitment that no council will be worse off under these reforms.

LGNSW deems this "no worse off" guarantee to be entirely independent of the population growth rates reforms. We note that the Minister for Local Government endorsed the recommendations of the Independent Pricing and Regulatory Tribunal (IPART) for reforms to council rates and the NSW Government has separately stated that it will progress these reforms independently from any reforms to the infrastructure contributions system. On this basis, it is our understanding that "no worse off" assumes the Government is not taking into consideration population growth supporting rate revenue.

Importantly, the Minister's pledge to work with local government to deliver these commitments must be upheld. A range of councils are modelling the impacts to confirm whether the reforms will leave them better or worse off. To ensure the Minister's guarantee that no council will be left worse off, LGNSW urges the department to actively review this modelling information and work with the councils and LGNSW 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 the population growth rate reforms and is reinforced by:*

- *the NSW Government ensuring it has access to councils' modelling of the effects of the reforms; and*
- *the Department of Planning, Industry and Environment working with LGNSW and councils to adjust the settings as necessary to uphold the Minister's guarantee.*

3.2 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 in the legislation are limited.

We acknowledge Minister Stokes' commitment that the adjustments to the reform package he has committed to on behalf of the NSW Government will form part of the legislative amendments currently before Parliament. Notwithstanding any changes as a result of the anticipated Cabinet reshuffle, we expect that any new Minister with carriage of legislation through Parliament on behalf of the NSW Government, will honour Minister Stokes' commitment.

LGNSW notes that in light of these commitments, the NSW Government tabled proposed amendments to the Bill in the Legislative Council on 25 November 2021⁴. However, as discussed further in this submission, these amendments do not fully address all of LGNSW's concerns and if adopted, would fail to embed all of the Minister's commitments in the legislation.

⁴ [Proposed amendments to Environmental Planning and Assessment Amendment \(Infrastructure Contributions Bill 2021 – c2021-248B \(Contains Amendment No's 1, 2, 3 & 4\)](#)

In summary, LGNSW considers that 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. (See section 4.1 of this submission.)
- b. Amend the Bill to include provisions that limit the expansion of RICs to other regions or add a provision requiring a parliamentary process if expanding the RIC to additional regions in future. (See section 4.2 of this submission.)
- c. Amend the Bill to include appropriate transparency and public scrutiny of regional infrastructure contributions. (See section 4.2 of this submission.)
- d. Amend the bill to include provisions that allow existing contributions plans to be grandfathered. (See section 3.3 of this submission.)
- e. Amend the legislation to recognise the principle that infrastructure contributions should capture both the land and capital costs of providing core community facilities. (See section 4.5 of this submission.)
- f. Delete the provision (Schedule 1[4]) that proposes to change the timing for LSPS review from 7 to 5 years. (See section 4.6 of this submission.)
- g. Amend the Bill to introduce a provision to guarantee payments of local contributions for SSD (where there is a contributions plan in place). (See section 4.7 of this submission.)

Recommendation 2: *That the NSW Government, and any Minister with carriage of this legislation through Parliament, honours Minister Stokes’ commitment to work with LGNSW to ensure all key reform adjustments, as discussed in this submission, are included in the primary legislation.*

3.3 Commencement, transitional arrangements and grandfathering

LGNSW 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, LGNSW 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. LGNSW notes the department’s advice⁵ 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.

Assuming a commencement date of mid-2022, this gives councils only two years to review and finalise their contributions plans under this entirely new scheme and is considered an unrealistic timeframe.

⁵ [DPIE FAQs](#)

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 date is 1 July 2025.

Some councils have invested years of consultation with their communities and negotiations with government agencies (principally DPIE) to develop contributions plans in good faith to meet the particular growth needs of their local areas. The transitional arrangements and any grandfathering provisions are of huge consequence for these councils, particularly in light of the requirement for contributions plans to be reviewed within a timeframe of just two years. Many have legitimate questions about the future status of their existing plans, particularly those which have been recently finalised or where a draft plan is well-advanced, and the community has been already consulted. The expectation that these plans have to be reviewed as early as 2024 creates unnecessary additional burden on councils’ resources and potentially a lot of confusion for the community.

