GOULBURN MULWAREE COUNCIL

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BUSINESS PAPER

Additional Items

Ordinary Council Meeting

2 June 2020

Warwick Bennett
General Manager

We hereby give notice that an Ordinary Meeting of Council will be held on:

Tuesday, 2 June 2020 at 6pm

in the Council Chambers, Civic Centre

184 - 194 Bourke Street, Goulburn

Order Of Business

Cr Bob Kirk
Mayor

Warwick Bennett
General Manager

15 REPORTS TO COUNCIL FOR DETERMINATION

15.6 2020/21 OPERATIONAL PLAN - INTERNAL SUBMISSIONS (SUPPLEMENTARY REPORT)

Author: **Brendan Hollands, Director Corporate & Community Services**

Authoriser: **Warwick Bennett, General Manager**

Attachments: **Nil**

Link to Community Strategic Plan:	Delivery Plan Action CL1.2 - Ensure the long term financial sustainability of Council through effective and prudent financial management (CSP Strategy CL1 - Effect resourceful and respectful leadership and attentive representation of the community)
Cost to Council:	The General Fund's projected unrestricted cash balance as at 30 June 2024 after taking into considerations these submissions is $3,990,476 (An increase of $5,918 from item the previous reports). The projected unrestricted cash balance of the Domestic Waste Fund is $1,502,541 (A reduction of $2,250) The projected unrestricted cash balance of the Water Fund is $11,968,276 (A reduction of $7,500) The projected unrestricted cash balance of the Sewer Fund is $2,936,886 (A reduction of $10,000)
Use of Reserve Funds:	Not Applicable

RECOMMENDATION

That

1. The following changes be made to the draft Operational Plan as a result of internal submissions:
   (a) The fees in relation to the Backflow Device annual fee on page D63 of the draft fees & charges appendix be removed and these fees be included as a table in Appendix C – Statement of Revenue Policy to enable the fees to be levied as part of the quarterly/monthly Water accounts
   (b) An amount of $100,000 be included in the budget as revenue from the RMCC Contract (increased by CPI in forward years)
   (c) An amount of $95,000 be included in the budget for Contracts under the RMCC Contract (also increased by CPI in forward years)
   (d) Council set the interest on overdue rates and charges at 0% from 1 July to 31 December 2020 and then 7% from 1 January 2021 for the remainder of the 2020/21 financial year
   (e) The Maximum Interest on Overdue Rates & Charges as set by the Office of Local Government be applied for all future financial years.
   (f) The budgets in each fund be adjusted to reflect reduced anticipated interest from overdue rates and charges in 2020/21

BACKGROUND

At its meeting on 7 April 2020 Council was presented with its Draft Operational Plan 2020-21 for consideration.

In accordance with the provisions of the Local Government Act 1993, Council resolved to place the Plan on public exhibition for wider community comments and submissions. The submission period closed on 15 May 2020.

This report should be read in conjunction with item 15.6 on this Agenda.

REPORT

The following is an internal submission inadvertently omitted from the report at item 15.6.

IS.09 Backflow Devices

An annual charge for backflow devices has been included in the Fees & Charges at Appendix D of the draft Operational Plan. This charge has appeared in this appendix for a number of years.

It has been found that this charge can be charged over the land and therefore can be levied on the Quarterly/Monthly Water Accounts alongside the Water & Sewer Availability charge, Water & Sewer Usage Charge and Trade Waste Charges. Traditionally these have been raised annually through Council's Accounts Receivable system.

The advantages of transferring these charges on to the Water Accounts benefit both Council and the ratepayer. For Council there is lower administrative costs without the need to send out separate invoices for this charge. For the ratepayer, they will get billed for this charge quarterly or monthly instead of an up-front invoice for the entire amount.

To achieve this, the fees for "Backflow Device annual fee for the first device per property" and "Backflow Device annual fee for the first device per property" on page D63 of the Fees & Charges Document will be deleted.

These will be replaced by the following table in the Statement of Revenue Policy (Appendix C):

Service	Number of Services	Charge	Estimated Yield	Quarterly Charge	Monthly Charge
First Device Per Property	171	$66.00	$11,286.00	$16.50	$5.50
Subsequent Device Per Property	257	$34.00	$8,738.00	$8.50	$2.83
		Total Estimated Yield	**$20,024.00**		

IS.10 RMCC Contract

As of 1 July Council will be performing works on behalf of the RMS on the 60km/hr sections of the State Roads in our LGA. The works in 2020/21 will primarily revolve around resealing activities.

To create a budget for this activity it is recommended that an amount of $100,000 be included as income with expenditure (Contracts) of $95,000. Although these figures will be reviewed as part of future budget processes, it is recommended that these figures be increased by CPI In the forward years of this Plan.

IS.11 Interest on Overdue Rates & Charges

Council is in receipt of Office Local Government Circular 20-19 *Information about Ratings 2020-21*.

The Circular covers a number of topics:

- *Boarding House Tariffs* – this does not apply to Council

- *Section 603 Certificate* – setting the price at $85.00. This is the same fee as last year's maximum price and as such has already been set at this price in the draft Fees & Charges
- *Statutory limit of the maximum amount of minimum rates* – setting the maximum amount of $554.00. Once again this amount is already included in our rating structure in the draft Statement of Revenue Policy.

The one thing that will impact on Council is the *Maximum Interest on Overdue Rates & Charges*. This has been set at 0% from July to December and at 7% from January 2021 and beyond. It is recommended that Council resolve to adopt the Maximum Interest on Overdue Rates & Charges as set by the Office of Local Government for the 2021/22 financial year and beyond. The following allocations are included in the draft budget for interest on overdue rates & charges.

- General Fund $30,000
- DWM $ 4,500
- Water Fund $15,000
- Sewer Fund $20,000

These amounts will need to be halved to reflect the interest free component for the first half of the 2020/21 financial year.

15.12 555 FOREST SIDING RD - COMPLIANCE UPDATE

Author: **Scott Martin, Director Planning & Environment**

Authoriser: **Warwick Bennett, General Manager**

Attachments: **1. 555 Forest Siding Road Inspection Photos 15 05 20.pdf**

Link to Community Strategic Plan:	EN1 – Protect and enhance the existing natural environment, including flora and fauna native to the region. EN3 – Protect and rehabilitate waterways and catchments. EN4 – Maintain a balance between growth, development and environmental protection through sensible planning.
Cost to Council:	Nil
Use of Reserve Funds:	Nil

RECOMMENDATION

That

1. The report of the Director Planning & Environment and Business Manager Environment & Health be received.
2. Council authorises the General Manager to commence the appropriate legal action against the property owner of 555 Forest Siding Road to ensure compliance with the relevant laws and regulations should it be determined that the property owner has acted contrary to Councils previous resolution.

BACKGROUND

On 7 April 2020 Council resolved to refuse Development Application DA/0116/1920 for the use of an existing structure a dwelling at 555 Forest Siding Rd, Middle Arm. Multiple facets of works had been carried out without consent, including clearing of vegetation, excavation of a hill, the erection of a large structure and the installation of an onsite sewage management system.

In addition to the refusal, Council also resolved to serve Orders upon the owner to demolish the illegally erected structure and restore the site as far as practicable to the condition of the site prior to the commencement of works.

Council has also received advice from the owner to indicate that they intend to pursue a review of the determination to refuse DA/0116/1920. As a result, the compliance date for the Demolition Order and the Restore Works Order will be held in abeyance whilst a review of the refusal is undertaken. Any such review must be lodged, assessed and determined by 7 November 2020. Should the review remain undetermined, or be refused, enforcement actions will recommence.

REPORT

On Friday 15 May 2020 Council received notification from a Middle Arm resident of significant heavy vehicle traffic movements entering and leaving 555 Forest Siding Rd and heavy machinery also being operated on the site.

An inspection was conducted that afternoon. Photos taken during the inspection have been attached. The inspection revealed the following:

1. Works were in the midst of being undertaken to construct a “chicken coup” as advised by person’s onsite. This structure is substantial and included extensive excavations for a concrete slab and footings, whilst several large posts had already been erected. The structure does not meet the requirements of the State Environmental Planning Policy

(Exempt & Complying Development Codes) 2007 to be considered exempt, and Council was not in receipt of a complying development certificate. The site representative advised that concrete had been ordered to be delivered the following day (Saturday 16 May) for this structure.

2. During the inspection it was observed that further and considerable excavation works had been undertaken onsite, particularly around the existing unauthorised shed structure. Specifically, an additional portion of the hill had been excavated with large amounts of fill being moved across the site and deposited to create an additional filled area that did not appear to be stable. Furthermore, the large scale construction of sandstone retaining walls was also observed to be taking place.

3. It was established that further works had been completed on the existing small shed structure at the property with additional external furnishings visible compared to what had been identified in mid-2019 at the commencement of compliance investigations. It was observed by Council officers who attended the site that this structure is also being used for habitable purposes as smoke was coming from the chimney during the inspection.

   As previously reported, no approval exists for this structure to be used as a dwelling, or for any associated onsite sewage management system. The only approval held by Council appears to be for the structure's use as a small 'farm garage' which had been approved by Mulwaree Shire Council in 1981.

4. During the site inspection it was evident that the existing large shed structure was also being used for dwelling and storage purposes. Cooking facilities, indoor recreation spaces and what appeared to be bedrooms were visible from outside the structure.

5. A large nutrient plume was evident on the downhill slope from the structures. A large amount of nutrient rich water, assumed to be effluent/wastewater was also evident on the surface. The only rational conclusion is that wastewater is being generated from the use of the structures. The effluent/wastewater is effectively draining to a crude cess pit-style onsite sewage management system, of which no approval is in place. This plume tracks downhill towards nearby natural drainage lines and is likely impacting upon the watercourse and downstream water quality.

As a result of the inspection and the continued works onsite, a Stop Work Order was issued that evening with immediate effect for the entire site. No works are permitted to be undertaken on the site and the owner has been advised of this both verbally and in writing.

During discussions between Council Officers and the owner that evening, the owner claimed that he had received advice from a Council representative to say that the works being undertaken were 'ok', therefore providing the owner with a perceived authority to continue with the works. It has since been determined that this so called approval to be incorrect and although the statement was clear to the Council Officer during the discussion, we believe the applicant has since withdrawn that statement.

During the same conversation with the Council Officer the owner confirmed that both structures were in fact being used as dwellings. This was further confirmed via an email form the owner received the following day.

On Wednesday 20 May 2020 following receipt of additional information from the owner in relation to the habitation of the structures, a Stop Use Order was issued. The Stop Use Order requires that all buildings onsite cease being used for habitable purposes or for any purpose for which consent has not been obtained. A direction to take clean-up action was also issued on Wednesday 20 May 2020. This direction relates to the pollution incident being caused by the overland disposal of effluent/ wastewater.

The owner has 14 days from the issue of both the Order and Direction to make representation as to why Council should not proceed with further prosecution. However the actions of the property owner is in our opinion a blatant disregard of NSW planning law, accepted process and the expectation of the community. Thus the recommendation in this report is that the General Manager

commence any legal action that maybe considered appropriate – including post inspection with WaterNSW to ensure that the property owner complies with the relevant laws and regulations

Due to the properties location within the Sydney Drinking Water Catchment, Council has arranged to carry out an inspection of the site with a WaterNSW Officer on Thursday 28 May 2020. A verbal update as to the result of this inspection will be provided at the Council meeting to be held Tuesday 2 June 2020.

At this stage, Officers are yet to determine whether further penalty infringement notices should be applied, or whether other means of prosecution should be pursued. A determination on this cannot be made until such time as representations from the owner have been received and considered.


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15.13 NSW DEPARTMENT OF PLANNING INDUSTRY & ENVIRONMENT REVIEW OF INFRASTRUCTURE CONTRIBUTIONS SYSTEM

Author: **Scott Martin, Director Planning & Environment**

Authoriser: **Warwick Bennett, General Manager**

Attachments:

1. **Planning Agreements Practice Note -Exhibition Draft** ⇩
2. **Improving the Review of Local Infrastructure Contributions Plan** ⇩
3. **Criteria to Request a Higher 7.12 Percentage** ⇩
4. **Special Infrastructure Contributions Guidelines** ⇩
5. **Proposed Amendments to the Environmental Planning & Assessment Regulation** ⇩

Link to Community Strategic Plan:	IN4 – Maintain and update existing community facilities and support the development of new community infrastructure as needed. CL1 – Effect resourceful and respectful leadership and attentive representation of the community.
Cost to Council:	Nil
Use of Reserve Funds:	Nil

RECOMMENDATION

That:

1. The report of the Director Planning & Environment be received.
2. That Council make submissions to the NSW Department of Planning Industry & Environment in relation to the following discussion papers:
   (a) Draft planning agreements policy framework
   (b) Improving the review of local infrastructure contributions plans discussion paper
   (c) Criteria to request a higher section 7.12 percentage discussion paper
   (d) Proposed amendments to the Environmental Planning & Assessment Regulation
3. That the submissions reflect the matters and commentary provided within the report.

BACKGROUND

Council were recently advised of a number of discussion papers that are currently being put forward by the NSW Department of Planning Industry and Environment (DPIE) relating to development contributions and infrastructure provision. The discussion papers explore a variety of mechanisms currently in place such as section 7.11 contributions (formerly section 94 contributions), section 7.12 developer levies (formerly section 94A levies) and planning agreements.

Each of the discussion papers have been attached.

Submissions are required to be provided to DPIE by 12 June 2020.

REPORT

Infrastructure contributions are an important aspect of the NSW Planning System. A fundamental planning principle within NSW is that new development should pay a contribution towards the cost of the infrastructure required to support that development.

The Environmental Planning and Assessment Act 1979 currently makes provision for this to be achieved via several avenues:

- *Section 7.11 Contributions*

  Contributions that are generally calculated on a per-lot basis, often relating to particular land or precincts. The contributions are underpinned by a plan that outlines the infrastructure to be funded, and how the costs have been determined. The plan also demonstrates the nexus between the development (or development site) and the required infrastructure.

  Since 2012, 7.11 Contributions have been capped at $20,000 per lot/dwelling, or $30,000 per lot/dwelling for specific urban release areas.

  The current Goulburn Mulwaree Section 94(7.11) Development Contributions Plan 2009 relates to the following precincts/development types:

  - Marys Mount
  - Clyde Street
  - Ducks Lane
  - Common Street
  - Extractive Industries, Mines & Other Heavy Haulage Uses

- *Section 7.12 Levies*

  A levy that is calculated based on a percentage of the overall development cost, or capital investment value.

