

**LGNSW Submission to
NSW Productivity Commissioner *Review of
Infrastructure Contributions in New South
Wales***

October 2020

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1.0 Opening

Local Government NSW (LGNSW) welcomes the opportunity to make a submission to the NSW Productivity Commissioner on the review of infrastructure contributions.

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.

Councils rely on development contributions to fund new infrastructure to support population growth and new development. Local government infrastructure responsibilities include local road, bridge, pedestrian and cycle networks, local water and sewerage utilities, stormwater and water management, buildings and facilities, regional airports and aerodromes, parks, recreation, cultural, family and community services facilities, and a range of other infrastructure vital to local communities and important for creating liveable communities. Council contribution plans are generally limited to the initial costs of providing this infrastructure. The ongoing life cycle costs of managing and maintaining infrastructure are not typically included in these plans. Infrastructure contributions are made by developers to help deliver the infrastructure needed as communities grow. This is based on a long-standing user-pays (or beneficiary pays) principle of the existing planning system i.e. new development makes a contribution towards the cost of infrastructure that will meet the additional demand it generates and benefits from.

This is the final submission which has been endorsed by the LGNSW Board.

2.0 Background

During November 2019, the Premier announced planning reforms including “fixing the uncertainty of developer contributions to boost investment”. The NSW Productivity Commissioner was appointed in April 2020 to undertake a comprehensive review of the infrastructure contributions system. The full Terms of Reference for the review are included in Appendix 1.

LGNSW met with the NSW Productivity Commissioner in June to discuss the review of infrastructure contributions and to highlight key issues from a local government perspective.

The Issues Paper released by the Productivity Commissioner in July addresses the following:

- principles for the infrastructure contributions system;
- general issues with infrastructure funding and delivery affecting State and local government;
- specific issues related to the development contributions mechanisms under the *Environmental Planning and Assessment (EP&A) Act 1979*;
- further issues in planning, infrastructure and contributions; and
- a range of issues for further exploration with stakeholders.

The Productivity Commissioner will present a Final Report to the Minister for Planning and Public Spaces towards the end of 2020.

In addition to this review the Department of Planning, Industry and Environment (DPIE) has proposed some short-term changes to the infrastructure contributions system. The proposed changes include:

1. updated draft practice note and Ministerial Direction relating to voluntary planning agreements;
2. options to simplify and shorten the process for reviewing s7.11 local contributions plans;
3. specific criteria for s7.12 levies above the standard 1%;
4. new guidelines related to the State's Special Infrastructure Contributions (SICs);
5. amendments to regulations to require councils to publish how much they have collected in developer levies and where they have been spent.

LGNSW made a submission to the DPIE review in June.¹

3.0 Summary of LGNSW Position

LGNSW's policy positions are informed by the views of our member councils.

LGNSW welcomes the Productivity Commissioner's review which aligns with the following resolution from our 2019 Annual Conference:

Review of developer contributions system

That the NSW Government undertakes an urgent holistic review of the developer contributions system in NSW, with the aim of reducing the financial burden placed on councils in providing infrastructure to support population growth and/or the changing needs of communities throughout NSW.

Key points:

User Pays

- Any changes must continue to be based on the user pays/beneficiary pays principle i.e. The cost of infrastructure that primarily serves a development should be paid for by the beneficiaries of that infrastructure as it is factored into the purchase price of the land to be developed.

Development Contributions

- Development contributions make a significant contribution to local government revenue, particularly in growth areas, and should form an important element of any new revenue framework.
- Developer contributions are efficient and equitable: efficient because they set charges that should reflect the real costs of local public infrastructure to support development and provide a mechanism for financing development; and equitable because the contributions are borne by the beneficiary of the works.
- Development impacts do not always respect council boundaries; they have a wider impact. This is particularly the case for large regional or state significant developments. There needs to be a mechanism by which a development contribution may be levied or imposed

¹ https://www.lgnsw.org.au/files/imce-uploads/581/Draft_Submission_to_DPIE_Review_of_Infrastructure_Contributions_System.pdf

for the benefit of an adjoining council or councils; having a strict nexus requirement may be limiting in this regard.

- The Independent Pricing and Regulatory Tribunal (IPART) regularly approves development contributions significantly higher (often double) than the cap in some areas – this validates what the true costs of development actually are.
- Councils that experience significant population growth are hampered by rate pegging and caps on development contributions and would benefit from more adequate funding tools to support, and potentially capture the value increase associated with new development and urban renewal. Metropolitan councils whose communities demand a much wider set of services would benefit from more autonomy and flexibility in their revenue tools.
- Historically, LGNSW has strongly objected to reform proposals designed to limit the level and scope of contributions (such as the caps introduced in 2009). Restrictions on developer contributions inevitably leads to increases in rates, fees and charges. The costs of infrastructure that primarily serves the needs of a development should not be shared across all other rate payers in the council area - as those properties are likely to have already been subject to development contributions.

Funding Limitations

- Councils are facing a funding gap, particularly with regard to funding important liveability facilities like open space. The traditional range of infrastructure funding mechanisms – federal funding; state infrastructure contributions; local infrastructure investment; local development contributions and planning agreements – are inadequate or not sufficiently flexible to meet growth needs.