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.

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.

Savings and transitional provisions will also be critical to ensuring the continued funding and roll-out of critical infrastructure, particularly that which is currently covered under existing special infrastructure contributions (SICs). Councils will need certainty to ensure that funding allocations under the current SIC program are honoured once the changes come into effect.

Recommendation 3: Amend the bill to include provisions that allow existing contributions plans to be grandfathered.

Recommendation 4: The 1 July 2024 timeframe for councils to review their existing contributions plans should be extended to 1 July 2025.

Recommendation 5: The NSW Government should give due consideration to delaying commencement of the new infrastructure contributions framework until January 2023.

4. Specific concerns

4.1 Timing of infrastructure contributions payments

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

Councillors from across NSW raised concerns with this proposal through the following resolution of the 2020 LGNSW Annual Conference:

64 Payments to council Contribution Plans by developers

That Local Government NSW lobbies the NSW Government to urgently review the decision to allow the deferral of payments for local council Contributions Plans by developers.

Under the current temporary health settings, a Ministerial Direction on the timing of payments⁶ was issued in June 2020 and applies to development estimated at \$10 million or greater. Ultimately, LGNSW would like to see the temporary provisions in the Act which currently allow these Ministerial Directions to be made to lapse as intended in March 2022.

In correspondence to LGNSW⁷, 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.

This provision remains a significant overreach of Ministerial powers and is opposed by LGNSW and the local government sector.

LGNSW requests that the Bill be amended to limit the direction-making powers regarding the timing of contributions payments to projects of \$10 million or greater in line with the Minister’s commitment.

Further, while it is noted that the PC recommended that the current Ministerial Direction be “extended permanently”, LGNSW does not regard this as meaning permanent expansion to *all* development. LGNSW and the entire local government sector would object to any reform at any stage in the future that would allow this direction to be expanded to apply to all development, and we would oppose using the PC recommendation to justify such a move.

⁶ <https://www.planning.nsw.gov.au/-/media/Files/DPE/Directions/ministerial-direction-local-infrastructure-contributions-timing-of-payments-2020-06-25.PDF?la=en>

⁷ Correspondence from Minister Stokes to LGNSW President, dated 27 October 2021 & 8 November 2021

Recommendation 6: 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.

Recommendation 7: 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).

Recommendation 8: 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 a process/guidelines to spell out how this will work.

Recommendation 9: LGNSW opposes any reform at any stage in the future that would expand this direction to apply to all development.

Other related recommendations by the PC

In conjunction with the recommendation to make the current Ministerial Direction permanent, the PC acknowledged the challenges and administrative costs faced by many councils in securing contributions payments from developers and therefore also recommended:

- ii. Design the NSW Planning Portal so that the release of occupation certificates is contingent upon payment of infrastructure contributions.
- iii. Increase oversight of private certifiers by requiring that the certifying authority must confirm payment of contributions before issuing an occupation certificate.
- iv. Amend legislation to create an offence should certifiers issue a certificate without an infrastructure contribution payment.

LGNSW strongly supports these recommendations and requests that the Government commit to implementing these in parallel with any permanent extension of the above-mentioned Ministerial Direction. Councils face issues recovering significant sums of money owed for infrastructure contributions where private certifiers have issued OCs. The time and administrative costs in pursuing these outstanding payments can be substantial. Where payments are deferred, councils can also be exposed to greater risk of default by developers and costly, protracted debt recovery proceedings.

LGNSW seeks confirmation that these recommendations have been, or are being, implemented.

Recommendation 10: That any permanent extension of the Ministerial Direction on the timing of payments be subject to the corresponding implementation of PC recommendations 4.10 ii, iii and iv and that NSW Department of Planning, Industry and Environment confirm the status of their implementation.

4.2 Regional Infrastructure contributions

The local government sector has maintained that the payment of a Regional Infrastructure Contribution by a proponent to the NSW Government should be independent of the payment of an infrastructure contribution to the council.