  The current Goulburn Mulwaree Section 94A(7.12) Levy Developer Contributions Plan 2009 imposes the levy at the following percentages (based upon development cost):

$0 - $100,000:	0%
$100,001 - $200,000:	0.5%
In excess of $200,000:	1%

  7.12 Levies cannot be applied to land that is the subject of 7.11 contributions.

- *Planning Agreements*

  Also referred to as Voluntary Planning Agreements, or VPA's, are agreements entered into between Council and developers in circumstances where developments provide an additional public benefit or embellishment of existing public infrastructure often in return for a reduction in 7.11 or 7.12 contributions/levies.

In addition to the above, the NSW Planning System also makes provision for 'Special Infrastructure Contributions', which are paid by developers to fund state and regionally significant infrastructure in areas of high growth, such as the North-West and South-West Sydney Growth Corridors. The Goulburn Mulwaree LGA is currently not eligible to levy Special Infrastructure Contributions.

In recent times the NSW Government has identified that the contributions system as a whole has become inefficient, less transparent and at times lacking certainty for developers. The system has also been identified as not having kept pace with various changes to the financial landscape, particularly in relation to the real costs borne by Councils in providing public infrastructure.

Following a review of the individual discussion papers, the Director Planning & Environment, Business Manager Strategic Planning and Business Manager Planning & Development have compiled the following items to form the basis of the Council's submissions:

ITEM 1: DRAFT PLANNING AGREEMENTS POLICY FRAMEWORK

- Council generally agree with the content contained within the discussion paper. Accordingly, Council thank DPIE for their initiative in undertaking this review.

- In relation to Section 2.2, 2nd dot point, it is noted that the ability of many Council's to carry out the required level of strategic planning, particularly in a rural or regional context, has not kept pace with development and therefore one of the few mechanisms to fill this gap is the use of Planning Agreements.

  It is understood the appropriate and preferred way of planning infrastructure is a strategic approach however the reality is that often areas have been zoned specifically with one outcome in mind, only for other permissible uses to become available over time through legislative change or the evolution of Land and Environment Court case law.

  Council requests that this situation is acknowledged by DPIE, and that any future policy provides rural and regional Council's with flexibility in relation to the use of Planning Agreements.

- In relation to Section 4.1, the preference for Council is always to negotiate a draft agreement, if not a letter of offer at the very least, prior to a Development Application being lodged. Often, and where practical, Council will utilise the pre-lodgement process advocated in DPIE's Development Assessment Best Practice Guide for Councils as a vehicle for flagging the potential or appropriateness for a Planning Agreement. This would ultimately allow for both the DA and the draft agreement to be exhibited concurrently.

  In reality however, Development Applications are almost always lodged prior to any negotiations having taken place. The subsequent letter of offer in effect becomes an additional information request given the DA's inability to demonstrate compliance with the demands created by the development on public infrastructure or services. The result of this is a prolonged assessment period, often resulting in a stalemate between Council and the developer. This leads to angst, confusion and ultimately a much poorer outcome for the community in terms of the final agreement, notwithstanding the fact that the draft agreement is exhibited well after the DA has been determined.

  This leads to issues around transparency and throws into question the legitimacy of the assessment amongst the community.

- Further to the above, Council believes that there needs to be some greater commentary around the ability to be able to refuse a DA should a letter of offer or draft Planning Agreement not be forthcoming, and when Council believes that the impacts of the proposed development can only be overcome by entering into such an agreement. For example, if an existing Development Control Plan or contributions plan does not contain the required development controls or contributions to address the specific issue, Council should have the confidence and ability to proceed with a refusal on the grounds that the development

does not meet site suitability and/or public interest tests under section 4.15 of the Environmental Planning & Assessment Act 1979.

- In relation to Part 5, Council suggests that greater clarity or guidance be provided by DPIE in relation to defining what matters can be conditioned within a consent as opposed to what matters need to be incorporated into a Planning Agreement. Council believes that such clarity from DPIE would be beneficial in relation to negotiating better community outcomes, provide more certainty for developers, and even prevent later modifications or legal challenges in relation to the imposition of conditions.

  An example of the confusion that can be generated is that generally a Planning Agreement is required where any land dedication is proposed as a part of the development, however an obvious exclusion to this is that Council's generally do not require Planning Agreement's for roads dedicated with subdivisions.

- Council notes the addition of the Template Planning Agreement as Attachment A to the Draft document. Council already has in place its own Policy incorporating a draft deed which is more comprehensive than the example provided. This document was generated via a need and based upon Council's varying experiences in the Planning Agreement space, and would therefore request that Council's continue to be given the flexibility to develop and implement their own standalone VPA policy and templates.

- The discussion is centred around infrastructure planning associated with new development, however Councils are also faced with funding shortfalls based upon the rising costs of infrastructure management associated with existing populations. An essential consideration for Council's infrastructure planning is maintenance and renewal, and income from land rates is insufficient to cover such costs. Council believes that a review of rate pegging within NSW should form part of the consideration around infrastructure provision.

ITEM 2: IMPROVING THE REVIEW OF INFRASTRUCTURE CONTRIBUTIONS PLANS

- Council thank DPIE for their initiative in undertaking this review.

- Council is supportive of Option 1 (page 9 of the discussion paper; i.e. through the application of CPI to the current thresholds). It is noted that in regional and rural areas Council already have a need to balance the need to levy such contributions but only to an extent where development does not become stifled.

- In higher growth areas, such as Sydney, where land values are significantly higher it would appear that Option 3 would be an appropriate approach. This is typically reflective of circumstances whereby substantial changes in land use in brownfield areas result in one land use significantly replacing another dominant land use, for example, an industrial area transitioning into a residential area. Costs may be more akin to greenfield development in terms of provision of new infrastructure and more expensive given that the area is already established, albeit for a different use.

- On account of the above points, it is clear to Council that a flexible and multi-faceted approach is required in order to address the differing needs of Sydney compared to the remainder of NSW. Whilst this does not conform to the notion that consistency is required across jurisdictions, it does seek to recognise that Sydney has differing needs to the

regions. All too often regional NSW is captured via legislative change aimed at the Sydney basin resulting in poorer outcomes. The initial versions of the State Environmental Planning Policy (Exempt & Complying Development Codes) 2007 are an example of this, demonstrated by the fact that the SEPP resulted in reduced approval times in Sydney, but caused a significant decline in the use of Complying Development in many of the regions.

- Further to the above, the stagnant nature of the existing contributions threshold, coupled with rate pegging, should signal to the NSW Government that a more frequent or regular review and monitoring process should be established as a priority.

- The broader discussion is centred around infrastructure planning associated with new development, however Councils are also faced with funding shortfalls based upon the rising costs of infrastructure management associated with existing populations. An essential consideration for Council's infrastructure planning is maintenance and renewal, and income from land rates is insufficient to cover such costs. Council believes that a review of rate pegging within NSW should form part of the consideration around infrastructure provision

ITEM 3: CRITERIA TO REQUEST A HIGHER SECTION 7.12 PERCENTAGE

- Council thank DPIE for their initiative in undertaking this review.

- The current maximum 'standard' levy of 1% is considered to be insufficient in terms of its ability to generate funds for Council's to provide and subsequently maintain the level of community infrastructure and services expected in today's society. Whilst some of these expectations should be curbed, the NSW Government must also consider that the provision of many infrastructure and service types are aimed at enabling towns and cities to adapt to situations such as the 'heat island effect', where projects such as CBD upgrades don't just seek to provide better visual amenity, but also serve to make public spaces much safer in times of increasing climate variability.

- The principles for a higher maximum levy are too focussed on employment growth, and therefore restrict opportunities for many regional areas to capitalise on their ability to serve as satellite dormitories for larger centres. For instance, the Goulburn Mulwaree LGA is home to many residents who work in either South-Western Sydney or Canberra and commute, with some taking advantage of federal infrastructure such as the NBN to carry out work duties from home. The relative affordability of land and housing, together with a sought-after lifestyle help drive this behaviour, placing a greater importance on the need for Council's such as Goulburn Mulwaree to deliver well-resourced community infrastructure such as libraries, cultural hubs and recreation facilities. It is critical to the long-term sustainability of regional areas that this be acknowledged by the NSW Government, with consideration to be given towards additional principles for a higher maximum levy.

- The State Government itself is often a major developer in regional areas, but is generally exempt from paying 7.12 levies. It is the view of Council that development carried out by, or on behalf of the Crown, be subject to the imposition of the levy, or at the very least contribute to the provision of local infrastructure. Examples of this in Goulburn would be the Ambulance Centre, Hospital and associated car park and proposed Police Station.

- Councils across NSW are faced with funding shortfalls based upon the rising costs of infrastructure management associated with existing populations. An essential consideration

for Council's infrastructure planning is maintenance and renewal, and income from land rates is insufficient to cover such costs, with the gap increasing year on year. Council believes that a review of rate pegging within NSW should form part of the consideration around infrastructure provision.

ITEM 4: DRAFT SPECIAL INFRASTRUCTURE CONTRIBUTIONS GUIDELINES

- Goulburn Mulwaree Council does not meet the criteria in relation to Special Infrastructure Contributions, nor do our infrastructure requirements meet the NSW Government's criteria of being 'state or regionally significant'. It is recommended that no submission be made in relation to this discussion paper.

ITEM 5: PROPOSED AMENDMENTS TO THE *EP&A* REGULATION

- Council thank DPIE for their initiative in undertaking this review.

- The proposed amendments to the Environmental Planning & Assessment Regulation aim to improve transparency in the infrastructure contributions system through the expansion of reporting requirements in relation to contributions received, and how the contributions were expended. The amendments incorporate planning agreements into the improvements relating to reporting.

  There are currently limited reporting requirements for planning agreements, and the proposed amendments will provide greater transparency and ensure the long-term success of any planning agreement. Council is favourable to this aspect of the amendments as they will provide assistance in giving additional public confidence in the collection and use of contributions.

- Council supports the proposal to increase the reliance upon the use of Council's website as the primary source of public information. This also serves to underpin the improvements previously addressed whereby Council's level of reporting in relation to contributions will become much more transparent, and therefore provide the community with greater confidence in terms of how contributions are managed and spent.

- The amendments seek to streamline the process for making or amending a contributions plan. Any improvement in this space will be supported by Council. By simplifying the process, Council's should become more willing and able to carry out more regular reviews of their contributions plans. The current reality is that the process is too cumbersome and drawn out to make the carry out of this task a priority for most resource-limited Councils, particularly in rural and regional areas.

- Council supports the need to better demonstrate the reconciliation of contributions and levies in relation to how they've been collected and spent. In order to ensure that this information is being reported in a consistent manner across LGA boundaries, Council believes that it is DPIE's responsibility to provide Councils with the appropriate resources such as templates and administrative support to facilitate not only the change in practice, but more importantly drive the consistent approach that is required.

CONCLUSION

Council is on the edge of entering a new era in terms of its strategic planning direction, particularly with the impending adoption of the Urban and Fringe Housing Strategy The importance of developer contributions to Council therefore cannot be underestimated. The imposition of appropriate contributions and levies will be required in order to enable Council to deliver critical community infrastructure and to help drive the growth required to achieve projected population targets. Failing to do so could result in difficult decisions needing to be made in terms of continued community service and infrastructure provision.

It is therefore recommended that Council make a submission on each of the discussion papers, with the exception of the Draft Special Infrastructure Contributions Guidelines, in lines with the commentary provided within this report.

Planning agreements practice note

Exhibition draft

April 2020

NSW GOVERNMENT

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Contents

Preface

Planning agreements

This practice note provides guidance on matters relating to planning agreements, often referred to as voluntary planning agreements. It sets out the statutory framework for planning agreements and deals with issues such as the fundamental principles governing their use.

Legislative and regulatory framework

Part 7 Division 7.1 Subdivision 2 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) provides the legislative framework for planning agreements.

Part 4 Division 1A of the *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation) has further requirements relating to the making, amending and revocation of planning agreements, giving public notice and other procedural arrangements relating to planning agreements.

About this practice note

This practice note is made for the purposes of clause 25B (2) of the EP&A Regulation to assist parties in the preparation of planning agreements.

This practice note applies in accordance with the draft *Environmental Planning Assessment (Local Infrastructure Contributions) Direction 2020*.

Parties to proposed planning agreements which were publicly notified under section 7.5 (1) of the EP&A Act, but not finalised before the issue of this practice note, are not required to have regard to it. However, planning authorities may choose to consider parts of the practice note when finalising these planning agreements.

This practice note replaces the previous 'Practice Note – Planning Agreements' issued by the Director General of the then Department of Infrastructure, Planning, and Natural Resources in July 2005.

How to use this practice note

The practice note is structured as follows:

Part 1 provides the rationale for planning agreements.

Part 2 identifies and provides fundamental principles and policy considerations.

Part 3 sets out strategic considerations for when and how planning agreements can be used.

Part 4 provides guidance on the procedures and decision-making for application, negotiation and administration of planning agreements.

Part 5 provides examples of the use of planning agreements.

Affordable Housing Contributions

State Environmental Planning Policy No. 70 - Affordable Housing (Revised Schemes) (SEPP 70) is the enabling mechanism for securing affordable housing contributions. The preferred pathway for a council to secure contributions in relation to SEPP - Affordable Housing (Revised Schemes) is through preparing an affordable housing contribution scheme and amending the relevant local environmental plan. *Environmental Planning Assessment (Planning Agreements) Direction 2019* sets out the matters to be considered by council if negotiating a planning agreement which includes provision for affordable housing.

Mining Projects

This practice note does not apply to planning agreements for mining projects. However, councils and proponents can refer to Parts 1, 4 and 5, for guidance on use, process and governance, which is appropriate for all planning agreements.

Terminology

The following terminology is used to convey key concepts in relation to planning agreements:

- **development application** has the same meaning as in the EP&A Act
- **development consent** has the same meaning as in the EP&A Act
- **development contribution** means the provision made by a developer under a planning agreement, being a monetary contribution, the dedication of land free of cost or the provision of a material public benefit to be used for or applied towards a public purpose
- **planning authority** has the same meaning as in Division 7.1 of Part 7 of the EP&A Act, and means:
  - a council, or
  - the Minister for Planning, or
  - the Planning Ministerial Corporation, or
  - a development corporation (within the meaning of the *Growth Centres (Development Corporations) Act 1974*), or
  - a public authority
- **planning obligation** means an obligation imposed by a planning agreement on a developer requiring the developer to make a development contribution
- **planning proposal** has the same meaning as in the EP&A Act
- **public benefit** is the benefit enjoyed by the public as a consequence of a development contribution
- **public facilities** means public infrastructure, amenities and services

Updates to this practice note

This practice note will be periodically updated. More detailed information or guidance on specific matters in this practice note may also be the subject of future separate practice notes.

Part 1 Introduction

1.1 Purpose of planning agreements

Planning agreements are used widely in the planning system as a tool for delivering innovative or complex infrastructure and public benefit outcomes in connection with planning proposals and development applications.