Value Capture

- LGNSW advocates greater flexibility for local development contributions, and action to apply value capture as a funding mechanism as part of approval of any planning proposals/up-zonings associated with current urban renewal projects.
- Value capture is a potential funding mechanism, alongside the more traditional measures, that needs to be amongst the funding mechanisms available for infrastructure delivery.

Transparency and Certainty

- The reforms to the development contributions system, which commenced in 2005, provide for in-built accountability and transparency measures (e.g. authorisation is required for the borrowing or pooling between contribution accounts, public exhibition required for development contribution plans and voluntary planning agreements (VPAs) etc).

Sections 4 to 15 of this submission respond to specific issues and questions raised in the Issues Paper.

4.0 Local government rate pegging

LGNSW is pleased that the Issues Paper recognises the financial challenges that local government faces in delivering the infrastructure and services demanded of it. Local government faces growing responsibilities, cost shifting from the Federal and State governments and revenue constraints. This has a direct bearing on council capacity to fund the

provision and maintenance of infrastructure and the mechanisms used by local government to do so.

The Productivity Commission has correctly identified rate pegging as a major constraint on local government finances and that prolonged rate pegging has produced undesired social and economic consequences.

NSW has experienced rate pegging for over 40 years now, having been introduced in 1976/77. Local government has strongly opposed the policy since its inception.

Rates are considered to be an equitable and efficient form of taxation. (e.g. by Productivity Commission and Henry Review of Taxation). However, LGNSW is strongly of the view that rate pegging is unnecessary, produces undesirable consequences and should be abolished. The primary reasons for this are that:

- Rate pegging has been made redundant/obsolete by the implementation of Integrated Planning & Reporting (Community Strategic Plan, Long Term Financial Plan etc).
- The NSW Treasury Corporation's assessment of the financial sustainability of NSW councils undertaken in 2013 indicates that existing revenue restrictions (including rate pegging), severely hamper councils' ability to fund current, let alone future, levels of service.
- The NSW Independent Local Government Review Panel in its 2013 Final Report found there was mounting evidence that around a third of all NSW councils suffer from weak revenues and infrastructure backlogs and connected this with rate capping. According to the Review Panel, over the period 2001/02 to 2010/11, growth in total revenue of NSW councils was 5.7% per annum, compared to an average of 8.0% for the other mainland states, pointing to "revenue foregone" in rates of well over \$1 billion over that period.
- Rate pegging forces councils to impose higher user-pays charges which could result in pricing inequities.
- Rate pegging increases reliance on infrastructure contributions creating property market distortions.
- Rate pegging distorts the operation of a land valuation based rating system. Valuations do not raise net revenue but merely redistribute the rate burden within a council area.
- Rate pegging contradicts the principles of democracy and accountability of local government.
- Councils are democratically accountable, and this keeps rates in check.
- Historical experience of other jurisdictions without rate pegging has shown that this does not lead to excessive rate increases.
- Rate pegging distorts the operation of the rating system and produces negative consequences, including the direct and indirect suppression of the rating effort.

Over the long run, rate pegging in NSW has resulted in:

- Under-provision of community infrastructure and services; and

- The deferral of infrastructure maintenance and renewal expenditure resulting in infrastructure backlogs.

On page 28 of the Issues Paper, it is stated that the rate peg acts as a financial disincentive for councils to accept development. LGNSW agrees that rate pegging has presented an obstacle to growth and development. However, it is not so much that councils resist development. On the contrary, the majority of councils promote development; one only needs to look at growth area councils such as Blacktown and Liverpool. LGNSW's interpretation is that rate pegging, combined with infrastructure contributions caps, has prevented or at least slowed the delivery of infrastructure required to enable and support growth. Apart from limiting the funding available for infrastructure, rate pegging acts as a deterrent to council borrowing to finance growth infrastructure.

Another way in which this works results from rate pegging undermining the effectiveness of a land valuation-based rating system. Rate pegging breaks the nexus between rate revenue and increases in land values resulting from growth, development and the delivery of better infrastructure. Under rate pegging, increases in property values simply result in a redistribution of the rate burden within the local government area. This effectively denies councils a mechanism that would provide for value capture and suppresses rate revenue.

It is also noted that the IPART considered the principles of value capture in the Review of the Local Government Rating System (December 2016). In this report the IPART recommended a model based on the uplift in Capital Improved Values (CIV). The IPART identified revenue benefits from a transition to CIV stating:

Over 10 years, we estimate that our approach would deliver the local government sector an additional \$1.8 billion revenue (in real terms), funded by future ratepayers, and about \$330 million per annum by Year 10. Councils would receive a sustainable revenue stream to support growth and urban renewal, while ensuring rates per household do not rise in real terms.²

For this to work effectively, rate pegging would need to be removed. LGNSW supports councils having the option of applying CIV.

While the removal or relaxation of rate pegging would improve council capacity to fund infrastructure - maintenance, renewal and potentially the provision of growth infrastructure - LGNSW warns against viewing rates as an alternative or replacement for infrastructure contributions. There are several reasons for this.

It would be inequitable to spread the costs of new infrastructure that primarily serves (and benefits) new development, across all rate payers in a local government area. Many of the pre-existing properties would already have been subject to infrastructure contributions if built after 1979. This would amount to double dipping. It would also fuel strong community opposition to new development. It would be quite rational for existing rate payers to oppose new development if new developments inevitably meant that their rates would increase. This would compound community resistance to new development in addition to resistance due to density, change of character and environmental impacts.