The sector has also called for transparency in the collection and expenditure of RIC funds.

LGNSW 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 LSPs based on district and regional plans.)*

LGNSW also notes the Government has proposed the following amendments to the Bill to reflect this commitment:

Provision of regional infrastructure

Page 13, Schedule 1[27], proposed section 7.23, lines 3 and 4. Omit all words on those lines. Insert instead—

- (4) A regional infrastructure contribution imposed as a condition of development consent on development must be applied to provide regional infrastructure within the region in which the development is located.

Regional infrastructure contributions

Page 15, Schedule 1[27]. Insert after line 43—

7.30A Effect of Subdivision

Nothing in this Subdivision affects the operation of Subdivision 2, 3 or 3A.

If adopted, these amendments in the Bill would provide legislative backing of the Minister's commitment that RIC money must be spent in the same region where it is collected and that the RIC will not in any way affect or reduce council contributions.

RIC regions

While the current proposal is for the RIC to apply in four regions, there is nothing in legislation that would prevent a future Minister or Government expanding the RIC to other regions. As the current framework is set out, LGNSW understands this could be done by an amendment to the proposed SEPP that will establish the RIC. While the government might undertake to consult on any future changes to the SEPP, there is no legislative requirement to do so, leaving it open to a future Minister or Government to introduce this broad-based regional charge into other parts of the state without parliamentary scrutiny.

The Bill should be amended to limit the expansion of RICs to other regions or make any future expansion of the RIC regions subject to a parliamentary process.

RIC reporting and transparency

Local government is subject to a highly regulated and transparent framework as part of preparation of its local contribution plans. It is arguable that similar transparency should apply to state and regional infrastructure funding. This should include a publication of information about where and how much

RIC funds have been collected from particular regions and the infrastructure they are being directed towards. This would enable appropriate scrutiny to ensure, in line with the Minister's undertaking, that expenditure of RIC funds remains within the region from which it is collected.

RIC funding priorities

LGNSW notes that the RIC Fund Investment Prioritisation Guidelines⁸ discuss where RIC funds can be spent and that decisions on the allocation of money from the RIC Fund will be made as part of the budget process. LGNSW 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. LGNSW 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.

Recommendation 11: Amend the Bill to include provisions that limit the expansion of RICs to other regions and/or make any future expansion of the RIC regions subject to a parliamentary process.

Recommendation 12: Amend the Bill to include appropriate transparency and public scrutiny of regional infrastructure contributions to ensure, in line with the Minister's undertaking, that expenditure of RIC funds remains within the region from which it is collected.

4.3 Appeal rights – s 7.11 and s 7.12

LGNSW 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.

4.4 Section 7.12 levies

LGNSW acknowledges changes made in the exhibited material in response to feedback from LGNSW and councils regarding s 7.12 levies. It is noted that these commitments are reflected in the exhibition package and summarised on DPIE's website⁹ 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.*
- *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.*

⁸ [RIC Fund Investment Prioritisation Guidelines](#), p 2

⁹ DPIE webpage '[how we have listened](#)'

LGNSW also understands that the proposed levy rates are maximum rates, and councils have the discretion to set lower rates, and that the maximum rates will be indexed.

There are still many questions about how these levies will work. LGNSW acknowledges efforts by the department to clarify councils' questions.

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 around 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 levy¹⁰, 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 7.12¹¹. 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 LGNSW and councils can be satisfied that the proposed changes will not leave councils worse off. LGNSW therefore urges DPIE to engage further with councils to consider their feedback on:

- the merits of percentage levy rates versus the proposed set dollar charges, and

¹⁰ Clause 25J(1) of [draft Regulation](#)

¹¹ Clause 25T(5) of [draft Regulation](#)

- 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 13: *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 and LGNSW to adjust the settings and provisions where necessary.*

Recommendation 14: *Commercially run non-government (private) schools and other education facilities should not be exempt from the requirement to pay the new local levy (s 7.12).*

4.5 Essential works list

Local government's capacity to plan and deliver high quality public domain works would be impossible to fund without appropriate contributions from development. One of the main mechanisms through which councils collect development contributions is through s7.11 contributions plans.