They provide a way for planning authorities and developers to negotiate flexible outcomes in respect of development contributions and enable the NSW planning system to deliver sustainable development while achieving key economic, social and environmental objectives.

Planning agreements authorise development contributions for a variety of public purposes, some of which extend beyond the scope of section 7.11 and 7.12 (local infrastructure contributions), or section 7.24 (special infrastructure contributions) of the EP&A Act. For example, these additional purposes could include the recurrent funding of public facilities provided by councils, the capital and recurrent funding of transport, the protection and enhancement of the natural environment, and the monitoring of the planning impacts of development.

Planning agreements are negotiated between planning authorities and developers in the context of applications for changes to environmental planning instruments (planning proposals) or for consent to carry out development (development applications).

In many cases, the planning authority negotiating a planning agreement is also responsible for the exercise of statutory functions relating to the agreement, such as the Minister or a council having functions relating to the making of an instrument or the determination of a development application.

1.2 Rationale for planning agreements

Since the commencement of the *Environmental Planning and Assessment Amendment (Development Contributions) Act 2005*, the use of planning agreements has steadily grown across NSW. There is a range of reasons why the use of planning agreements has become widespread.

- Developers recognise that their own developments benefit from the provision of public facilities and are seeking greater involvement in determining the type, standard and location of these facilities.
- Planning agreements provide a flexible means of achieving tailored development outcomes and focused public benefits, including agreement by communities to the redistribution of the costs and benefits of development.
- Planning agreements can provide enhanced and more flexible infrastructure funding opportunities and better planning implementation.
- Planning agreements allow for the flexible delivery of infrastructure for a development proposal which may have good planning merit but be out of sequence with broader strategic planning processes.

Planning agreements provide a flexible framework under which the planning authorities can share responsibility for the provision of infrastructure in new release areas or in major urban renewal projects. They permit tailored governance arrangements and the provision of infrastructure in an efficient, co-operative and coordinated way.

Part 2 Principles and policy for planning agreements

2.1 Fundamental principles

Planning agreements must be governed by a set of policy principles that ensure transparency, fairness and flexibility of planning decisions. A planning agreement cannot and should not purport to fetter a planning authority's exercise of statutory functions, in particular the function of a relevant planning authority in relation to a planning proposal or as the consent authority for a development application.

A planning agreement related to a development application is one of several matters for consideration identified by the EP&A Act when a consent authority is determining a development application. Public benefits offered by developers do not make unacceptable development acceptable.

Planning authorities and developers that are parties to planning agreements should adhere to the following fundamental principles.

- Planning authorities should always consider a proposal on its merits, not on the basis of a planning agreement.
- Planning agreements must be underpinned by proper strategic land use and infrastructure planning carried out on a regular basis and must address expected growth and the associated infrastructure demand.
- Strategic planning should ensure that development is supported by the infrastructure needed to meet the needs of the growing population.
- The progression of a planning proposal or the approval of a development application should never be contingent on entering into a planning agreement.
- Planning agreements should not be used as a means of general revenue raising or to overcome revenue shortfalls.
- Planning agreements must not include public benefits wholly unrelated to the particular development.
- Value capture should not be the primary purpose of a planning agreement.

2.2 Public interest and probity considerations

It is critical to consider whether a planning agreement is in the public interest. Generally speaking, the public interest is directed towards ensuring planning controls are imposed fairly for the benefit of the community. In some cases, the public interest may be directed towards the need to mitigate adverse impacts of development on the public domain or towards providing a benefit to the wider community.

Planning agreements are matters of public interest and this is a relevant consideration in negotiating outcomes. The negotiation of planning agreements involves the use of discretion on both sides, giving planning authorities and developers room to accommodate subjective values and varying concepts of the public and private interests.

The ability for a planning agreement to wholly or partly exclude the application of other infrastructure contributions gives a planning authority scope for tradeoffs under an agreement. This means that the financial, social and environmental costs and benefits of development can be redistributed through a planning agreement.

However, there is no guarantee that these costs and benefits will be equitably distributed within the community and what may be a specific benefit to one group in the community may be a loss to another group or the remainder of the community. As such, best practice principles, policies and procedures should be implemented as safeguards to protect the public interest and the integrity of the planning process. These are discussed in *2.6 Policies and procedures for planning agreements*.

If probity and public interest are not considered, planning agreements may produce undesirable outcomes, including where:

- A planning authority seeks inappropriate benefits through a planning agreement because of opportunism or to overcome revenue-raising or spending limitations that exist elsewhere.
- A planning authority has not undertaken appropriate infrastructure planning as part of strategic land use planning, resulting in growth being poorly aligned with infrastructure planning and funding, infrastructure demand and costs relating to infrastructure operation.
- There is insufficient analysis of the likely planning impacts of a proposed development because a planning authority is determined to enter into, or to give effect, to a planning agreement.
- A planning authority allows the interests of individuals or small groups to demand benefits, which otherwise outweigh the public interest.
- A planning authority takes advantage of an imbalance of bargaining power between the planning authority and developer, for example by improperly relying on its statutory position in order to extract unreasonable public benefits under a planning agreement.
- A planning authority's bargaining power is compromised, or its decision-making freedom appears to be fettered by a planning agreement.

The potential for misuse also exists where a planning authority, acting as consent authority or in another regulatory capacity for development, is both party to a planning agreement and a development joint venture partner under the agreement, for example as a landowner. Special safeguards, such as the use of an independent third party in the development assessment process, would be appropriate in such circumstances.

Considerations for public participation

Public participation in the planning agreement process is important to ensure the community has an opportunity to provide input into decisions being made relating to public benefit and development. Planning agreements redistribute the costs and benefits of a development, and it is critical the public can comment on whether they think the balance between development and public benefit is achieved successfully. Public participation processes are discussed in *4.5 Public participation and notification.*

2.3 Value capture

The term value capture is widely used and covers several different practices; this practice note does not attempt to define or discuss them all. In general, the use of planning agreements for the primary purpose of value capture is not supported as it leads to the perception that planning decisions can be bought and sold and that planning authorities may leverage their bargaining position based on their statutory powers.

Planning agreements should not be used explicitly for value capture in connection with the making of planning decisions. For example, they should not be used to capture land value uplift resulting from rezoning or variations to planning controls. Such agreements often express value capture as a monetary contribution per square metre of increased floor area or as a percentage of the increased value of the land. Usually the planning agreement would only commence operation as a result of the rezoning proposal or increased development potential being applied.

2.4 Relationship with development applications and planning proposals

Development applications

When determining a development application, the consent authority is required by the EP&A Act to take into consideration any relevant planning agreement or draft agreement that has been entered into. The consent authority is also required to take into consideration any public submissions made in respect of the development application, which may include submissions relating to a planning agreement.

Planning proposals

The EP&A Act requires a planning authority to state the objectives and outcomes of a planning proposal, and to describe and justify the process by which they will be achieved. The role of a planning agreement in facilitating these objectives or outcomes should be clearly set out in the planning proposal documentation.

Nexus

Development contributions provided for in a planning agreement are not required to bear the same nexus with development as required for section 7.11 local contributions. Because planning agreements are voluntary and facilitate public benefits, they can allow for a wider consideration of the costs and benefits of development, subject to the fundamental principles discussed in Part 2.1. However, planning agreements should provide for public benefits that are not wholly unrelated to development.

Varying development standards

Benefits provided under a planning agreement must not be exchanged for a variation from a development standard under any circumstances. Variations to development standards under Clause 4.6 of the Standard Instrument LEP or SEPP1 must be justified on planning grounds, and the benefit under the agreement should contribute to achieving the planning objective of the development standard.

Conditions of development consent

Planning authorities and developers must make a judgement in each case about whether negotiation of a planning agreement is beneficial and otherwise appropriate. However, planning agreements should not be used to require compliance with or restate obligations imposed by conditions of development consent.

2.5 Acceptability test

Planning agreements should be assessed against the test below which is a generally applicable test for determining the acceptability of a planning agreement.

The acceptability test requires that planning agreements:

- Are directed towards legitimate planning purposes, that can be identified in the statutory planning controls and other adopted planning strategies and policies applying to development.
- Provide for the delivery of infrastructure or public benefits not wholly unrelated to the development.
- Produce outcomes that meet the general values and expectations of the public and protect the overall public interest.
- Provide for a reasonable means of achieving the desired outcomes and securing the benefits.
- Protect the community against adverse planning decisions.

2.6 Policies and procedures for planning agreements

Councils are strongly encouraged to publish policies and procedures concerning their use of planning agreements. Best practice principles, policies and procedures should be implemented as safeguards to protect the public interest and the integrity of the planning process.

These safeguards are to protect against the misuse of planning discretions and processes, which may seriously undermine good planning outcomes and public confidence in the planning system. They should ensure that planning decisions are exercised openly, honestly and freely in any given case and fairly and consistently across the board.

Policies applying to the use of planning agreements should:

- Provide a generally applicable test for determining the acceptability of a planning agreement (see 2.5 Acceptability Test).
- Contain specific measures to protect the public interest and prevent misuse of planning agreements.
- Have published and accessible rules and procedures.
- Provide for effective formalised public participation.
- Extend fairness to all parties affected by a planning agreement.
- Guarantee regulatory independence of the planning authority.

Policies and procedures prepared by planning authorities should incorporate the contents of this practice note and the following considerations:

- How the use of planning agreements aligns with any relevant district and regional strategic plans and policies.
- How the use of planning agreements fits within the context of the planning authorities' broader organisational strategic planning and land use planning policies, goals, and strategies.
- The circumstances in which the planning authority would consider entering into a planning agreement.
- The land use planning and development objectives that are sought to be promoted or addressed by the use of planning agreements.
- The role served by planning agreements in the development contributions and infrastructure funding systems of the planning authority.
- The types of development to which planning agreements will ordinarily apply, and how their use may be differentiated between different types of development.
- Whether any thresholds apply to the use of planning agreements in relation to particular types of development or in particular circumstances.
- The matters ordinarily covered by a planning agreement.
- The form of development contributions ordinarily sought under a planning agreement.
- The kinds of public benefits sought.
- The method for determining the value of public benefits.
- Whether money paid under different planning agreements is to be pooled and progressively applied towards the provision of public benefits to which the different agreements relate.
- When, how and where public benefits will be provided.
- The procedures for negotiating and entering into planning agreements.
- The planning authority's policies on other matters relating to planning agreements, such as review and modification, discharging of the developer's obligations under agreements, dispute resolution and enforcement mechanisms, and payment of costs relating to the preparation, negotiation, execution, monitoring and other administration of agreements.

Part 3 Strategic considerations when using planning agreements

3.1 When to use planning agreements

This section provides guidance and strategic considerations on when to use planning agreements. Planning agreements should meet the considerations set out in *2.1 Fundamental principles and 2.5 Acceptability test* and should comply with the specific requirements in this section to the fullest extent possible. Whether a planning agreement is acceptable and reasonable can only be judged in the circumstances of the case and considering State, regional or local planning policies.

Planning agreements have the potential to be used in a wide variety of circumstances. For example, they may be an appropriate contribution mechanism:

- In major development sites or precincts that are owned by a single land owner or a consortium of land owners.
- Where the developer has a direct incentive, such as bringing forward potential development, to be involved in the delivery of community infrastructure.
- Where the developer wants to provide community infrastructure in addition to, or at a higher standard than, what has been specified under the contributions plan.
- Where a council and the developer negotiate a different and better or more innovative outcome than can be achieved through imposing direct or indirect contributions.
- Where a proposed development has not been anticipated by local council and thus works and facilities to cater for this development have not been identified. A planning agreement can be prepared to specifically target the needs of the development.

Objectives of planning agreements

The objectives of planning agreements will be dictated by the circumstances of each case and the policies of planning authorities in relation to their use. However, as a general indication, planning agreements may be directed towards achieving the following broad objectives:

- Meeting the demands created by the development for new or augmented public infrastructure, amenities and services.
- Securing off-site benefits for the community so that development delivers a net community benefit.
- Compensating for the loss of or damage to a public amenity, service, resource or asset by development through replacement, substitution, repair or regeneration.

Relationship to other contributions mechanisms

Planning agreements should complement other contribution mechanisms. They can be used to deliver infrastructure outcomes for which these contributions are required, or additional public benefit. Planning agreements should not be used as de facto substitutes for contributions plans.

There is a clear legislative, regulatory and policy framework supporting contributions plans which does not apply to planning agreements. Where there is need for public infrastructure across a development area with a range of land owners, a contributions plan is likely to be more appropriate because it simplifies transactions and is underpinned by clear strategic planning.

Planning agreements may be used to overcome past deficiencies in infrastructure provision that would otherwise prevent development from occurring. This may involve the conferring of a public benefit under the agreement.

3.2 Land use and strategic infrastructure planning

This section provides advice on how planning agreements can support broader strategic infrastructure planning, particularly in areas where there is significant growth, and where a planning agreement may be associated with a planning proposal.

Land use planning should occur concurrently with strategic infrastructure planning to ensure that built form provisions and infrastructure contributions deliver both appropriate urban forms and contributions related to the development.

Strategic infrastructure planning should be undertaken regularly and address expected growth, infrastructure demand resulting from this growth, and the apportioned cost of these infrastructure provisions. Planning agreements should be used towards public benefits that are in accordance with the council's infrastructure planning and funding policies and strategies. Planning agreements should not be used as a substitute to proper strategic infrastructure planning.

Local Strategic Planning Statements

Local strategic planning statements set out the 20-year vision for land use in the local area, including how change will be managed into the future. These statements need to align with the regional and district plans, and council's own priorities in the community strategic plan it prepares under the *Local Government Act 1993*. The statements identify the planning priorities for an area and explain how these are to be delivered.

In this regard, local strategic planning statements will identify upfront the strategic planning priorities and infrastructure needs for an area, which should be reflected in planning agreements that demonstrate a comprehensive approach to infrastructure planning and funding.

Impact of planning proposals

There may be circumstances where a developer lodges a planning proposal that was not anticipated at the time the local strategic planning statement was prepared. It is common site-specific planning proposals in locations where development had not been anticipated to be accompanied by offers to enter into planning agreements. While it is appropriate that applications for more intensive development also consider opportunities for public benefit associated with development, this must be in a way that is mutually agreeable between the planning authority and the developer.

Planning authorities must ensure that adequate infrastructure is available to support the development, that the community can be confident in the integrity of the planning decision and that the planning authority is not improperly relying on its statutory role to extract unreasonable contributions.

Site specific planning proposals must not be prioritised on the basis they provide an opportunity for public benefits. Public benefits to be delivered by development should not be wholly unrelated to the development and the costs should be clearly set out and justified in the planning agreement. It is important that planning agreements in relation to planning proposals complement a comprehensive approach to infrastructure planning and funding.