² IPART, Review of the Local Government Rating System, December 2016, p 56

Another option is to apply substantially higher rates to the properties in new developments to cover new infrastructure costs. This could be implemented by a special rate in the form of an infrastructure levy, paid on top of ordinary rates and applied over an extended period. Apart from legislative and regulatory obstacles, this approach also presents some other challenges and potentially undesirable outcomes.

If it is accepted that the infrastructure costs were largely factored into the purchase price of land by the developer, the infrastructure costs are not (should not) be added on to the purchase price of individual properties within the new development/subdivision. If this is the case, applying an infrastructure levy would transfer the costs already accounted for in the purchase of the development site to the home buyer providing a windfall profit to the developer. Alternatively, and when the market adjusts, it may add to the wholesale price of the land with the excess profit transferred to the wholesale property vendor. Either way, the final homebuyer will bear infrastructure costs that had previously been absorbed/paid further up the chain adding to housing costs and reducing housing affordability. Further, in the case of new home buyers, the levy would add an additional cost at a time when they can least afford it, particularly if they have taken out large mortgages.

It is appropriate that local infrastructure be funded from various sources including rates, infrastructure contributions and State and Federal Government grants. The challenge is raising the required funding in an equitable and efficient manner. There is no doubt that the removal of rate pegging would help reduce NSW council dependency on infrastructure contributions and potentially lead to reduced contributions.

Recommendation 1:

Rate Pegging should be removed to provide councils with greater financial flexibility and capacity to fund infrastructure maintenance, renewal and new infrastructure to support development.

5.0 Value Capture and Planning Agreements

On page 34 of the Issues Paper, the following question is raised:

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

The framework for planning agreements was introduced in 2005. An updated framework was previously exhibited in 2016 and LGNSW made a submission.

Where land value increases due to planning decisions, it is appropriate for the landowner to share a portion of that benefit with the community – this is unequivocal in the current (2005) and draft 2016 practice notes. This is more equitable than the individual or business receiving windfall gains and private benefit from planning decisions.

Value capture provides an equitable and efficient alternative for funding infrastructure – at present the only mechanism for this is through VPAs. In recent years many councils have been advocating for value capture mechanisms other than VPAs to be developed and finalised urgently.

In April 2020, DPIE released an updated draft '*Planning Agreements Practice Note*'. LGNSW welcomed the publication of this updated practice note. In proposing an updated framework,

the government has reaffirmed the legitimacy and importance of VPAs in the planning system. However, LGNSW has strongly objected to the inference in the latest draft practice note that value capture should not be used in VPAs. LGNSW is concerned about any proposals to remove the use of VPAs as a tool for explicit value capture - this would depart from the current practice reflected in the existing 2005 Practice Note and the draft practice note exhibited in 2016³.

LGNSW advocates for new and fairer financing opportunities for local government, with particular emphasis on infrastructure e.g. value capture, VPAs and fees and charges⁴. Value capture through a planning agreement is an important tool for councils to deliver the infrastructure needed to meet the demands of future populations, over and above what can be delivered through a s 7.11 or s 7.12 plan, where the current Ministerial 'thresholds' limit the levying for such infrastructure.

Internationally, value capture provisions are being implemented successfully to provide important infrastructure. For example, in the United States⁵ simple value capture mechanisms are funding the construction of more new rail lines and tram tracks than at any other time in the past. A 2016 Policy Paper by Infrastructure Victoria⁶ contains many local and international case studies.

The practice of sharing the land value arising from rezoning 'uplift' is appropriate when founded on an equitable, transparent and evidence-based approach and can provide certainty for all stakeholders. In the absence of any other tools for value capture, it is therefore appropriate and important for councils to have the option of including value capture in planning agreements. Many councils have been including value capture as part of VPAs for up to 15 years. In recent times, some have collaborated with the DPIE to formulate their value capture policies to ensure delivery of infrastructure needed to meet growth targets in their areas. The DPIE's latest proposed change appears to deviate from this current and collaborative practice. Furthermore, it could have significant financial implications for councils and undermine the delivery of essential infrastructure. It may also trigger the need for councils to urgently review their infrastructure contributions framework, which may delay other key projects.

LGNSW strongly objects to the removal of value capture as an explicit use for VPAs. The current practice established in 2005 to provide for value capture as an accepted provision in VPAs should be continued.

Recommendation 2:

In the absence of other value capture mechanisms, LGNSW strongly supports inclusion of value capture as an appropriate use of planning agreements as it is considered equitable and provides an important source of revenue for councils to provide infrastructure for the community.

³ [Draft Practice Note, Planning Agreements](#), Nov 2016, p 14: "The provision of planning benefits for the wider community through planning agreements involves capturing part of development's profit. The value of planning benefits should always be restricted to a reasonable share of development profit."

⁴ https://www.lgnsw.org.au/files/imce-uploads/581/LGNSW_Policy_Platform_-_April_2020.pdf (p 9)

⁵ <https://www.thefifthestate.com.au/columns/spinifex/funding-sydney-where-the-value-capture/>

⁶ https://www.infrastructurevictoria.com.au/wp-content/uploads/2019/04/IV18-Value-Capture-Options_Final-web_v2_0.pdf

6.0 Section 7.11 Local infrastructure contributions

On page 36 of the Issues Paper the following question is posed:

How could the complexity of s 7.11 contributions planning be reduced?