The Essential Works List (EWL) prescribed by DPIE is currently applied to s7.11 contributions plans that propose contribution levels above the current contribution caps of \$20,000 for infill areas and \$30,000 for greenfield developments. These caps have not been increased since they were introduced in 2010. The list heavily restricts the level of contributions that may be raised under s7.11 plans.

LGNSW strongly opposes any moves to further restrict the EWL.

The current EWL is already limited to the very most basic and narrowly defined development contingent infrastructure:

- Land and facilities for open spaces
- Land for community facilities
- Land and facilities for transport
- Land and facilities for stormwater management
- The costs of plan preparation and administration.

The most glaring omission from the list is contributions for community facilities. It is incongruous that *land* for community facilities is considered development contingent but the actual facilities are not.

Notwithstanding this, DPIE's own Practice Note module currently on exhibition¹² has included community facilities among the examples of development-contingent local infrastructure:

Local infrastructure is the public amenities and services that councils are usually responsible for delivering. Depending on the infrastructure needs of the area this might include for example, open space, **community facilities**, local roads, traffic management and stormwater drainage. Local infrastructure is generally a development-contingent cost as it is infrastructure that would not be required if the development did not proceed. The development has created these infrastructure costs by increasing the demand for infrastructure.

¹² *Infrastructure Contribution - Practice Note Review - Policy Paper*, p 25 and [Module](#)

The NSW Government has referred the PC's recommendations about the EWL and related matters to IPART for review. A draft report has been released but the review is still in progress. The PC's recommendations, if implemented, would further restrict the EWL and reduce the amount of contributions that councils can collect. The PC has also recommended that the application of the EWL be extended to include plans that fall within the cap. This would mean that no councils could fund community facilities. LGNSW is disappointed that the Terms of Reference for the review specifically excluded the inclusion of community facilities.

Councils aim to create healthy and thriving communities by funding local facilities such as community and neighbourhood centres, halls, libraries, youth and childcare facilities. It is important for infrastructure to be in place when residents move into areas if we are to create liveable communities. Moreover, contemporary community expectations are that these essential services and facilities will be in place when they move into an area. The absence of community facilities is unacceptable.

The exclusion of community facilities means that councils face significant funding shortfalls causing the delivery of community facilities to lag behind population growth, often many years behind. The definition of "essential" should not be limited to what is physically necessary, it should include what is necessary for communities.

LGNSW has long advocated the inclusion of community facilities in the EWL. It is not sufficient to simply provide land for such facilities. LGNSW strongly opposes any moves to further restrict the EWL and reduce development contributions.

LGNSW has welcomed the Minister's commitment, and related Bill amendment¹³, that there will be no changes to the current settings for the essential works list for at least the next 3 years. However, LGNSW remains of the view, as discussed in our submission to IPART's review, that there should not be an essential works list or a cap.

Recommendation 15: Amend the legislation to recognise the principle that infrastructure contributions should capture both the land and capital costs of providing core community facilities.

4.6 Local Strategic Planning Statements

The Bill shortens the review requirements for councils' Local Strategic Planning Statements (LSPS) from 7 to 5 years. Councils were not consulted about this change and there is no rationale provided for it.

The Minister gave verbal agreement to the (former) LGNSW President that the NSW Government would not change the review timeframe for council LSPS, although this commitment has not been reflected in the Minister's written correspondence to LGNSW. The Bill should be amended to reflect this commitment. It should remain open for each council to revise its LSPS in line with its strategic objectives as they might be from time to time.

Recommendation 16: That council reviews of Local Strategic Planning Statements should remain at minimum seven years and the Bill be amended to delete the provision that proposes to require councils to review LSPS at least every 5 years.

¹³ [Proposed amendments to Environmental Planning and Assessment Amendment \(Infrastructure Contributions Bill 2021 – c2021-248B \(Amendment No. 4\)](#)

4.7 Contribution of State significant development towards local infrastructure

In representations to the Minister and in our submission to the Parliamentary Inquiry¹⁴, LGNSW has recommended that the Act should be amended to guarantee the payment of local infrastructure contributions for all State Significant Developments (SSD) where there is a local contributions plan in place.