Part 4 Procedures and decision making

4.1 Basic procedures for entering into a planning agreement

Planning agreements may be negotiated between planning authorities and developers in relation to development applications or changes sought by developers to environmental planning instruments. Where possible, planning agreements should be negotiated between planning authorities and developers before a related development application or planning proposal is made so that it may be accompanied by the draft agreement. The steps below are provided for general guidance and are indicative only. The actual steps taken in negotiating each specific planning agreement may differ.

Indicative steps for planning agreements

Step 1 Commencement. Before making a development application or submitting a planning proposal, the planning authority and developer decide whether to negotiate a planning agreement. In making this decision consideration should be given to this practice note, relevant legislation and any relevant policies. The parties consider whether other planning authorities and other persons associated with the development should be additional parties to the agreement, such as the landowner if the landowner is a different person to the developer.

Step 2 Negotiation. If an agreement is negotiated, it is documented as a draft planning agreement with an accompanying explanatory note. The draft planning agreement should be assessed against the acceptability test outlined in this practice note. The parties should consider how the planning agreement will be enforced and when the planning agreement will be executed, as this will inform the security provisions and conditions of the agreement. Legal advice should be sought in each case to ensure that the appropriate conditions are imposed on the planning agreement.

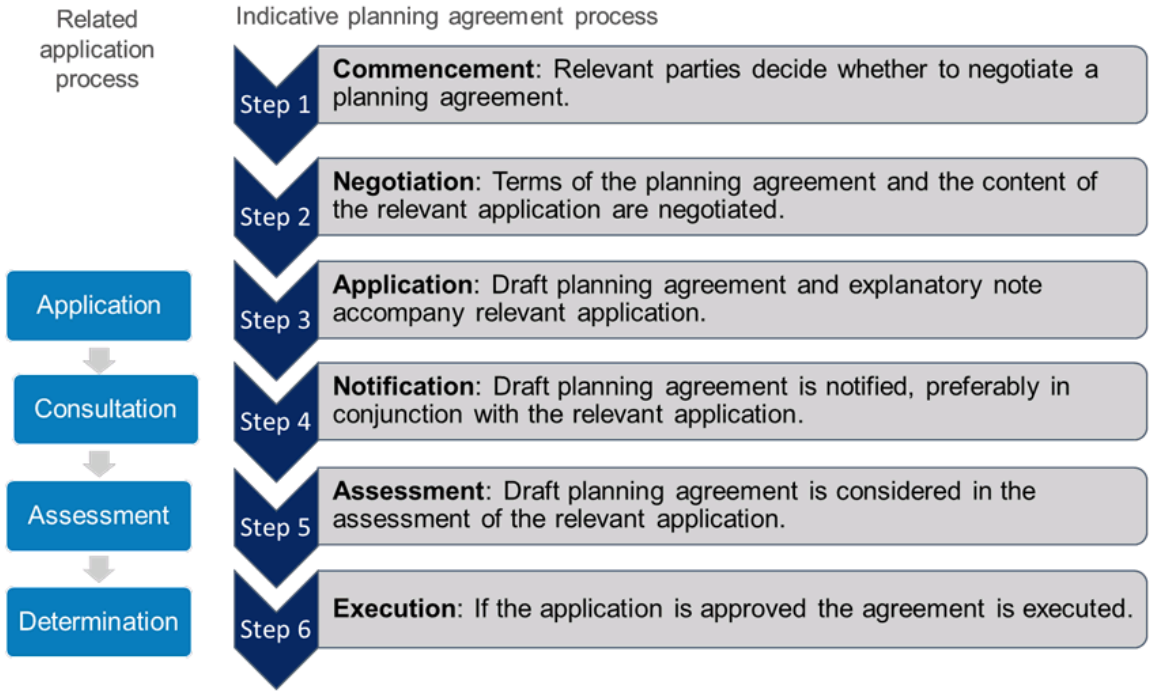
Step 3 Application. When the developer makes the application to the relevant authority, it should be accompanied by the draft planning agreement that has been signed by the developer and the explanatory note.

Step 4 Notification. Relevant public authorities are consulted and the application, draft planning agreement and explanatory note are publicly notified in accordance with the EP&A Act and EP&A Regulation. Any amendments required to the application and draft agreement as a result of submissions received are made. If necessary, the amended application, draft planning agreement and explanatory note are renotified.

Step 5 Assessment. The draft planning agreement and public submissions are considered in the determination of the related application. The weight given to the draft agreement and public submissions is a matter for the relevant authority acting reasonably.

Step 6 Execution. The development application or planning proposal is determined by the approval authority. The planning agreement is generally executed at this stage.

Figure 1 – Indicative planning agreement process and related application process



4.2 Offer and negotiation

Offer to enter into a planning agreement

The EP&A Act does not define what constitutes an 'offer' for the purpose of section 7.7(3) of the EP&A Act. However, an offer should:

- Be in writing.
- Be addressed to the planning authority to whom it is made.
- Be signed by or on behalf of all parties to the proposed planning agreement other than the planning authority to whom the offer is made.
- Outline in sufficient detail the matters required to be included in a planning agreement as specified in s7.4 (3) of the EP&A Act to allow proper consideration of the offer by the planning authority.
- Address in sufficient detail any relevant matters required to be included in an offer as specified in any applicable planning agreements policy published by the planning authority to whom the offer is made to allow proper consideration by the planning authority.
- Outline in sufficient detail all other key terms and conditions proposed to be contained in the planning agreement to allow proper consideration by the planning authority.

A consent authority cannot refuse to grant development consent on the grounds that a planning agreement has not been entered into in relation to the proposed development or that the developer has not offered to enter into such an agreement.

However, if a developer has offered to enter into a planning agreement in connection with the development application or a change to an environmental planning instrument, then a consent

authority is authorised to require a planning agreement to be entered into in the terms of the offer as a condition of development consent.

Efficient negotiation systems

Planning authorities, particularly councils, should implement fast, predictable, transparent and accountable negotiation systems for planning agreements. Negotiation of planning agreements should not unnecessarily delay ordinary planning processes and should run in parallel with applications to change environmental planning instruments or development applications. This includes through pre-application negotiation in appropriate cases. Negotiation should be based on principles of co-operation, full disclosure, early warning, and agreed working practices and timetables.

Involvement of independent third parties

Independent third parties can be used in a variety of situations involving planning agreements. Planning authorities and developers are encouraged to make appropriate use of them during negotiation. Including where:

- An independent assessment of a proposed change to an environmental planning instrument or development application is necessary or desirable.
- Factual information requires validation.
- Sensitive financial or other confidential information must be verified or established in the course of negotiations.
- Facilitation of complex negotiations is required for large projects or where numerous parties or stakeholders are involved.
- Dispute resolution is required.

Dispute resolution

Different kinds of dispute resolution mechanisms may suit different disputes and this should be reflected in a planning agreement. For example, mediation may be suitable to deal with disputes arising from grievances, while expert determination may be suitable to resolve disputes of a technical nature and arbitration may be suitable for resolving commercial disputes.

4.3 Costs and charges

Costs

There is no comprehensive policy on the extent to which a planning authority may recover costs for negotiating, preparing, executing, registering, monitoring, enforcing and otherwise administering planning agreements. Wherever possible, planning authorities and developers should negotiate and agree costs at the earliest opportunity.

GST considerations

Both parties to a planning agreement have a potential GST liability and they should obtain advice in every case on whether a potential GST liability attaches to the agreement.

Recurrent costs and maintenance payments

Planning agreements may require developers to make contributions towards the recurrent costs of facilities that primarily serve the development to which the planning agreement applies or neighbouring development in perpetuity. However, where the facilities are intended to serve the

wider community, planning agreements should only require the developer to make contributions towards the recurrent costs of the facility until a public revenue stream is established to support the on-going costs of the facility.

Pooling of monetary contributions

Planning authorities should disclose to developers, and planning agreements should specifically provide, that monetary contributions paid under different planning agreements are to be pooled and progressively applied towards the provision of public benefits that relate to the various agreements. Pooling may be appropriate to allow public benefits, particularly essential infrastructure, to be provided in a fair and equitable way.

While planning agreements allow for pooling of funds, if significant pooling is required the planning authority should consider if a s7.11 infrastructure contributions plan would be appropriate.

Refunds

Planning agreements may provide that refunds of monetary development contributions made under the agreement are available if public benefits are not provided in accordance with the agreement.

4.4 Registration and administration

Standard form planning agreements

Planning authorities are encouraged to publish and use standard form planning agreements or standard clauses for inclusion in planning agreements in the interests of process efficiency. Planning authorities are encouraged to use the template planning agreement (Attachment A).

Documentation of planning agreements

The parties to a planning agreement should agree on which party is to draft the agreement to avoid duplication of resources and costs.

Councils are required to keep and make available a register of planning agreements. The register should be made available online or incorporated into the online planning register of the planning authority's website.

Monitoring and review of planning agreements

Planning authorities should use standardised systems to monitor the implementation of planning agreements in a systematic and transparent way. This may involve co-operation by different parts of planning authorities.

Monitoring systems should enable information about the implementation of planning agreements to be made readily available to public agencies, developers and the community. Planning agreements should contain a mechanism for their periodic review that should involve the participation of all parties.

Security for enforcement of developer's obligations

Parties should consider the means by which a planning agreement may be enforced. The most suitable means of enforcement may depend on:

- The circumstances of the planning agreement.
- The nature and extent of the developer's obligations under the planning agreement.

- The planning authority's reasonable assessment of the risk and consequences of non-performance.

Tying the performance of the developer's obligations to the issuing of construction or subdivision certificates may provide a suitable means of enforcing planning agreement obligations in some cases. The EP&A Act and the EP&A Regulation restrict the issuing of a construction certificate or subdivision certificate by a certifier until any preconditions to the issuing of the certificate specified in a planning agreement have been complied with. Where adopting this approach, consider including provisions to allow a developer to provide a financial security, such as a bond or bank guarantee, if they subsequently seek release of a certificate before completing the required obligations. This will avoid the need to amend the planning agreement.

Some planning agreements require land to be dedicated to the planning authority. It may be suitable for the planning agreement to contain a pre-acquisition agreement for the purposes of the *Land Acquisition (Just Terms Compensation) Act 1991* enabling the planning authority to compulsorily acquire the land to be dedicated for nominal or an agreed value in the event of default by the developer.

Financial security, such as a bond or bank guarantee, can be a suitable means of enforcement where a planning agreement requires the carrying out of works by the developer. Financial security can be called on by the planning authority in the event of default, coupled with step-in rights by the planning authority. The value of the financial security should relate to the potential costs that may be incurred by the planning authority in carrying out the relevant works obligations of the developer in the event of default by the developer.

Financial security or additional financial security may also be appropriate where the developer seeks to postpone obligations under a planning agreement to a time later than the time originally specified for performance. An amendment to the planning agreement would ordinarily be required in such circumstances unless the planning agreement already makes provision for such an arrangement.

Registration on title

Registration is important to inform people of the existence of a planning agreement affecting the land and for the enforcement of a planning agreement. Registration on title may bind future owners of the land to the agreement. There is no requirement that a planning agreement must be registered over the whole of the land covered by the agreement.

To ensure that the intention of the parties to register the planning agreement is not defeated, the developer should get written agreement to the registration from each person with an estate or interest in the land to which the planning agreement applies. This should be provided to the planning authority as a precondition to the execution of the planning agreement.

Provision should be made in a registered planning agreement about when the notation of the planning agreement on the title to land can be removed. For example, when:

- The developer has complied with all obligations under the planning agreement relating to the land and is discharged from the planning agreement.
- The developer has complied with all relevant obligations under the planning agreement relating to a stage of development and the notation about that stage in the planning agreement on the title to the land is removed.

- Land the subject of the planning agreement is subdivided and titles for new lots are created and the developer has complied with all relevant planning agreement obligations relating to the subdivision.
- Additional valuable security for performance of the planning agreement acceptable to the planning authority is provided by the developer in exchange for removal of the registration of the planning agreement from the title to land.

Discharge of developer's obligations

Planning agreements should not impose obligations on developers indefinitely. Planning agreements should set out the circumstances in which the parties agree to discharge the developer's obligations under the agreement.

4.5 Public participation and notification

Planning agreements must be publicly notified and made available for public inspection before they can be entered into.

The EP&A Regulation requires that the notification of a proposed planning agreement occurs at the same time as the planning proposal or development application, or if this is not practicable, as soon as possible after.

The terms of the planning agreement and its proposed public benefits should be clearly shown as part of consultation material. This will help the community make a fully informed decision on the overall proposal.

Planning agreements must be accompanied by an explanatory note to assist the public in understanding the agreement. Other types of consultation material are encouraged in addition to the explanatory note. This might include additional written material, diagrams or plans.

Amendment to proposed planning agreement after public notification

Any material changes that are proposed to be made to a planning agreement after a public notice has been given should be subject to renotification if the changes would materially affect:

- How any of the matters specified in section 7.4 of the EP&A Act are dealt with by the planning agreement.
- Other key terms and conditions of the planning agreement.
- The planning authority's interests or the public interest under the planning agreement.
- Whether a non-involved member of the community would have made a submission objecting to the change if it had been publicly notified.

4.6 Explanatory notes

Planning agreements are legal documents and may not be easily understood by the public. An explanatory note can help the public understand a planning agreement and facilitate informed discussion. The EP&A Regulation requires that an explanatory note is provided with the public notice of a planning agreement and it is to be prepared having regard to this practice note.

The explanatory note is to be prepared jointly with the other parties proposing to enter into the planning agreement. However, if two or more planning authorities propose to enter into a planning agreement, an explanatory note may include separate assessments prepared by the planning

authorities in relation to matters affecting only one of the planning authorities or affecting those planning authorities in a different manner.

In practice, the explanatory note can be prepared by one of the parties but should be reviewed and agreed on by any other party to the agreement.

The explanatory note must help the broader community to simply and clearly understand what a planning agreement is proposing, how it delivers public benefit, and why it is acceptable and in the public interest. It should be easy to understand, written in plain English and address all considerations outlined in this practice note.

The explanatory note must:

- Identify how the agreement promotes the public interest.
- Identify whether the agreement conforms with the planning authority's capital works program, if any.
- State whether the agreement specifies that certain requirements of the agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued.

It should be possible for a person to be able to readily understand the nature of the development proposed and the public benefits to be provided. The explanatory note should indicate timing of delivery and should include maps, diagrams and other material to help explain what is proposed.

A template is also attached to guide councils in the preparation of explanatory notes (Attachment B). It includes model content to be adopted and adapted by councils in accordance with related guidance in this practice note.

Part 5 Examples of the use of planning agreements

Planning agreements have the potential to be used in a wide variety of planning circumstances and to achieve many different planning outcomes. Their use will be dictated by the circumstances of individual cases and the policies of planning authorities. Accordingly, it is not possible to set out all the circumstances in which a planning agreement may be appropriately entered into.