Section 7.11 contributions are charged where there is a demonstrated link between the development and the infrastructure to be funded. Councils are required to prepare contributions plans specifying the infrastructure to be provided and an estimate of its cost. This information is used to calculate a contribution rate, usually charged per dwelling or per square metre. If a council's plan estimates contribution rates above the thresholds set by the Minister, the plan is required to be reviewed by the Independent Pricing and Regulatory Tribunal (IPART).

LGNSW has always opposed the maximum caps on s 7.11 local infrastructure contributions on behalf of its members. The IPART review process has been typically long and complicated, potentially delaying the collection and expenditure of funds. Currently, the local infrastructure contribution plan triggers review by IPART where a council's contribution plan proposes to levy s 7.11 local infrastructure contributions above the following amounts:

- \$20,000 per lot/dwelling; and
- \$30,000 per lot/dwelling in identified urban release/greenfield areas.

In recent public consultation, DPIE has proposed options to increase these thresholds.

The thresholds were introduced in 2010, and no evidence or analysis was provided at the time to support the use of these figures. The IPART review adds another resource-intensive and lengthy stage into the complex process of preparing and adopting contributions plans. Historically, LGNSW has opposed the imposition of these thresholds due to the burden of the IPART review process on councils. LGNSW does not support the thresholds and maintains that councils should be empowered to do the planning for infrastructure within their local areas and to recoup contributions for the provision of infrastructure for the benefit of the community.

In the ten years since the caps were introduced, there have been significant increases in land values and construction costs – particularly in the greater metropolitan area, so it is reasonable for the thresholds to be reviewed. A 2018 report⁷ which reviewed contributions caps indicates that the contribution rate for a metropolitan council is in the vicinity of \$100,000 and for a fringe metropolitan council in excess of \$70,000 per lot or dwelling. This data confirms that contribution rates are irrefutably above the current thresholds, particularly for metropolitan areas, reinforcing the need to review and increase the thresholds. This is further ratified by the fact that IPART regularly approves development contributions significantly higher than (often double) the cap in some areas – this validates what the true costs of development actually are.

LGNSW maintains that the thresholds need to be removed or at a minimum, increased to a more realistic level. They do not accurately reflect councils' increasing infrastructure delivery costs and land values and have not been indexed for 10 years which means they have declined in real terms during this period.

⁷ Melissa Ballinger, *Development Contributions in NSW: A Review of the Section 7.11 Contributions Cap*, 2018

The caps on s 7.11 local infrastructure contributions are being phased out and were expected to no longer apply from July 2020, however in June 2020 the Minister for Planning and Public Spaces extended maximum caps on local infrastructure contributions to \$50,000 per residential lot or dwelling in the Hills and Blacktown local government areas from 1 July 2020 to 31 December 2020.

Recommendation 3:

The thresholds that trigger IPART review of contributions plans should be removed so that plans are not required to go through the IPART process – this would result in a reduced drain on both council and IPART resources. Removal of the thresholds and the IPART review would significantly reduce the length and complexity of the process of preparing section 7.11 infrastructure contribution plans.

On page 36 of the Issues Paper, barriers to the spending of contributions is raised as follows:

Some councils have significant contributions balances, indicating there may be barriers to timely expenditure.

The primary barrier to councils spending contributions funds has been that s 7.11 moneys are tied to plans which specify the infrastructure the funds can be applied to and when it is to be delivered. They have been externally restricted funds requiring approval of the Minister for Planning and Public Spaces if a council wanted to access (borrow from) the funds for other purposes. This is changing and becoming more flexible, with the Minister issuing a Direction to allow pooling of funds (effectively borrowing between funds) without councils having to amend their contributions plans.⁸ Some councils already have this provision in their plans, while others do not.

Another reason for delayed expenditure is that councils have needed to hold and accumulate the funds until delivery thresholds are reached (quantum/sufficient funds, population etc). This is a reflection of the long development lead times, often taking 10, 20 or 30 years for some areas to reach full development. In regional townships, the progress of even a relatively small subdivision could plausibly take more than ten years to reach completion, and a council may not be in a position to finalise any new works/infrastructure until most of these funds have been collected. Growth councils can have several active release areas concurrently, each with contributions plans, showing potentially millions of dollars but with matching commitments over the life of those plans. One western Sydney growth council advises they already “have a big spend each year” and they still have a big balance.

Further, land acquisition requirements are one of the most time-consuming components for delivery of local infrastructure, particularly where there are small lot sizes and multiple landowners in growth areas.

On page 36 of the Issues Paper, the following question is posed:

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

As council contributions schedules are published and some councils have calculators, it is considered that adequate certainty of infrastructure contribution costs is already available upfront. However, some developers may create their own ‘uncertainty’ if they purchase sites that are outside of the strategically planned areas as these areas don’t have contribution

⁸ <https://www.planning.nsw.gov.au/local-infrastructure-contributions-policy>

schedules. It is a risk that developers pay too much for the land if they assume a contributions benchmark for an area contiguous to an area included within an infrastructure plan.

Recommendation 4:

LGNSW recommends that prospective developers consult with relevant councils prior to the purchase of land to ensure that they obtain correct information regarding potential infrastructure contribution costs.