LGNSW notes that the exhibition material proposes changes to the way levies for solar and wind farms are calculated. Some regional councils are concerned that the proposed change will create a significant gap in contributions, as this charge is a departure from their current contributions policy (for example where they apply a 1% levy (under s 7.12)).

The proposed adjustment to the levy rate for solar and wind farms also does not address the broader concern that where these and other resource projects are SSD, councils are not the consent authority and consequently have little control over the inclusion of developer contributions as a condition of consent for these proposals.

In regional areas across the state, SSD commonly includes mines, solar farms and other large resource developments. Councils and their communities are being overlooked for important supporting infrastructure because the approval bodies for these developments do not always require payment of contributions for local infrastructure as a condition of approval for SSD. This means that conditions requiring local infrastructure contributions for SSD are not being applied consistently, as they are for locally approved development.

LGNSW is not aware of any mandatory framework to formalise the requirement for such contributions or to extend such contributions to benefit neighbouring councils that may be also directly affected because of the cumulative impacts of many developments in adjoining LGAs.

Recommendation 17: *In recognition of the significance of local government’s role in the provision of local infrastructure to support state significant development, the Act should be amended to ensure that where an SSD project occurs within an LGA, mechanisms are in place to ensure that councils can have genuine input to the assessment of the project, including giving the council concurrence on the conditions of consent for SSD.*

Recommendation 18: *The Act should be amended to guarantee the payment of local infrastructure contributions for all SSD where there is a local contributions plan in place.*

5. Other comments on reform areas

5.1 Land value contributions

LGNSW supports the principle underlying this proposal, which in effect enables a value capture mechanism which is tied to the value of the land. The proposed new approach seeks to address the

¹⁴ <https://www.parliament.nsw.gov.au/lcdocs/submissions/73405/0098%20Local%20Government%20NSW.pdf>

challenges of escalating land costs faced by councils when acquiring land for public purposes. This is welcomed, however, its application appears to be complex.

Councils have sought confirmation from the department as to whether the land value contribution mechanism will be available to all councils where there are opportunities for areas to achieve uplift through rezoning, not just to greenfield councils. In addition to greenfield councils as modelled in the package, this new mechanism should be available for infill councils, where rezonings typically allow substantial development uplift. This is important to ensure that the infrastructure needed to support additional development density is properly funded.

Recommendation 19: *DPIE to confirm that the new land value mechanism will be available for infill councils as well as for greenfield councils.*

5.2 Resourcing implications

The reforms encompass potential increased administrative and compliance burdens for councils in the short to medium term. These new responsibilities relate to the implementation and administration of an entirely new contributions scheme, additional needs of the new centralised (digitised) contributions system, amendments to councils' plans, development of new plans and the integration of these plans within the Integrated and Performance Reporting Framework (IP&R) framework.

Recommendation 20: *It is critical that the NSW Government commits adequate resourcing, support and technical assistance if councils are to transition to this new framework.*

6. Conclusions

LGNSW acknowledges the immense challenge involved in improving the infrastructure contributions system while balancing the interests of all stakeholder groups. These are once-in-a-generation reforms that can ill-afford to be hastily conceived and their implementation rushed through.

LGNSW made known its concerns to the State Government about certain aspects of the Productivity Commissioner's Review and recommendations in 2020. These concerns, together with the manner in which the Bill was introduced in NSW Parliament in June, underpinned our opposition to the Bill and the sector's calls for the details in the reform package (including IPART's draft report on the review of the EWL and benchmarks) to be published prior to the Bill being allowed to progress.

LGNSW welcomed the pause on the progress of the Bill and has appreciated the Minister's and department's engagement with LGNSW and the local government sector to understand councils' legitimate concerns and to adjust the package accordingly. Given the scale and financial implications of this particular reform, it is prudent to give full consideration of the reform package and to fully explore and understand the cumulative and long-term effects of not only the changes to contributions, but the series of reforms to complying development, employment zones, revisions of SEPPs and the new Planning Principles.