Below are some examples of the potential scope and application of planning agreements.

Compensation for loss or damage caused by development

Planning agreements can provide for development contributions that compensate for increased demand on the use of a public amenity, service, resource or asset that will or is likely to result from the carrying out the development.

For example, development may result in the loss of or increased impact on the provision of public open space, public car parking, public access, water and air quality, bushland, wildlife habitat or other natural areas.

The planning agreement could impose planning obligations directed towards replacing, substituting, or restoring the public amenity, service, resource or asset to an equivalent standard to that existing before the development is carried out.

In this way, planning agreements can offset development impacts that may otherwise be unacceptable.

Meeting demand created by development

Planning agreements can also provide for development contributions that meet the demand for new public infrastructure, amenities and services created by development. For example, development may create a demand for public transport, drainage services, public roads, public open space, streetscape and other public domain improvements, community and recreational facilities.

The public benefit provided under the agreement could be the provision, extension or improvement of public infrastructure, amenities and services to meet the additional demand created by the development. An agreement may be used to meet the requirements set out in a contributions plan in relation to certain land, or, potentially in the case of a large development area being delivered by one or a small number of developers, provide public amenities and services in lieu of preparing a contributions plan.

Prescribing inclusions in development

Planning agreements can be used to secure the implementation of particular planning policies by requiring development to incorporate particular elements that confer a public benefit.

Examples include agreements that require the provision of public facilities, open space or the retention of urban bushland. Agreements may also require development, in the public interest, to meet aesthetic standards, such as design excellence.

Providing benefits to the wider community

Planning agreements can also be used to secure the provision of broader benefits for the wider community. Broader benefits provided through planning agreements involve an agreement between a developer and a planning authority to allow the wider community to share in benefits resulting from the development. The benefit may be provided in conjunction with planning

obligations or other measures that address the impacts of the development on surrounding land or the wider community.

Alternatively, the benefit could wholly or partly replace such measures if the developer and the planning authority agree to a redistribution of the costs and benefits of development in order to allow the wider community, the planning authority and the developer to realise their specific preferences for the provision of public benefits.

Broader benefits may take the form of additional or better-quality public facilities than is required for a particular development. Alternatively, benefits may involve the provision of public facilities that, although not strictly required to make the development acceptable in planning terms, are not wholly unrelated to the development.

Recurrent funding

Planning agreements may provide for public benefits that take the form of development contributions towards the recurrent costs of infrastructure, facilities and services. Such benefits may relate to the recurrent costs of items that primarily serve the development to which the planning agreement applies or neighbouring development. In such cases, the planning agreement may establish an endowment fund managed by a trust, to pay for the recurrent costs of the relevant item.

For example, a planning agreement may fund the recurrent costs of water quality management in respect of development that will have a demonstrated impact on a natural watercourse that flows through or nearby to the development.

Broader benefits may also take the form of interim funding of the recurrent costs of infrastructure, facilities and services that will ultimately serve the wider community. The planning agreement would only require the developer to make such contributions until a public revenue stream is established to support the on-going costs of the facility.

Biodiversity offsetting

A planning agreement may fund the recurrent costs of habitat protection where development will trigger the Biodiversity Offsets Scheme under the *Biodiversity Conservation Act 2016*. Where planning agreements are used in this manner, they must adhere to the processes identified in Part 6 of the *Biodiversity Conservation Regulation 2017*.

This includes the implementation of a biodiversity stewardship agreement on the land that has been identified, which will include identifying the status on title and create a traceable alignment of obligations on all parties. A condition of the planning agreement must include fully funding the required total fund deposit value relevant for the biodiversity stewardship agreement and site, as a monetary contribution indexed accordingly.

The total fund deposit pays for the management actions identified in the biodiversity stewardship agreement to be undertaken in-perpetuity. The value of the total fund deposit is determined when the biodiversity stewardship agreement is entered into.

Attachment A – Template planning agreement

PLANNING AGREEMENT

Parties

of ##, New South Wales (**Council**)

and

of ##, New South Wales (**Developer**).

Background

(For Development Applications)

A. On, ##, the Developer made a Development Application to the Council for Development Consent to carry out the Development on the Land.

B. That Development Application was accompanied by an offer by the Developer to enter into this Agreement to make Development Contributions towards the Public Facilities if that Development consent was granted.

(For Changes to Environmental Planning Instruments)

A. On, ##, the Developer made an application to the Council for the Instrument Change for the purpose of making a Development Application to the Council for Development Consent to carry out the Development on the Land.

B. The Instrument Change application was accompanied by an offer by the Developer to enter into this Agreement to make Development Contributions towards the Public Facilities that Development Consent was granted.

C. The Instrument Change was published in NSW Government Gazette No. ## on ## and took effect on ##.

D. On, ##, the Developer made a Development Application to the Council for Development Consent to carry out the Development on the Land.

Operative Provisions

1 Planning agreement under the Act

The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 7.1 of Part 4 of the Act.

Application of this Agreement

[*Drafting Note* 2: Specify the land to which the Agreement applies and the development to which it applies]

Operation of this Agreement

[*Drafting Note* 3: Specify when the Agreement takes effect and when the Parties must execute the Agreement]

Definitions and interpretation

In this Agreement the following definitions apply:

Act means the *Environmental Planning and Assessment Act 1979* (NSW).

Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

Development means ##

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost or the provision of a material public benefit.

GST has the same meaning as in the GST Law.

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and any other Act or regulation relating to the imposition or administration of the GST.

Instrument Change means ## Local Environmental Plan ##.

Land means Lot ## DP ##, known as ##.

Party means a party to this agreement, including their successors and assigns.

Public Facilities means ##.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

Headings are inserted for convenience only and do not affect the interpretation of this Agreement.

A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.

If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.

A reference in this Agreement to dollars or $ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.

A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.

A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.

A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.

An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.

Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.

References to the word 'include' or 'including are to be construed without limitation.

A reference to this Agreement includes the agreement recorded in this Agreement.

A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.

Any schedules and attachments form part of this Agreement.

Development Contributions to be made under this Agreement

[*Drafting Note* 5: Specify the development contributions to be made under the agreement; when they are to be made; and the manner in which they are to be made]

Application of the Development Contributions

[Specify the times at which, the manner in which and the public purposes for which development contributions are to be applied]

Application of s7.11 and s7.12 of the Act to the Development

[*Drafting Note* 7: Specify whether and to what extent s7.11 and s7.12 apply to development the subject of this Agreement]

Registration of this Agreement

[*Drafting Note* 8: Specify whether the Agreement is to be registered as provided for in s7.6 of the Act]

Review of this Agreement

[*Drafting Note* 9: Specify whether, and in what circumstances, the Agreement can or will be reviewed and how the process and implementation of the review is to occur].

Dispute Resolution

[*Drafting Note* 10: Specify an appropriate dispute resolution process]

Enforcement

[*Drafting Note* 11:Specify the means of enforcing the Agreement]

Notices

Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

Delivered or posted to that Party at its address set out below.

Faxed to that Party at its fax number set out below.

Emailed to that Party at its email address set out below.

Council

Attention: ##

Address: ##

Fax Number: ##

Email: ##

Developer

Attention: ##

Address: ##

Fax Number: ##

- Email: ##

If a Party gives the other Party 3 business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

Any notice, consent, information, application or request is to be treated as given or made at the following time:

If it is delivered, when it is left at the relevant address.

If it is sent by post, 2 business days after it is posted.

If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

Approvals and consent

Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

Assignment and Dealings

[*Drafting Note* 14: Specify any restrictions on the Developer's dealings in the land to which the Agreement applies and the period during which those restrictions apply]

Costs

[*Drafting Note* 15: Specify how the costs of negotiating, preparing, executing, stamping and registering the Agreement are to be borne by the Parties]

Entire agreement

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

Further acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

Governing law and jurisdiction

This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

Joint and individual liability and benefits

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

No fetter

Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

Representations and warranties

The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

Severability

If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

Modification

No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

Waiver

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

GST

If any Party reasonably decides that it is liable to pay GST on a supply made to the other Party under this Agreement and the supply was not priced to include GST, then recipient of the supply must pay an additional amount equal to the GST on that supply.

Execution

Dated: ##

Executed as an Agreement: ##

Attachment B – Template explanatory note

Explanatory Note Template

Environmental Planning and Assessment Regulation 2000 (Clause 25E)

Explanatory note for planning agreements under section 7.4 of the Environmental Planning and Assessment Act 1979

1. Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of the draft planning agreement (the **planning agreement**). This explanatory note explains what the planning agreement is proposing, how it delivers public benefit and whether it is an acceptable means of achieving the proposed planning outcomes.

2. **The parties to this planning agreement are:**

[Planning authority name] as the planning authority

[Developer name] as the developer

3. The land subject to the planning agreement is:

Lot and deposited plan	Address or description of location

A map of the subject land is attached to this explanatory note.

Will the planning agreement be registered on the subject land titles? Yes / No

4. Description of the proposed [development application/application for complying development certificate / change to the environmental planning instrument] *(delete as appropriate)*

The developer is seeking approval for subdivision of the subject land into approximately **[xx]** residential lots / approval for development of approximately [xx] dwellings in accordance with Development Application **[DA reference]** and has made an offer to enter into the planning agreement in connection with the proposed development.

OR

The developer is seeking an amendment to the planning controls for the subject land in accordance with Planning Proposal **[PP reference]** and has made an offer to enter into a planning agreement in connection with the planning proposal. The amendments outlined in the related planning proposal are:

	Current	Proposed
Zone		
Floor space ratio		
Max height		
Dwelling yield		
Non-residential floor space		
(add others as appropriate)		

Note: Provide new tables for separate lot/DP where appropriate (e.g. if the existing zones, or proposed planning controls are different between each lot.)

5. Description of the planning agreement *(delete as appropriate)*

The objectives of the planning agreement are **[describe]**. The effect of the planning agreement will be **[describe]**.

Will the contributions be in the form of land, works or a monetary contribution?

The contributions required by the planning agreement will be provided in the form of a monetary contribution paid to **[describe]**. The contribution is for approximately **[$xxx per lot / $xxxx for the subject land]**.

OR

The contributions required by the planning agreement will be provided in the form of works undertaken by the Developer. The scope of works is **[describe works]**.

OR

The contributions required by the planning agreement will be provided in the form of dedication of land **[describe land]**. A map of the proposed land to be dedicated is attached to this explanatory note.

Will the contributions be provided in addition to or in lieu of other contributions?

The contributions required by the planning agreement will be provided in addition to contributions under **[relevant contributions plan]**.

OR

The contributions required by the planning agreement will be provided in lieu of the contributions under **[relevant contributions plan]**, which would have required the development to contribute $**[xxx]**.

OR

The contributions required by the planning agreement will be provided partially in lieu of the contributions under **[relevant contributions plan]**, which would have required the development to contribute $**[xxx]**. The planning agreement will reduce the payment under the local contributions plan to $**[xxx]**.

When will the contributions be provided?

The contributions required by the planning agreement will be provided before **[describe timeframe for provision, whether the provision will be linked to the release of subdivision/construction certificates etc]**.

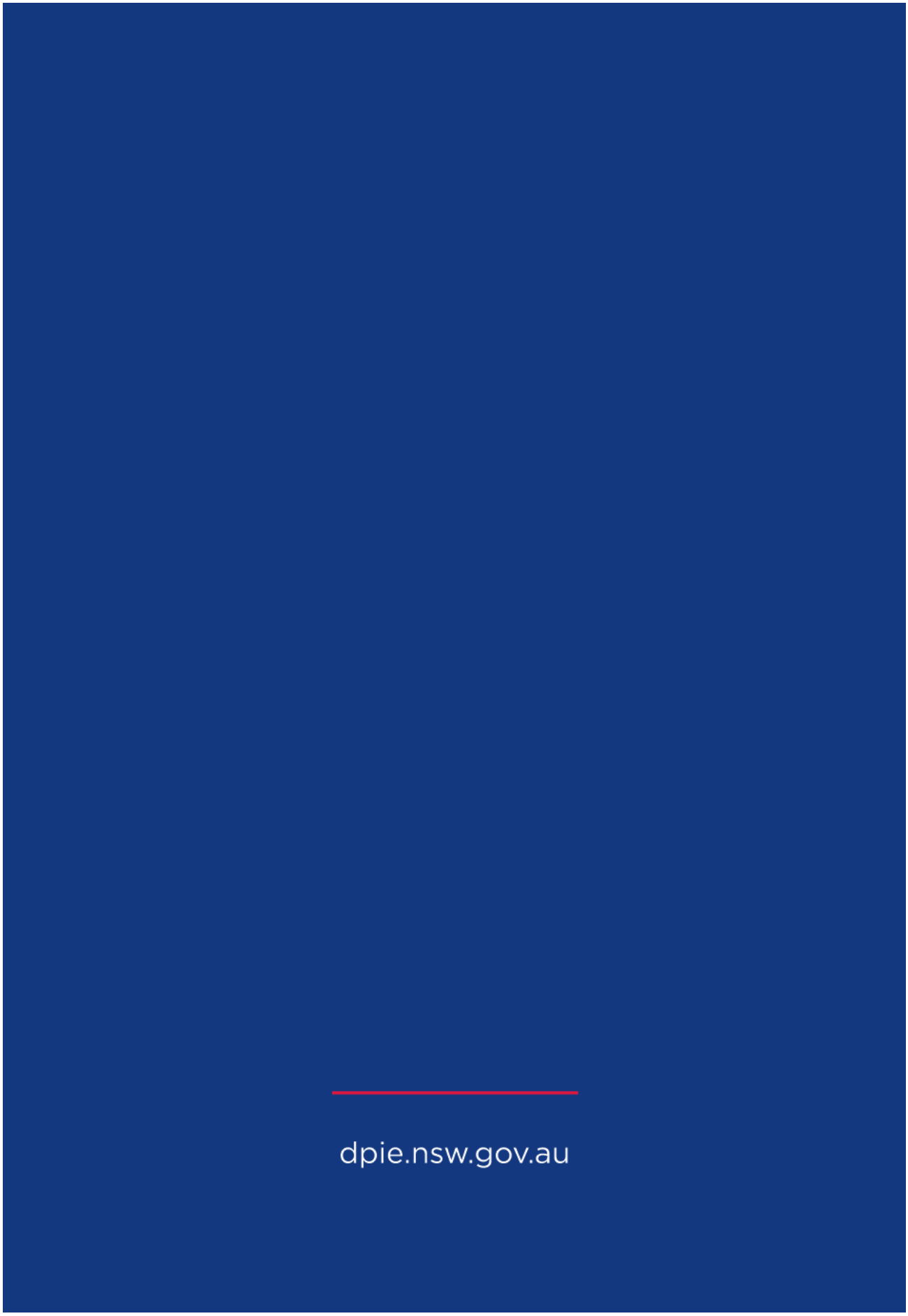
6. Assessment of the merits of the planning agreement