7.0 Essential Works List

On page 39 of the Issues Paper, the following questions are posed:

Should the essential works list be maintained? If it were to be expanded to include more items, what might be done to ensure that infrastructure contributions do not increase unreasonably?

On page 57 of the Issues Paper, the following issue is identified for further exploration with stakeholders:

Operation of the essential works list has restricted the ability to deliver some types of infrastructure, most notably, community facilities. Works excluded from the essential works list are difficult to fund and deliver, especially because of rate pegging.

The Essential Works List is relevant to the s 7.11 plans that propose contribution levels above the relevant cap. The DPIE prescribes a list⁹ of essential infrastructure that these plans can contain. This list does not include community facility buildings, only the land component of these 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. To create healthy and liveable communities, it is important for infrastructure to be in place when residents move into areas. Moreover, contemporary community expectations are that these essential services and facilities will be available when they move into an area. As community facility buildings are not included on the current essential works list, local government faces significant funding shortfalls for providing community facilities. For example, in 2015 Blacktown City Council had a funding shortfall in excess of \$135 million¹⁰. This situation is not sustainable for councils and not in the public interest. LGNSW recommends that the “essential works list” be amended to include the capital costs of providing community facility buildings.

Recommendation 5:

LGNSW recommends that the “essential works list” be amended to include the capital costs of providing community facility buildings.

8.0 1% fixed development consent levy (section 7.12)

It is acknowledged on page 40 of the Issues Paper, that s 7.12 local infrastructure levies are low and do not reflect the cost of infrastructure. The following question is posed:

⁹ NSW Planning and Environment, *Local Infrastructure Contributions Practice Note*, January 2019

¹⁰ LGNSW Annual Conference Business Paper 2015, p 48

What would be a reasonable rate for s 7.12 development consent levies?

Under s 7.12 of the *EP&A Act*, councils may charge contributions as a percentage of the estimated cost of the development. The maximum percentage that can be charged in most council areas is 1%, although 6 councils (Liverpool, Wollongong, Parramatta, Newcastle, Burwood and Willoughby) are permitted to charge a higher percentage ranging from 2% to 4 % for development in either defined areas, specific zones or all zones. The DPIE has released a series of proposed criteria which are intended to provide clarity where councils wish to apply a s 7.12 levy above the standard 1% maximum.

The value of 1% requires revision - it was introduced about 15 years ago with no justification or financial analysis. This review, in consultation with local government, is overdue to confirm a higher more appropriate baseline contribution amount. Some councils have suggested that the minimum amount for the levy should be 3%. LGNSW also advocates for a flexible system by including relevant criteria for councils to address if applying for higher percentage levies above the new higher baseline levy amount.

Recommendation 6: LGNSW recommends that the current 1% levy amount for section 7.12 contributions be increased, in consultation with local government, to a higher baseline contribution levy amount.

Recommendation 7: LGNSW advocates for a flexible system by including relevant criteria for councils to apply for higher percentage levies above the baseline contribution levy amount.

9.0 Open Space

On page 52 of the Issues Paper, the following questions are posed:

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

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

Public open space is important infrastructure that contributes to the creation of liveable and healthy communities. The experience of the Covid-19 pandemic has demonstrated the significant value and importance of open space. The open space requirements should be evidence based and determined using reference to the latest research. As there is a hierarchy of public open space ranging from local, neighbourhood, district and regional, it is considered appropriate for the state government to work together with local government to determine appropriate and consistent requirements for public open space.

In metropolitan areas, there are significant costs associated with providing open space to cater for additional residents living in new higher density infill developments due to steep land value increases. LGNSW recommends that appropriate tools are provided to ensure that councils obtain sufficient funds from infrastructure contributions to fund the provision of quality public open space.

Recommendation 8:

Due to the hierarchy of open space, state government should work together with local government to determine appropriate and consistent requirements for public open space.

Recommendation 9:

LGNSW recommends that infrastructure contributions in combination with other tools (such as value capture) are provided to ensure that councils obtain sufficient funds for the provision of quality public open space.

10.0 Timing of infrastructure contributions payments

On page 37 of the Issues Paper, the following questions are posed:

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

Councils report issues around having to follow up and chase significant sums of money owed for infrastructure contributions for some developments where private certifiers have issued occupation certificates (OCs) without referring to council to confirm contributions payments have been made. The time and administrative costs in pursuing these outstanding payments can be substantial. This issue is one of many that the local government sector has with the private certification system.

In July 2020 a new Ministerial direction was made to temporarily defer the payment of local infrastructure contributions and levies until the issuing of an occupation certificate.¹¹ LGNSW considers that the timing for the payment of infrastructure contributions should not be a blanket provision imposed by the State government, but rather a decision for each individual council. Some councils already have policies based on a risk management approach that allow conditions requiring infrastructure payments at the time of occupation certificates as a development incentive. One of the significant risks with delaying the payment of contributions to council is that this may lead to delays in the delivery of infrastructure. For some councils, the deferral of payment of contributions to the OC stage will result in delaying payments for up to two years, with either a consequential delay to the provision of essential community infrastructure or existing communities having to carry the burden of paying for the infrastructure costs to support new developments until the payments are made.

The e-construction portal currently being developed as part of the NSW Building Commissioner's building reform program offers an opportunity to create a system of gateways that can be used to ensure infrastructure contributions are paid prior to a private certifier issuing an OC.