As detailed in this submission, Minister Stokes' commitments have been welcomed, however, there is more work to be done to ensure these are upheld and reflected during the passage of the legislation and that, independent of the population growth rates reforms, no council is worse off as a result of these reforms. LGNSW urges the department to continue to work closely with the sector to ensure the settings and adjustments to the reforms satisfy all of the Minister's guarantees.

Summary of recommendations

In summary, LGNSW makes the following recommendations:

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

- the NSW Government ensuring it has access to councils' modelling of the effects of the reforms; and
- the Department of Planning, Industry and Environment working with LGNSW and councils to adjust the settings as necessary to uphold the Minister's guarantee.

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

Recommendation 3: Amend the bill to include provisions that allow existing contributions plans to be grandfathered.

Recommendation 4: The 1 July 2024 timeframe for councils to review their existing contributions plans should be extended to 1 July 2025.

Recommendation 5: The NSW Government should give due consideration to delaying commencement of the new infrastructure contributions framework until January 2023.

Recommendation 6: 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.

Recommendation 7: 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).

Recommendation 8: 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 a process/guidelines to spell out how this will work.

Recommendation 9: LGNSW opposes any reform at any stage in the future that would expand this direction to apply to all development.

Recommendation 10: That any permanent extension of the Ministerial Direction on the timing of payments be subject to the corresponding implementation of PC recommendations 4.10 ii, iii and iv and that NSW Department of Planning, Industry and Environment confirm the status of their implementation.

Recommendation 11: Amend the Bill to include provisions that limit the expansion of RICs to other regions and/or make any future expansion of the RIC regions subject to a parliamentary process.

Recommendation 12: Amend the Bill to include appropriate transparency and public scrutiny of regional infrastructure contributions to ensure, in line with the Minister's undertaking, that expenditure of RIC funds remains within the region from which it is collected.

Recommendation 13: 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 and LGNSW to adjust the settings and provisions where necessary.

Recommendation 14: Commercially run non-government (private) schools and other education facilities should not be exempt from the requirement to pay the new local levy (s 7.12).

Recommendation 15: Amend the legislation to recognise the principle that infrastructure contributions should capture both the land and capital costs of providing core community facilities.

Recommendation 16: That council reviews of Local Strategic Planning Statements should remain at minimum seven years and the Bill be amended to delete the provision that proposes to require councils to review LSPS at least every 5 years.

Recommendation 17: In recognition of the significance of local government's role in the provision of local infrastructure to support state significant development, the Act should be amended to ensure that where an SSD project occurs within an LGA, mechanisms are in place to ensure that councils can have genuine input to the assessment of the project, including giving the council concurrence on the conditions of consent for SSD.

Recommendation 18: The Act should be amended to guarantee the payment of local infrastructure contributions for all SSD where there is a local contributions plan in place.

Recommendation 19: DPIE to confirm that the new land value mechanism will be available for infill councils as well as for greenfield councils.

Recommendation 20: It is critical that the NSW Government commits adequate resourcing, support and technical assistance if councils are to transition to this new framework.

* * *

LGNSW would welcome the opportunity to assist with further information to ensure the views of local government are appropriately considered.

To discuss this submission further, please contact Executive Manager Advocacy, Kelly Kwan at kelly.kwan@lgnsw.org.au or on 02 9242 4038.