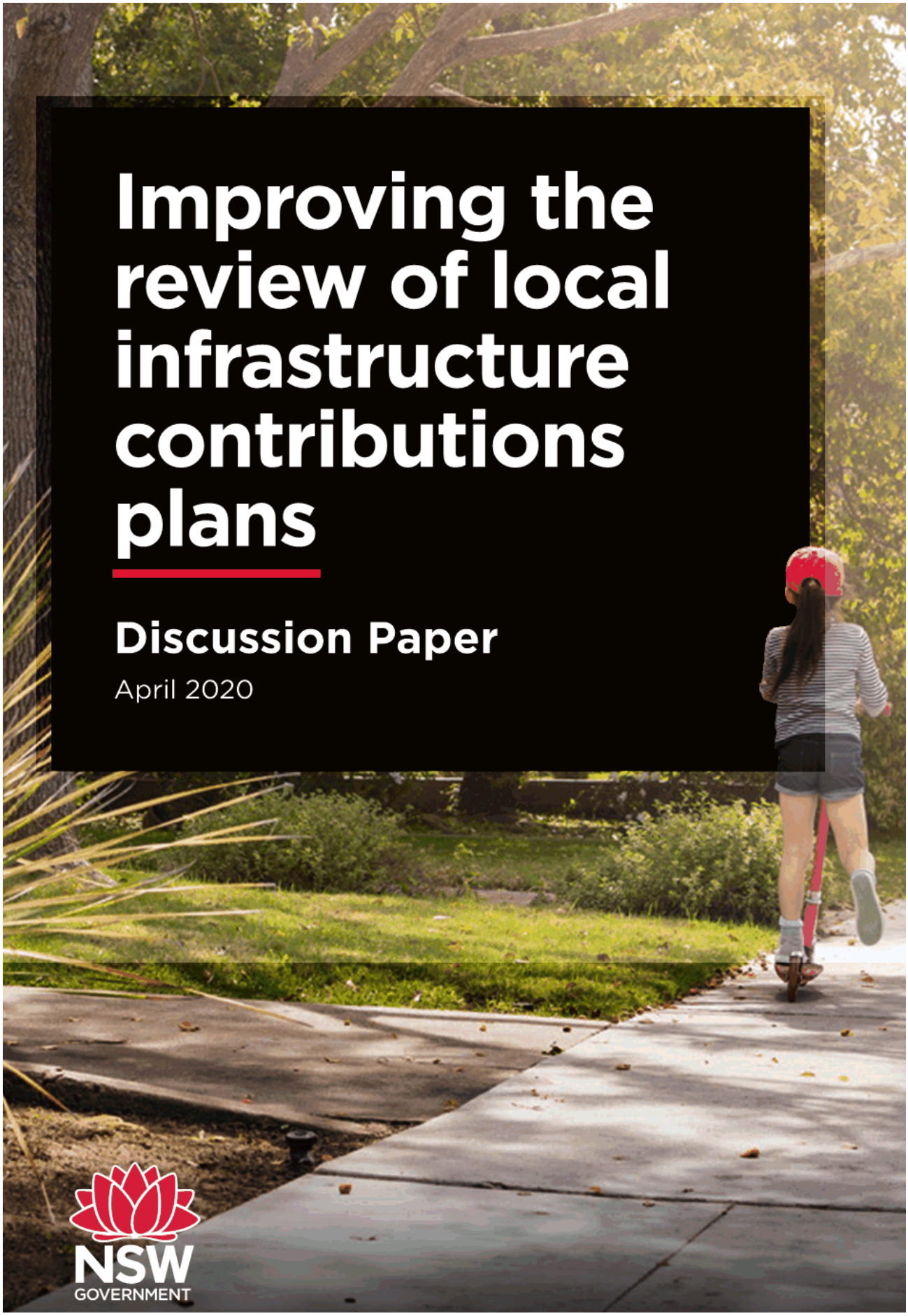
How is the planning agreement in the public interest?

What is the impact, positive or negative, of the planning agreement on the public or any section of the public?

How does the planning agreement conform with the planning authority's capital works program, if any?

Are there any other matters which a reasonable member of the public would wish to know in understanding this planning agreement?


dpie.nsw.gov.au


Improving the review of local infrastructure contributions plans
Discussion Paper
April 2020
NSW GOVERNMENT

Published by NSW Department of Planning, Industry and Environment

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Title: Improving the review of local infrastructure contributions plans

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Contents

Executive summary

The Department of Planning, Industry and Environment (the Department) is committed to ensuring that the process of reviewing higher-rate local (s7.11) infrastructure contributions plans (the review process) remains efficient while serving its purpose to ensure transparency and accountability.

The review process is triggered when a local s7.11 development contributions plan exceeds the thresholds set out in the Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2012 (currently $20,000 per lot/dwelling and $30,000 per lot/dwelling in identified urban release/greenfield areas). Its purpose is to ensure contributions plans above the thresholds reflect reasonable costs of providing necessary local infrastructure to support development.

The review process is comprised of multiple steps undertaken by council, the Independent Pricing and Regulatory Tribunal (IPART), the Department and the Minister's nominee. Community consultation takes place at different stages of the process (refer to Appendix A for a full overview of the process stages). The review process is an important way to ensure that the system remains transparent and accountable.

The Department has identified a series of improvements to collectively make the review process more efficient.

Box 1: Summary of system improvements discussed in this paper

1. Increase the value thresholds that trigger the review process (refer to options in section 2.2).
2. Implement an annual indexation mechanism for the thresholds that trigger the review process, based on the CPI.
3. Review the IPART terms of reference.
4. Remove existing exemptions to the review process, known as grandfathered contributions plans.
5. Remove existing requirement for councils to re-exhibit an IPART reviewed contributions plan following the receipt of advice from the Minister's nominee. See also detailed paper on proposed amendments to the EP&A Regulation.

These system improvements will collectively ensure the review process remains efficient and certain. They will reduce the time required to complete the review process while maintaining the transparency and accountability underpinning it.

1. Introduction

Section 7.11 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) allows councils to levy contributions towards the cost of providing local infrastructure. Councils levy contributions through local contributions plans which identify the infrastructure needed to support new development, how much it costs and how costs will be shared.

Councils that propose to levy s7.11 local infrastructure contributions above thresholds set out in the *Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2012* (the Ministerial Direction)[1] are required to go through a review process. The thresholds currently are:

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

The process of reviewing local (s7.11) infrastructure contributions plans (the review process) provides independent oversight to higher-rate local infrastructure contributions to ensure that they are reasonable (i.e. they fairly reflect the relationship between development and demand for public amenities and services) and align with the Department's essential works List (which can be found in the Local Infrastructure Contributions Practice Note 2019).[2] As part of the review process, IPART assesses the nexus (the connection between proposed development and the demand created), apportionment, cost estimates and delivery timeframes.

1.1 Purpose

The Department has identified a series of improvements to collectively make the review process more efficient, reducing its timeframes while maintaining the transparency and accountability underpinning the entire process.

These are:

1. Increase the value thresholds that trigger the review process.
2. Implement an indexation mechanism for the thresholds that trigger the review process based on the CPI.
3. Review the IPART terms of reference.
4. Remove existing exemptions to the review process, known as grandfathered contributions plans.
5. Remove existing requirement for councils to re-exhibit an IPART reviewed contributions plan following the receipt of advice from the Minister's nominee. See also detailed paper on proposed amendments to the EP&A Regulation.

1.2 Working group

Councils and other stakeholders have expressed concerns about the time it takes to have a reviewed contributions plan in place to levy appropriate infrastructure contributions and the resulting lost revenue.

A working group of officers from the Department and Blacktown City Council was established to identify factors which contribute to the current timeframes and potential ways to collectively make the system more efficient and aligned with contemporary planning requirements and costs of delivering local infrastructure, whilst maintaining the transparency and accountability of the review process. Based on the working group's findings, the Department has developed a number of system improvements aimed at collectively streamlining the entire review process.

1 Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2012 <https://www.planning.nsw.gov.au/-/media/Files/DPE/Directions/environmental-planning-and-assessment-direction-2012-act-s-94e-consolidated-2019-01-29.pdf?la=en>

2 Local Infrastructure Contributions Practice Note 2019 <www.planning.nsw.gov.au/-/media/Files/DPE/Practice-notes/practice-note-local-infrastructure-contributions-january-2019-01-21.pdf?la=en>

Box 2: The thresholds triggering the review process are no longer maximum caps on s7.11 contributions

It is important to note that the thresholds for review are no longer maximum caps on s7.11 local infrastructure contributions. Instead they are a trigger for when a s7.11 contributions plan is to go through the review process. Once councils have an IPART reviewed contributions plan, they can levy an amount above the threshold.

Although the $20,000 and the $30,000 per lot/dwelling thresholds were originally introduced as maximum amounts for contributions (or caps), above which councils were not able to levy s7.11 contributions, their role as maximum caps was removed in 2017 for most areas as part of the NSW Government Housing Affordability Strategy. The caps have remained in place in some areas eligible to apply for Local Infrastructure Growth Scheme (LIGS) funding.

1.3 Rationale for process improvements

The proposed improvements set out in this paper aim to collectively streamline the process of reviewing s7.11 contributions plans by making improvements at different stages of the process. Their aim is to ensure that the process remains efficient and fair.

The review process is taking longer

The review process comprises several steps managed by different agencies, which must be completed before a plan can be considered an IPART reviewed contributions plan. Analysis by the Department indicates that the entire process can take over 12-18 months to be completed and is becoming longer (refer to Table 1).

The current thresholds triggering the review process are outdated

The current $20,000 and $30,000 thresholds have not changed since their introduction in 2008 and 2010. This means that their value has continuously fallen in real terms for the past 10 years, while capital and land infrastructure costs have continued to increase. There is a risk that eventually, as costs continue to increase due to inflation and other factors, the value threshold will mean most s7.11 local infrastructure contribution plans will be required to go through the review process.

The improvements to the review process outlined in this paper are timely considering the thresholds have not changed since their introduction. Collectively they will ensure the process remains efficient, fair and certain for councils, developers and communities.

Table 1 - Overview of the current review process

	Step	Description	Current typical timeframes	
1	Council prepares and publicly exhibits a Draft Contributions Plan	In preparing a contributions plan, the council must publicly exhibit a contributions plan for a minimum period of 28 days and must consider any submissions received. Preparation of a plan may be concurrent with rezoning process.	6-12 months	
2	If the council wants to impose a levy above the relevant threshold amount, the plan is submitted to IPART for review	Council completes IPART application form and has pre-lodgement discussions with IPART.	2-4 weeks	
3	IPART receives formal application for review	IPART reviews the plan consistent with the Practice Note and Terms of Reference. IPART aims to complete this task within the 6-month review timeframe.	6 months	12-18 months
4	IPART publishes draft findings report and recommendations	Public consultation and consideration of submissions. IPART usually publicly exhibit the draft report for a period of 4 weeks, prior to releasing final recommendations.	6-8 weeks	
5	IPART provides final report and recommendations to the IPART provides final report and recommendations to the Department for issuing of advice by the Minister's nominee	Department reviews IPART recommendations and forwards to the Minister nominee to seek approval to issue advice to the council on implementing the IPART recommendations.	4-8 weeks	
6	Council receives Minister nominee's advice and amends the Contributions Plan	Council is currently required to re-exhibit the amended Contributions Plan for a period of 28 days and consider submissions received. The council must then consider submissions received prior to adopting the plan.	3-6 months	

Source: Department internal data

1.4 Appointment of a Minister's Nominee

The Minister has recently delegated the Minister's functions under clause 5(3) of the *Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2012* to the following nominees:

- The Secretary of the Department.
- Any Deputy Secretary in the Department in a role with responsibility for administering the *Environmental Planning and Assessment Act 1979.*

The appointment of a Minister's nominee shortens the time required to provide advice to councils as it reduces administrative processes. It does not alter the existing process of receiving and reviewing IPART recommendations by the Department and the issuing of advice to the council under delegation.

The appointment of a Minister's nominee is an important step in streamlining the process of reviewing s7.11 contributions plans. It complements the proposals outlined in this paper by reducing the time required to complete the review process while maintaining the transparency and accountability underpinning it.

1.5 Improving the infrastructure contributions system

The above proposals are part of a wider suite of system improvements intended to fix the uncertainty in the infrastructure contributions system. More information on other current proposals can be found on: planning.nsw.gov.au/infrastructure-contribution-reforms

2. Update the thresholds that trigger the review process

Proposal:

- Increase the value thresholds that trigger the review process (refer to options in section 2.2).
- Implement an indexation mechanism for thresholds triggering the review process, based on CPI.

2.1 Why should the thresholds increase?

Infrastructure costs continue to increase

Since the thresholds were established, both capital and land infrastructure costs have increased significantly while the thresholds have remained the same. The absence of indexation means that their real value has been gradually falling relative to infrastructure construction costs.

The Australian Bureau of Statistics (ABS) Road and Bridge Construction Costs Index is a good indicator of the escalating construction costs of local infrastructure. ABS data shows that over the past 10 years Road and Bridge Construction Costs Index has persistently increased faster than inflation.3 Figure 2 illustrates the growing gap between the value of the fixed contributions thresholds and the costs of delivering infrastructure, adjusted for inflation using the Consumer Price Index (CPI).

Land costs associated with delivering local infrastructure also continue to significantly increase. For instance, data shows that between 2010 and 2018, Sydney residential land values have increased by 101%.4 An audit of contributions plans by the Department in 2014 showed land costs represent about 30% of the value of plans in metropolitan Sydney.

The thresholds that trigger the review process do not currently reflect increasing infrastructure delivery costs and land values over the past 10 years.

Infrastructure contributions rates are already indexed

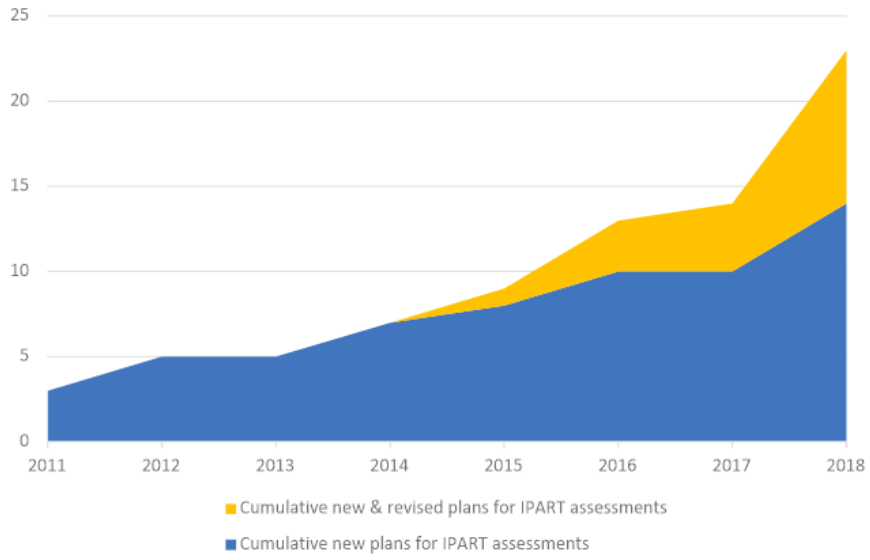
Unlike the review process thresholds, contributions rates set by councils are usually indexed to a readily accessible index (such as the Consumer Price Index) in accordance with cl32(3) and Division 1B, Part 4 of *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation).