Recommendation 10:

LGNSW recommends that the timing for the payment of infrastructure contributions be determined and decided by each individual council rather than a blanket timeline imposed by the State government.

Recommendation 11:

Processes be strengthened to utilise the e-construction portal being developed alongside the planning portal to impose a gateway that requires developers to pay infrastructure contributions before the OC can be issued by the private certifier.

¹¹ <https://www.planning.nsw.gov.au/local-infrastructure-contributions-policy>

11.0 Reporting, transparency and accountability

On page 34 of the Issues Paper, the following question is posed:

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

On page 53 of the Issues Paper, the following questions are posed:

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

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

Councils currently report on contributions as required under the EP&A Regulation 2000 and the *Local Government Act 1993*. It is challenging for many councils to satisfy the current reporting requirements.

LGNSW supports the principle of transparency, however we urge the NSW Productivity Commissioner to consider the significant reporting and compliance burdens which already apply to local government. Details of these sometimes onerous and unnecessary requirements were outlined in a report by IPART in 2016¹².

Additional reporting requirements may negatively impact councils' already-stretched resources and may incur additional financial costs and unreasonable administrative burdens on councils.

Councils are not currently set up for undertaking additional reporting. Local government's current priorities are job creation to stimulate the economy post-Covid-19, and rebuilding communities after bushfires and floods. LGNSW does not support placing additional reporting expectations on councils, particularly at this time, when they are focused on prioritising infrastructure delivery to create local jobs and supporting their communities to recover after a string of emergency events.

Recommendation 12:

LGNSW objects to the introduction of any additional reporting requirements on councils, with no compensatory financial support, as this will place increased financial and administrative burdens on councils, at a time when their current priority is on responding to and recovering from the impacts of recent natural disasters and the current pandemic.

Currently, there is a lack of consistency in the reporting requirements for local and state government. LGNSW advocates that transparency principles and the requirements for local contributions reporting should equally apply to the State government's Special Infrastructure Contributions.

Recommendation 13:

The requirements for local contributions reporting should equally apply to State Infrastructure Contribution Plans.

¹² Independent Pricing and Regulatory Tribunal NSW, *Review of reporting and compliance burdens on Local Government*, 2016

12.0 Affordable Housing

On page 44 of the Issues Paper, the following questions are posed:

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

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

LGNSW supported the Greater Sydney Commission's (GSC's) inclusion of an affordable housing target in the Greater Sydney Region Plan and District Plans. These plans set an affordable housing target of 5% to 10% of all new floorspace in land release and urban renewal areas (subject to viability). The target is a welcome start; however, councils have been calling for tangible policy mechanisms that will facilitate delivery of affordable rental housing at least to the minimum target level proposed in these plans.

Some councils are of the view that the GSC's targets do not go far enough and have alternative approaches. Affordable housing targets should be determined in consultation with councils at the same time the overall housing targets for a district, region or subregion are being determined.

In the context of affordable housing, targets would help to articulate and deliver councils' affordable housing objectives. The publication of clear targets would have the secondary benefit of indicating to private industry a council's commitment to affordable housing, allowing developers and community housing providers to plan future projects with more certainty and confidence.

DPIE and the GSC should work proactively and collaboratively with LGNSW, councils and the relevant State agencies and housing bodies to agree on specific affordable housing targets and how these can be delivered at a district, regional and local level.

A clear affordable housing planning framework is required to enable councils and others to meet the targets set out. The inclusion of all councils in State Environmental Planning Policy 70 (Revised Schemes) (SEPP 70) and the development of a template have been welcome developments, however there is significant scope for improving the system.

Some councils have implemented VPAs for affordable housing. It is important that these planning tools support opportunities for value capture for affordable housing (and other infrastructure).

Many councils were disappointed that the delay in expanding SEPP 70 and lack of a clear framework at a time when there was significant residential development (particularly in the metropolitan area) has resulted in missed opportunities to deliver affordable housing over the past 5-10 years.

Recommendation 14:

LGNSW recommends that DPIE and the GSC work proactively and collaboratively with councils, LGNSW and the relevant State agencies and housing bodies to agree on specific affordable housing targets at the same time the overall housing targets for a district, region or subregion are being determined and how these can be delivered.

Recommendation 15:

LGNSW supports planning tools such as VPAs being available to provide opportunities for value capture for affordable housing (and other infrastructure).

13.0 Skills Shortage

On page 53 of the Issues Paper, the topic of the skills shortages of planners is raised.

The following questions are posed:

What can be done to address this issue?

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

In research conducted by the Local Government Workforce Development Group¹³, 42% of NSW councils reported shortages of urban and town planners, with 40% considering it a critical issue in the future. One quarter of councils are forced to recruit less skilled applicants in response.

The shortage of town planners is most acute in urban, urban fringe and urban regional areas. Findings from this research and subsequent consultation with urban councils indicate that councils have the greatest challenges with:

- Attracting mid-level career (5 – 8 years) strategic planners
- Attracting candidates with experience on major development and planning projects
- Retaining experienced employees.

Councils in rural and remote areas report challenges in accessing specialist expertise or supplementary resources at times of workload peaks. Access to the right expertise is dependent on the knowledge and networks of individual planners and in rural and remote areas, this can be a limitation.