ATTACHMENT 1 Minister's commitments

LGNSW position	Government response	Reference & recommendation in submission
It is essential that councils and communities are not left worse off by the NSW Government's infrastructure contributions reform agenda.	I reiterate my commitment that no council will be worse off as a result of these reforms.	Refer to section 3.1 Recommendation 1
Reform of the rate peg		
Reform of the rate peg should proceed independently of changes to infrastructure contributions.	The Minister for Local Government has endorsed the recommendations of the Independent Pricing and Regulatory Tribunal (IPART) for reforms to council rates – so it will proceed separately from infrastructure contributions reform.	Refer to section 3.1 Recommendation 1
Parliamentary oversight		
Key reform adjustments should be included in the primary legislation to ensure appropriate Parliamentary oversight.	The adjustments to the reform package I have committed to will form part of the legislative amendments currently before Parliament. I will work with LGNSW to ensure this occurs as part of the Bill progressing in the Legislative Council.	Refer to section 3.2 Recommendation 2
Timing of infrastructure contributions payments		
<p>All developer contributions payable to a council should be required prior to the PCA issuing the <i>construction certificate</i> or <i>complying development certificate</i> (as relevant), except with the written consent of the council to delay the payment.</p> <p>The temporary COVID-19 Ministerial Direction should lapse in March 2022 as initially intended.</p> <p>Financial assistance should be provided for those councils who can demonstrate a cash flow problem with commencing essential infrastructure projects identified in contributions plans until such time as sufficient contributions are collected under those plans.</p>	<p>We won't expand the Ministerial direction about when local contributions are to be paid beyond the current settings.</p> <p>Payment at occupation certificate has applied to high-value projects since mid-2020 and this will not be expanded to all development, as recommended by the Productivity Commissioner.</p> <p>I will seek financial assistance for councils that can demonstrate cash flow problems resulting from my directions about the timing of local contribution payments.</p>	Refer to section 4.1. Recommendations 6, 7, 8, 9 & 10
Regional Infrastructure Contributions		
The payment of a Regional Infrastructure Contribution by a proponent to the NSW Government should be independent of the payment of an infrastructure contribution to the council.	<p>There will be no reduction in council contributions caused by the new regional infrastructure contribution.</p> <p>The RIC is paid by developers separately to local infrastructure contributions and will be spent in the region it is charged from.</p> <p>RICs will be spent in the region they are collected from, and the funding priorities will be determined based on the</p>	Refer to section 4.2. Recommendations 11 & 12

<p>All Regional Infrastructure Contributions levied for development within a region should be expended on infrastructure within that region in accordance with an approved Regional Plan linked to councils Local Strategic Planning Statements.</p>	<p>applicable strategic planning framework (which includes LSPSs based on district and regional plans.)</p>	
Local Strategic Planning Statements		
<p>Council reviews of Local Strategic Planning Statements shall remain at seven years.</p>	<p>Verbal commitment during meeting with LGNSW.</p>	<p>Refer to section 4.6 Recommendation 16</p>
Appeal rights		
<p>There should be no appeal rights available if local infrastructure contribution conditions are imposed in accordance with a contributions plan.</p>	<p>There will be no change to existing section 7.11 and section 7.12 appeal rights in this package.</p>	<p>Refer to section 4.3</p>
Section 7.12 contributions		
<p>Section 7.12 levies should be calculated on a maximum percentage levy not less than 3%.</p> <p>The Act should be amended to guarantee the payment of local infrastructure contributions for all State Significant Developments.</p>	<p>We've heard the concerns about the Productivity Commissioner's suggested rates for section 7.12 levies being too low, so we've reset the rates to reflect a true 3% construction cost for residential development and 1% for commercial, industrial and retail development.</p> <p>The rates will be indexed to ensure they keep pace with constructions costs.</p> <p>We've also extended the levy to residential knock-down and rebuilds, alterations and additions that increase demand and commercial refits. We'll invite councils to model these changes during exhibition to make sure they stack up.</p> <p>We've heard your concerns about wind and solar development and will increase the maximum contribution, because it's currently too low. Instead of a maximum \$300,000, the threshold will be raised to \$450,000.</p>	<p>Refer to sections 4.4 & 4.7</p> <p>Recommendations 13, 17 & 18</p>
Essential works list and benchmarking		
<p>The Essential Works List should not be further restricted to development contingent costs.</p>	<p>There will be no changes to the existing settings for the essential works list applying to section 7.11 plans.</p> <p>In three years we will review the settings against the Productivity Commissioner's recommendations and the implementation of the other components of the reform, in consultation with the local government sector.</p>	<p>Refer to section 4.5 Recommendation 15</p>