This means that the rates in contributions plans continue to increase, while the review thresholds have remained static. Unless the review thresholds are adjusted and indexed, over time all s7.11 contributions plans will exceed the existing thresholds triggering the review process triggers, even if there are no changes to the infrastructure being funded, as demonstrated by Figure 1.

3 ABS6427.0, Table 17.

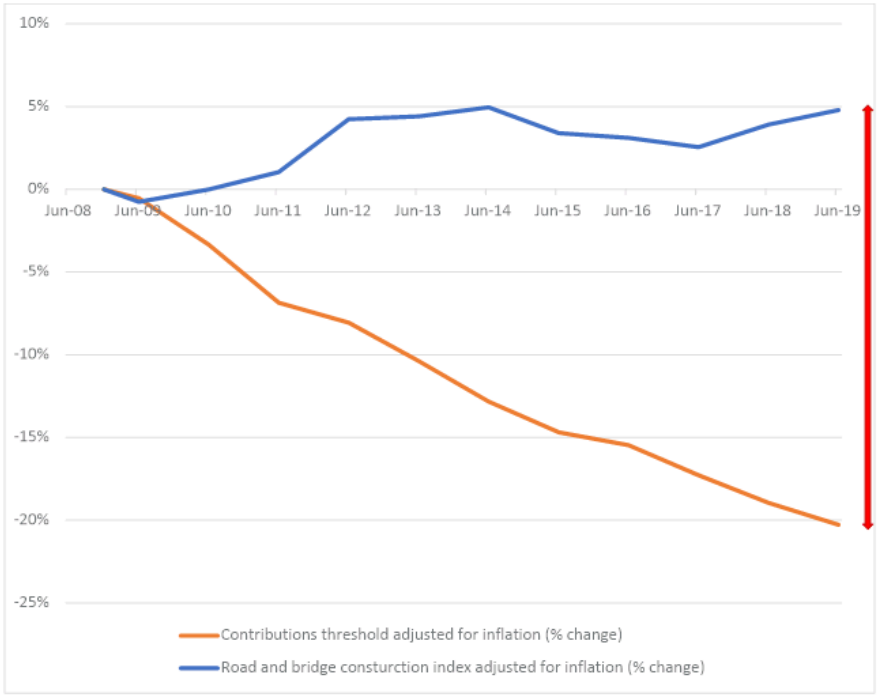
4 NSW Valuer General, https://www.valuergeneral.nsw.gov.au/land_value_summaries/historical_values.php

Figure 1 – Cumulative increase in local contributions plans requiring review



Source: Department analysis

Figure 2 - Percentage change in Road and Bridge Construction cost compared to the fixed contributions thresholds (adjusted for CPI - All Groups, Sydney)



Source: DPIE internal analysis, ABS 6401.0 Table 5, and ABS 6427.0 Table 17

7 Improving the review of local infrastructure contributions plans

2.2 What thresholds are proposed?

Options:

1. Index the existing $20,000 and $30,000 per lot/dwelling thresholds by the ABS Consumer Price Index - All Groups Sydney (CPI) from June 2010 to the latest available quarter.
2. Increase the thresholds to $35,000 per lot/dwelling and $45,000 per lot/dwelling in greenfield (urban release areas).
3. Implement one single threshold of $45,000 for all IPART reviewed contributions plans.

Councils are able to levy contributions that are higher than the specified thresholds, but only once their plan is an IPART reviewed contributions plan. All s7.11 contributions plans, regardless of the review process, are required to demonstrate nexus between development and the infrastructure to be funded through the s7.11 contributions plans.

Note, the thresholds do not represent maximum caps on s7.11 local infrastructure contributions. Instead, they act as thresholds which trigger the review process.

The Department has considered multiple indices to develop the options for increasing the threshold, as shown on Table 2.

Table 2 - Escalations of thresholds from June 2010 to June 2019 quarter using various indices

Current Thresholds	**Adjusted thresholds using various indices**				
	CPI (All groups, Sydney)[5]	CPI (New dwelling purchase by owner-occupiers, Sydney)[6]	Bridge & Road Index (NSW)[7]	Residential Property Price Index (Sydney)[8]	Land value (Sydney)[9]
$20,000	$ 24,247	$ 27,942	$ 25,409	$ 30,276	$ 40,183
$30,000	$ 36,370	$ 41,913	$ 38,114	$ 45,414	$ 60,275

Source: DPIE internal analysis based on published data

5 ABS6401.0, Table 5. Indexed to June 2019 quarter.
6 ABS6401.0, Table 9. Indexed to June 2019 quarter.
7 ABS6427.0, Table 17. Indexed to June 2019 quarter.
8 ABS6416.0, Table 1. Indexed to June 2019 quarter.
9 NSW Valuer General, https://www.valuergeneral.nsw.gov.au/land_value_summaries/historical_values.php, Indexed to June 2018 only.

Option 1:

This option involves indexing the existing $20,000 and $30,000 per lot/dwelling thresholds by the ABS Consumer Price Index - All Groups Sydney (CPI) from June 2010 to the latest available quarter. The CPI is a well-understood, accessible and widely used index and it is updated quarterly.

Many local contributions plans already use the CPI as an indexing mechanism for local contributions, making the proposed changes consistent with existing approaches to the indexation of local contributions plans. However, this index does not fully reflect the actual increase in infrastructure delivery and land costs as it is based on increase in prices of general household expenditure.

Option 2:

This option involves increasing the thresholds to $35,000 per lot/dwelling and $45,000 per lot/dwelling in greenfield (urban release areas). This is more in line with increasing infrastructure delivery costs and land costs associated with building local infrastructure since 2010, as shown on Table 2. This option is also consistent with the levels of development contributions in transitional areas as prescribed in the EP&A (Local Infrastructure Contributions) Amendment Direction 2017 applicable on 30 June 2020. This will provide certainty and continuity for the development industry in these transitional areas.

Option 3:

A third option is to simplify the system by applying a single threshold where all s7.11 contribution plans would be subject to an IPART review. This would remove the existing split between greenfield (urban release areas) and all other areas with the additional benefit of removing the administrative requirements associated with including areas in the list of urban release areas in Schedule 2 of the Ministerial Direction.

It is suggested that a single threshold of $45,000 per lot or dwelling could be applied and any council that proposed to levy above this amount would first need to have their plan reviewed by IPART.

This option would remove Schedule 2 of the Ministerial Direction, and the Ministerial Direction would be updated to clarify that one single threshold applies across NSW.

Box 3: The Department welcomes your feedback on the proposed options and any other ideas to simplify and improve the Ministerial Direction

Adjusting the thresholds will require an update to the Ministerial Direction to replace the existing thresholds triggering the review process.

The Department welcomes your feedback and ideas on other ways to simplify and improve the operation of thresholds and the Ministerial Direction.

2.3 How should the thresholds be indexed?

Proposal:

- Implement an annual adjustment of the review thresholds, based on the Australian Bureau of Statistics Consumer Price Index -All Groups, Sydney (the CPI).

To ensure the thresholds triggering the review process keep pace with cost increases, it is necessary to implement an indexing mechanism that adjusts the thresholds to inflation.

The EP&A Regulation already allows councils to make annual or quarterly amendments to existing s7.11 contributions plans to reflect variations to index figures adopted by the plan. The EP&A Regulation includes the CPI as a common index for this purpose.

Since the CPI is a well-understood and widely used index, the Department proposes to implement an annual adjustment of the thresholds, using the CPI published figures for the March quarter. A similar methodology is already used to reflect annual variations to Special Infrastructure Contributions (SICs). A common methodology provides consistency within the system and simplicity to ensure the adjustment is well-understood.

2.4 What will happen to local contributions plans below the relevant threshold?

All s7.11 local development contributions plans need to reflect reasonable costs of providing necessary local infrastructure to support development. They are based on demand for infrastructure created by the development (called nexus) and the share of the total demand that the developer must pay (called apportionment).

In preparing a contributions plan, all councils (whether or not they are required to go through the review process) must publicly exhibit a contributions plan for a minimum period of 28 days and must consider any submissions received.

The increase in the thresholds will mean that contributions plans below the threshold will not be required to go through the review process and will not be limited to the essential works list. They will however still need to reflect reasonable costs of providing necessary local infrastructure to support development, be exhibited and be in line with statutory requirements and practice notes.

2.5 Consequential amendments to the Ministerial Direction

To give effect to the proposed updates to the thresholds, the existing *Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2012* (Ministerial Direction) would need to be amended to reflect the new thresholds and annual indexation. The updated Ministerial Direction would ensure the review thresholds remain up-to-date, clear and accessible to all stakeholders.

3. Review of the IPART terms of reference

Proposal:

- Review the IPART terms of reference.

3.1 Issues with the current terms of reference

The IPART terms of reference was established at the same time as the maximum caps on infrastructure contribution rates and subsequently updated in 2018. With the replacement of maximum caps for thresholds triggering the review process, the context and purpose of the review process has changed. It is timely that the IPART terms of reference are reviewed.

The existing terms of reference are broadly worded and therefore unclear on the scope of certain aspects of the review. The open-ended wording on some of the review requirements has resulted in IPART being required to:

- Consult widely throughout each iteration of the review rather than being able to tailor the consultation scope to the specific requirements of each review.
- Undertake detailed analysis of every aspect of the plan notwithstanding the level of impact.

Additionally, the current terms of reference includes duplications with the practice note in relation to assessment criteria and services. Having detailed guidance in two separate documents reduces transparency and adds complexity to the system. There is a need to ensure that the IPART terms of reference remain up-to-date, transparent and respond to the changing role and scope of the review.

3.2 Intent of proposed updates to the terms of reference

It is proposed to review the existing terms of references to:

- Clarify the purpose of the terms of reference and removing duplications with the practice note to ensure the practice note remains the source of detailed guidance on the review process.
- Consider introducing a targeted review of additional information to facilitate quicker review in situations where a plan has already been reviewed, allowing a targeted review rather than requiring IPART to review the whole plan when additional information is supplied.
- Simplify consultation requirements so that IPART is only required to consult with the relevant council. While IPART may still consult with other parties as appropriate on a case by case basis and as detailed in the practice note, the updated terms of reference would not make this a requirement.
- Modernise and clarify wording, references and definitions.

The review will allow IPART to focus on the aspects which have the most impact in ensuring that s7.11 contributions plans are reasonable. This will contribute to streamlining aspects of the review without affecting the rigour and transparency of the process, especially for plans which are proposing rates only marginally above the threshold.

The IPART Terms of Reference are issued and signed by the NSW Premier. The Department will work closely with the Department of Premier and Cabinet (DPC) and IPART in considering submissions received and finalising the proposed Terms of Reference for signature by the Premier.

4. Remove existing exemptions from the review process

Proposal:

- Remove the list of grandfathered contributions plans from Schedule 1 of *Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2012*.

Currently the review process and the essential works list do not apply to land identified in Schedule 1 of the Ministerial Direction. The grandfathering of contribution plans through Schedule 1 was introduced when the $20,000 and the $30,000 per lot/dwelling thresholds were established as maximum amounts above which councils were not able to levy s7.11 contributions (caps).

Since the maximum caps have been removed and the thresholds now operate as triggers for the review process, it is no longer appropriate to exempt these contribution plans from the review process.

There are several benefits associated with removing these existing exemptions from the IPART review process to:

- Support IPART's role in ensuring that the contributions system remains transparent and accountable by encouraging councils to review outdated contributions plans.
- Remove references to outdated and superseded contributions plans from Schedule 1 of the Ministerial Direction.
- Simplify the operation of the Ministerial Direction to clarify that the review process applies to all contribution plans that meet the review triggers.

The removal of grandfathering will provide additional certainty about the operation of the review process. It complements other system improvements proposed in this paper, such as increasing the thresholds that trigger the review and updating IPART's terms of reference.

5. Remove re-exhibition requirements for councils

Proposal:

- Streamline the process following IPART's review by removing the existing requirement in the EP&A Regulation for councils to re-exhibit a contributions plan for a minimum period of 28 days following the receipt of advice from the Minister or Minister's nominee. 3.1 Issues with the current terms of reference

The Department proposes to amend the EP&A Regulation to allow for contributions plans to be amended to give effect to the advice of the Minister or Minister's nominee in relation to implementing IPART recommendations without requiring a further 28-day exhibition following IPART's review.

Appendix A illustrates the current process and the proposed improvements.

Effect of the changes

In preparing a contributions plan, councils must publicly exhibit a contributions plan for a minimum of 28 days and consider any submissions received. Where contribution plans go to IPART for review, IPART also have a practice of publicly exhibiting the draft report for a period of 4 weeks, prior to releasing final recommendations.

Currently, councils are required to re-exhibit the contributions plan for a further 28 days following the issuing of advice to council by the Minister or Minister's nominee on amendments required to the contributions plan. Council must then consider submissions received. During the re-exhibition of a contributions plan councils are constrained in their ability to make any further changes as a result of any submissions received.

This amendment will therefore remove the requirement for councils to re-exhibit their IPART reviewed contributions plan. This does not reduce the community's ability to contribute to the review process. The community is able to provide upfront input during council's exhibition of draft plan and during the exhibition of IPART's draft findings report and recommendations.

To facilitate public review of final approved contributions plans, the Department is also proposing to amend the Regulation to require councils to publish contributions plans on their websites or on the NSW Planning Portal. See also detailed paper on proposed amendments to the EP&A Regulation.

6. Have your say

The Department welcomes your feedback on the proposals in this paper. Your feedback will help us better understand the views of the community and will assist us to finalise the proposals.

Submissions can be made via the Department's website:

www.planningportal.nsw.gov.au/exhibition

You may also post your submission to:

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

All submissions will be made public in line with our objective to promote an open and transparent planning system. If you do not want your name published, please state this clearly at the top of your submission. The Department will publish all individual submissions and an assessment report on all submissions shortly after the exhibition period has ended.