LGNSW has adopted a range of approaches in tackling the issue of skills shortages. These include the development of [Careers at Council](#) to attract, inform and connect candidates to jobs in councils and dialogue with the NSW Government regarding funding for the sector.

Development contributions planning is a very specialised area of planning and there are even more limited numbers of experienced planners working in this area. Additional incentives may attract more urban planners to work in this specialty area of infrastructure contributions.

Recommendation 16:

The NSW Government work closely with LGNSW to explore ways and consider options such as additional incentives to attract more professionals, including graduates and experienced urban planners, to work in infrastructure contributions planning roles.

¹³ Local Government Workforce Development Group (2018) **Local Government Workforce and Future Skills Report: New South Wales**, September, p37

14.0 Exemptions

On page 55 of the Issues Paper, it is noted that exemptions from contributions are complex and are inconsistent. The following questions are posed:

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

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

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

All developments require infrastructure and LGNSW maintains that infrastructure contributions should apply to all developments. Where there is a public good element related to the development, the infrastructure contribution cost should be explicit and transparent and should be met by government subsidy if not by the proponent.

Many such developments serve an area wider than the LGA in which they are built, and it would be inequitable for the cost of subsidising that infrastructure to be fully paid for by the ratepayers in that LGA. Further, the failure to make contributions would encourage community opposition to such developments.

Recommendation 17:

LGNSW maintains that infrastructure contributions should apply to all developments, and the infrastructure contribution cost be met by explicit and transparent government subsidy if not by the proponent where there is a public good related to the development.

15.0 Other Issues

On page 24 of the Issues Paper, the report indicates that in 2019 Infrastructure Australia identified some emerging cost pressures including 'growing environmental and planning compliance costs' facing Australian governments in general and of particular relevance to New South Wales.

While LGNSW acknowledges that unnecessary compliance burdens should be removed, it is short-sighted to suggest that lifting environmental and planning requirements would solve emerging cost pressures. Planning and environmental regulations exist to protect public health, safety and amenity (extremely important in the current Covid-19 world). Likewise, regulations governing building and construction are critical to ensuring that 'savings' and 'efficiencies' in construction cost are not transferred to future owners and building occupants in the form of indirect costs such as ill-health (caused by poorly designed and constructed buildings) and unexpected and substantial maintenance/rectification costs. Unfortunately, we have already seen the effects of a lack of building regulation that has compromised the quality and safety of buildings.

On page 15 of the Issues Paper, the following question is posed:

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

There are inherent differences between metropolitan, regional and rural areas and therefore the new infrastructure contributions framework may require a tailored approach to reflect the diversity of council areas across NSW. Some areas are experiencing rapid growth and development while others may be in decline. Many communities are keen for growth to occur while others resist further development. In addition, the level and adequacy of existing infrastructure provision varies from region to region. The impacts of the new framework on the diverse council areas should be considered during the review process.

Recommendation 18:

As there are inherent differences between metropolitan, regional and rural councils, the impacts of the new infrastructure contribution framework on the diverse council areas across NSW should be considered during the review process.

An area of uncertainty, particularly for rural and regional councils, is that conditions requiring local infrastructure contributions for state significant developments (SSD) are not being applied consistently, as they are for locally approved development. Councils are concerned that their communities are being overlooked for important supporting infrastructure because payment of contributions for local infrastructure is not always being required as a condition of approval for state significant 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 mines in adjoining LGAs. This issue was flagged in LGNSW's submission to the review of the Independent Planning Commission.¹⁴

During the assessment of state significant development applications, consultation should be undertaken with the relevant councils to ensure that appropriate conditions are included on development approvals to ensure that the local council and any neighbouring councils, if applicable, receive sufficient funding to provide community infrastructure required as a result of increased demand generated by the development.

Recommendation 19:

Due to the significance of local government's role in the provision of local infrastructure to support state significant development, the Productivity Commissioner should consider, in consultation with local government, what mechanisms could be put in place to ensure that councils can have genuine input to the conditions of consent for SSD.

16.0 Conclusion

Councils have limited sources of revenue and yet have significant responsibilities and expectations to provide community infrastructure to support population growth and development and to continue to manage and maintain those amenities and services. Councils rely on contributions from developers to help provide this important infrastructure to create healthy and liveable communities and meet contemporary community expectations.

¹⁴https://lgnsw.org.au/common/Uploaded%20files/Submissions/Draft_LGNSW_submission_on_review_of_Independent_Planning_Commission_Nov_2019.pdf

Councils are facing funding shortfalls, particularly with regard to funding important liveability facilities like open space. LGNSW advocates greater flexibility for local development contributions, and the ability to apply value capture as a funding mechanism as part of approval of any planning proposals/up-zonings associated with current urban renewal projects.

LGNSW has also long advocated for the removal of rate pegging and other constraints on council revenue to assist councils in meeting the infrastructure funding needs of their communities.

Development contributions make a significant contribution to local government revenue, particularly in growth areas, and should form an important element of any new revenue framework.

LGNSW opposes any departure from the current practice of using VPAs as a tool for value capture is discussed in Section 5. LGNSW also opposes the imposition of unrealistic thresholds for s 7.11 contributions, which are not evidence-based as discussed in section 6.

Another important recommendation, which has been a longstanding policy of LGNSW, is the amendment of the “essential works list” to include the capital costs of providing community facility buildings (also discussed in section 7). The introduction of any extra reporting requirements on councils for local infrastructure contributions is also opposed by LGNSW for the reasons outlined in section 11.

A summary of all recommendations is provided in Appendix 2.

To discuss this submission further, please contact Jane Partridge, Strategy Manager, Planning and Transport at Jane.Partridge@lgnsw.org.au.

Appendix 1 – Terms of Reference

The NSW Productivity Commission should:

- review the infrastructure contributions system to determine whether it meets the objectives of certainty and efficiency while delivering public infrastructure required to support development
- make recommendations for reform aimed at delivering a principles-based system that delivers the infrastructure required to accompany growth, and
- identify legislative and regulatory changes necessary to implement the proposed reforms.

Contributions under Part 7 of the *Environmental Planning and Assessment Act 1979* are within the scope of the Review. The Review should also have consideration of the relationship to and impact of other charges and levies relating to the development process.

In reviewing the contributions system, the Commission should, at a minimum, consider the following:

- certainty and transparency for communities, local government and developers
- the extent that contributions rates reflect efficient costs and the principle that beneficiaries should pay
- the major cost drivers in the contributions system and how these factors can be managed
- the relationship with local government funding and service provision, and
- implications for the volume and nature of the housing market and the delivery of public open space.

The Review should be complementary to broader reforms to the planning system. The Review will coincide with system improvements led by the Department of Planning, Industry and Environment.

The Commission should provide a Final Report to the Minister for Planning and Public Spaces by the end of 2020. In undertaking its review, the Commission should:

- consult with NSW Government agencies, external stakeholders, and the community, as appropriate
- assemble and analyse relevant data, and
- draw on best practice in other jurisdictions, previous review and published research.

Appendix 2 - Summary of Recommendations

Recommendation 1:

Rate Pegging should be removed to provide councils with greater financial flexibility and capacity to fund infrastructure maintenance, renewal and new infrastructure to support development.

Recommendation 2:

In the absence of other value capture mechanisms, LGNSW strongly supports inclusion of value capture as an appropriate use of planning agreements as it is considered equitable and provides an important source of revenue for councils to provide infrastructure for the community.

Recommendation 3:

The thresholds that trigger IPART review of contributions plans should be removed so that plans are not required to go through the IPART process – this would result in a reduced drain on both council and IPART resources. Removal of the thresholds and the IPART review would significantly reduce the length and complexity of the process of preparing section 7.11 infrastructure contribution plans.

Recommendation 4:

LGNSW recommends that prospective developers consult with relevant councils prior to the purchase of land to ensure that they obtain correct information regarding potential infrastructure contribution costs.

Recommendation 5:

LGNSW recommends that the “essential works list” be amended to include the capital costs of providing community facility buildings.

Recommendation 6: LGNSW recommends that the current 1% levy amount for section 7.12 contributions be increased, in consultation with local government, to a higher baseline contribution levy amount.

Recommendation 7: LGNSW advocates for a flexible system by including relevant criteria for councils to apply for higher percentage levies above the baseline contribution levy amount.

Recommendation 8:

Due to the hierarchy of open space, state government should work together with local government to determine appropriate and consistent requirements for public open space.

Recommendation 9:

LGNSW recommends that infrastructure contributions in combination with other tools (such as value capture) are provided to ensure that councils obtain sufficient funds for the provision of quality public open space.

Recommendation 10:

LGNSW recommends that the timing for the payment of infrastructure contributions be determined and decided by each individual council rather than a blanket timeline imposed by the State government.

Recommendation 11:

Processes be strengthened to utilise the e-construction portal being developed alongside the planning portal to impose a gateway that requires developers to pay infrastructure contributions before the OC can be issued by the private certifier.

Recommendation 12:

LGNSW objects to the introduction of any additional reporting requirements on councils, with no compensatory financial support, as this will place increased financial and administrative burdens on councils, at a time when their current priority is on responding to and recovering from the impacts of recent natural disasters and the current pandemic.

Recommendation 13:

The requirements for local contributions reporting should equally apply to State Infrastructure Contribution Plans.

Recommendation 14:

LGNSW recommends that DPIE and the GSC work proactively and collaboratively with councils, LGNSW and the relevant State agencies and housing bodies to agree on specific affordable housing targets at the same time the overall housing targets for a district, region or subregion are being determined and how these can be delivered.

Recommendation 15:

LGNSW supports planning tools such as VPAs being available to provide opportunities for value capture for affordable housing (and other infrastructure).

Recommendation 16:

The NSW Government work closely with LGNSW to explore ways and consider options such as additional incentives to attract more professionals, including graduates and experienced urban planners, to work in infrastructure contributions planning roles.

Recommendation 17:

LGNSW maintains that infrastructure contributions should apply to all developments, and the infrastructure contribution cost be met by explicit and transparent government subsidy if not by the proponent where there is a public good related to the development.

Recommendation 18:

As there are inherent differences between metropolitan, regional and rural councils, the impacts of the new infrastructure contribution framework on the diverse council areas across NSW should be considered during the review process.

Recommendation 19:

Due to the significance of local government's role in the provision of local infrastructure to support state significant development, the Productivity Commissioner should consider, in consultation with local government, what mechanisms could be put in place to ensure that councils can have genuine input to the conditions of consent for SSD.