Appendix A

Overview of the review process and proposed improvements

Current

1. Prepare draft contributions plan

2. Exhibit draft contributions plan

3. IPART review and exhibit draft recommendations

4. Department review and Minister's recommendations

5. Finalise, re-exhibit and adopt contribution plan

Improvements

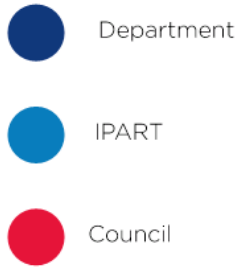
A. Update threshold triggers

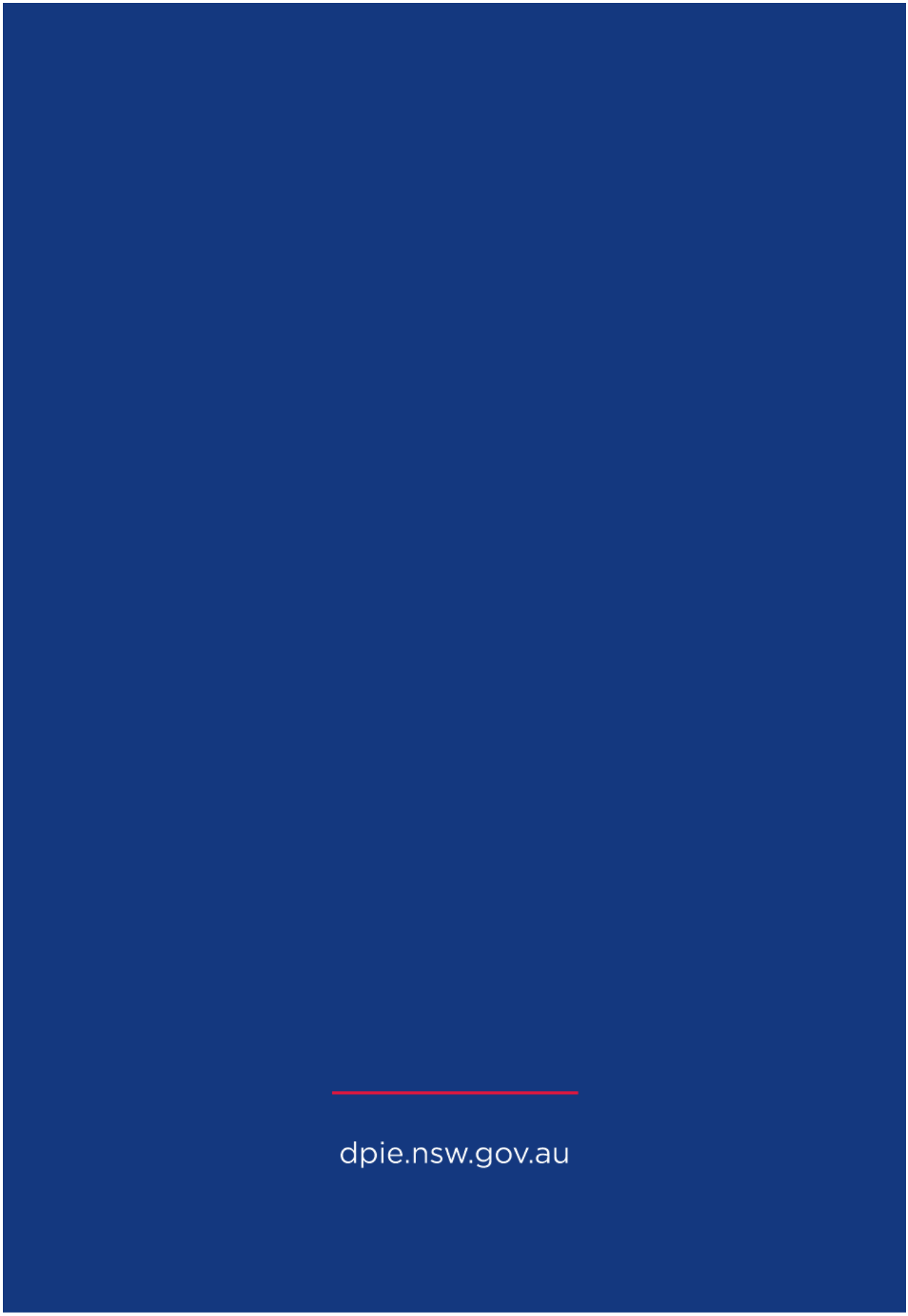
B. Remove grandfathered plans

C. Revise IPART's Terms of Reference

D. Minister's nominee

E. Remove re-exhibitions requirements

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Criteria to request a higher s7.12 percentage
Discussion Paper
April 2020
NSW GOVERNMENT

Published by NSW Department of Planning, Industry and Environment

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Title: Criteria to request a higher s7.12 percentage

Subtitle: Discussion Paper

Criteria to request a higher s7.12 percentage

Contents

Criteria to request a higher s7.12 percentage

Executive summary

An underlying principle of the NSW planning system is that new development should pay a contribution towards the cost of infrastructure needed to support that development. Section 7.12(s7.12) contributions are one of several mechanisms available to local councils to fund new development-related infrastructure. They operate as 'flat rate levies', meaning that they are charged as a percentage of the proposed development cost.

The *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) sets 1% as the standard highest maximum percentage which councils can levy under a s7.12 development contributions plan. The EP&A Regulation, however, identifies specific areas which are subject to higher maximum percentage levies if listed in clause 25K(1)(b). Currently, land in six local government areas (LGAs) is listed in this clause as having higher maximum percentage levies (see Table 2).

The Department is committed to ensuring the process of assessing and determining requests to increase the maximum percentage levy for s7.12 contributions is efficient and transparent.

For this purpose, the Department is proposing to adopt a series of consistent criteria and request evidence to assist with the assessment and determination of submissions to increase maximum percentage levies in specific areas.

The proposed criteria discussed in this paper are based on three key principles to increase the maximum percentage:

1. The area being proposed for a higher maximum percentage levy must be identified in a strategic plan as a strategic centre, local centre or economic corridor.

2. It must have an existing or identified potential for significant employment growth.

3. Planning controls will need to reflect and support the planned increase in population and employment capacity of the identified area.

Based on the above principles, a two sets of potential assessment criteria, for either an increase of the maximum percentage to up to 2%, or up to 3%, have been developed for discussion and feedback.

The use of criteria will provide certainty, transparency and consistency in the Department's decision-making in response to submissions seeking to increase the maximum percentage s7.12 levy in specific areas. They will also support councils in understanding when it may be appropriate to request a higher maximum percentage levy and assist them in preparing requests.

Feedback is sought on the proposed approach, including the draft criteria outlined in this paper. Targeted discussion questions have been developed to assist with the discussion (see Section 4.3). However, feedback on all aspects of the discussion paper are welcome and will be used to develop the finalised set of criteria.

1. Introduction

1.1 Purpose

Section 7.12 (s7.12) fixed development consent levies under the *Environmental Planning and Assessment Act 1979* (EP&A Act) are one of several mechanisms available to local councils to fund local infrastructure.

This discussion paper seeks feedback on a new approach to improve decision-making in relation to council requests to increase the maximum percentage for s7.12 levies as provided for under the EP&A Regulation. It outlines draft principles and criteria proposed to be used by councils and the Department when preparing and considering increasing the maximum percentage for s7.12 levies. It also outlines how s7.12 levies currently operate including how variations to the maximum percentage rate of 1% are considered.

1.2 Improving the infrastructure contributions system

The above proposals are part of a wider suite of system improvements intended to fix the uncertainty in the infrastructure contributions system. More information on other current proposals can be found on: planning.nsw.gov.au/infrastructure-contribution-reforms.

2. How the s7.12 fixed rate levy operates?

Section 7.12 fixed development consent levies operate as 'flat rate levies', meaning they are charged as a percentage of the proposed development cost. They were introduced into the EP&A Act in 2005 as an alternative to s7.11 development contributions and are generally used in rural, infill and mixed-use areas[1].

The premise of a simple low flat percentage charge is that s7.12 contributions do not require consent authorities to identify the connection between development which pays the levy and the object of the expenditure of the levy. As such, s7.12(4) removes a proponents' right to appeal against a condition imposed for a s7.12 levy solely on the grounds of a lack of connection between the development and what the contributions are expended on.

The intent of fixed percentage levies is to deliver an efficient outcome for both developers and the consent authority by providing a low-cost charge on development in areas where nexus (the connection between proposed development and the demand created) and apportionment (the share of the total demand that the developer must pay) may be difficult to establish. This is particularly useful in regional areas, established urban areas or mixed-use areas where development rates are difficult to predict[2].

The maximum percentages councils can levy in a s7.12 development contributions plan is defined in clause 25K of the EP&A Regulation.

1 Note the City of Sydney has been able to adopt a 1% fixed development consent levy where the cost of development exceeds $200,000 since 1997 through s61 of the City of Sydney Act 1988

2 See 2005 Development Contributions - Practice Note

Table 1 – Current s7.12 standard maximum percentage

Proposed cost of the development	Maximum percentage of the levy
Up to $100,000	Nil
$100,001 - $200,000	0.5 percent
More than $200,000	1.0 percent

2.1 Areas where a higher maximum percentage levy currently applies

Councils have previously requested increases to the maximum percentage levy for specific parts of their local government area. In order to achieve a higher maximum levy percentage, the council makes a request and the Department recommends to the Minister on whether to list the area in clause 25K(1)(b) of the EP&A Regulation.

Presently six councils[3] levy higher maximum percentages for specified areas within their LGA which are identified as important economic and job priority areas. These are listed in Table 2. The higher maximum percentages were specifically permitted for a limited geographical area usually within the boundaries of the commercial cores where identified local and place-based local amenities were to be funded.

The intent and features shared by the areas which currently have a higher maximum percentage levy have been analysed and used to form the principles and criteria in this paper.

Table 2: List of s7.12 contribution plans with higher maximum percentage levies

LGA	Planning instrument where the land area is identified	Zones where the higher maximum levy apply	Maximum levy	Cost of development for which the maximum levy applies
Liverpool	Liverpool City Centre Local Environmental Plan 2007	Neighbourhood Centre, Commercial Core, Mixed Use, Enterprise Corridor	3%	>$1,000,000
		High Density Residential, Light Industrial	2%	>$1,000,000
Wollongong	Wollongong City Centre Local Environmental Plan 2007	Commercial Core	2%	>$250,000
Parramatta	Parramatta City Centre Local Environmental Plan 2007	All	3%	>$250,000
Newcastle	Newcastle City Centre Local Environmental Plan 2008	All	3%	>$250,000
Burwood	Burwood Local Environmental Plan (Burwood Town Centre) 2010	All	4%	>$250,000
Willoughby	Chatswood Central Business District (CBD) Section 94A Development Contributions Plan 2011	All in map 1	3%	>$250,000

3 Gosford City Centre will revert to 1% following introduction of Gosford City Centre Special Infrastructure Contribution and under a proposed amendment to the EP&A Regulation.

2.2 The standard 1% levy will be maintained

This paper is not proposing to increase the overall s7.12 maximum rate as specified under clause 25K(1)(a) of the EP&A Regulation, this will be maintained at 1% of the cost of development. This is because the charge is a flat rate levy on development costs, which track closely to construction costs overtime.

Contribution revenues from s7.12 contribution plans should therefore keep up with cost escalations of capital component of infrastructure costs. Australian Bureau of Statistics and internal Department's analysis have shown that both the House Construction Index (NSW) and Other Residential Building Construction Index (NSW) have relatively kept up with capital cost of infrastructure investments, when using the Road and Bridge Construction Index as a proxy.

2.3 How the s7.12 fixed levy is applied

The *2005 Development Contributions - Practice Note* outlines principles for the use of s7.12 fixed development consent levies. This discussion paper does not intend to depart from these principles, but rather provides additional requirements to strengthen or extend the desired development context for which the plan applies.

The following outlines general features of areas where a standard s7.12 fixed levy may apply as shaped by the existing principles. They provide a frame of reference for the principles and criteria discussed in Section 4 of this paper.

Infrastructure demand is difficult to establish

Section 7.12 is designed to deliver an efficient outcome for both developers and the government where provision of the infrastructure benefits a dispersed set of contributors, and the connection, or nexus, between the development and required infrastructure is difficult to identify.

It is often difficult to measure demand arising from non-residential development. Consequently, in some areas it can be more efficient and effective to collect contributions through a s7.12 fixed levy. This can be especially true in areas which are experiencing high levels of development to accommodate employment opportunities.

Section 7.12 also offers greater flexibility in what contributions can be spent on. This is important for employment centres where public amenities and services can be quite different to that required in standard residential precincts. For example, centres may require provision or upgrade to public spaces and centre domain works for retail precincts, concourses to transport interchanges and undergrounding of cables. In some cases, special customised local infrastructure is required to service the industries that anchor the centres.

Growth is sporadic

In areas where the rate of development is difficult to predict, a s7.12 levy is useful in collecting contributions and funding dispersed local infrastructure projects. The strength of s7.12 contribution plans is that local infrastructure can still be provided from different sets of contributors and in areas with multiple land owners.

This is also especially important for urban centres which are experiencing high levels of growth. These areas can experience the added complexity of both residential and commercial development occurring and complex land ownership structures. It can be difficult to forecast levels of commercial development and different industries have different impacts on infrastructure requirements and amenities.

This makes s7.12 fixed levies appropriate for urban centres and commercial cores.

3. Principles for a higher maximum levy

The following principles are the basis on which higher maximum percentage levies are proposed to be set. They are instrumental in determining whether it is appropriate to consider an identified centre for a higher s7.12 maximum percentage levy.

3.1 Identified in a strategic plan

In order to be considered for a higher maximum percentage levy, it is important that the proposed area is identified as a strategic centre, local centre or economic corridor in a strategic plan, which may be a regional plan, or district plan.

This principle recognises the importance of supporting centres in facilitating growth and delivering placed-based public infrastructure with an appropriate funding mechanism. It is also consistent with previous decisions to increase the maximum percentages for areas already identified in the EP&A Regulation.

3.2 Significant employment growth

In addition to being identified in a strategic plan, the centre needs to demonstrate a significant increase in employment capacity. This establishes a need for additional resources to fund infrastructure that supports mixed-use of employment-related development.

This is also related to the fact that it is difficult to measure demand arising from non-residential development, especially in areas experiencing high levels of development to accommodate employment opportunities.

Currently, the six areas identified in the EP&A Regulation as having higher maximum percentage levies share a common goal of facilitating employment growth. In fact, all of them except Burwood Town Centre are intended to facilitate at least 25% more new jobs than new residents over the planned 25-year period.

This principle, therefore, is linked to these centres having a specific need for distinct infrastructure and civic improvements.

3.3 Local planning controls will need to support growth

It is important to ensure that planning controls reflect the planning outcomes, strategic direction and targets identified for the centre in the relevant strategic plan. This includes any planned increase in population and employment capacity identified at the strategic level.

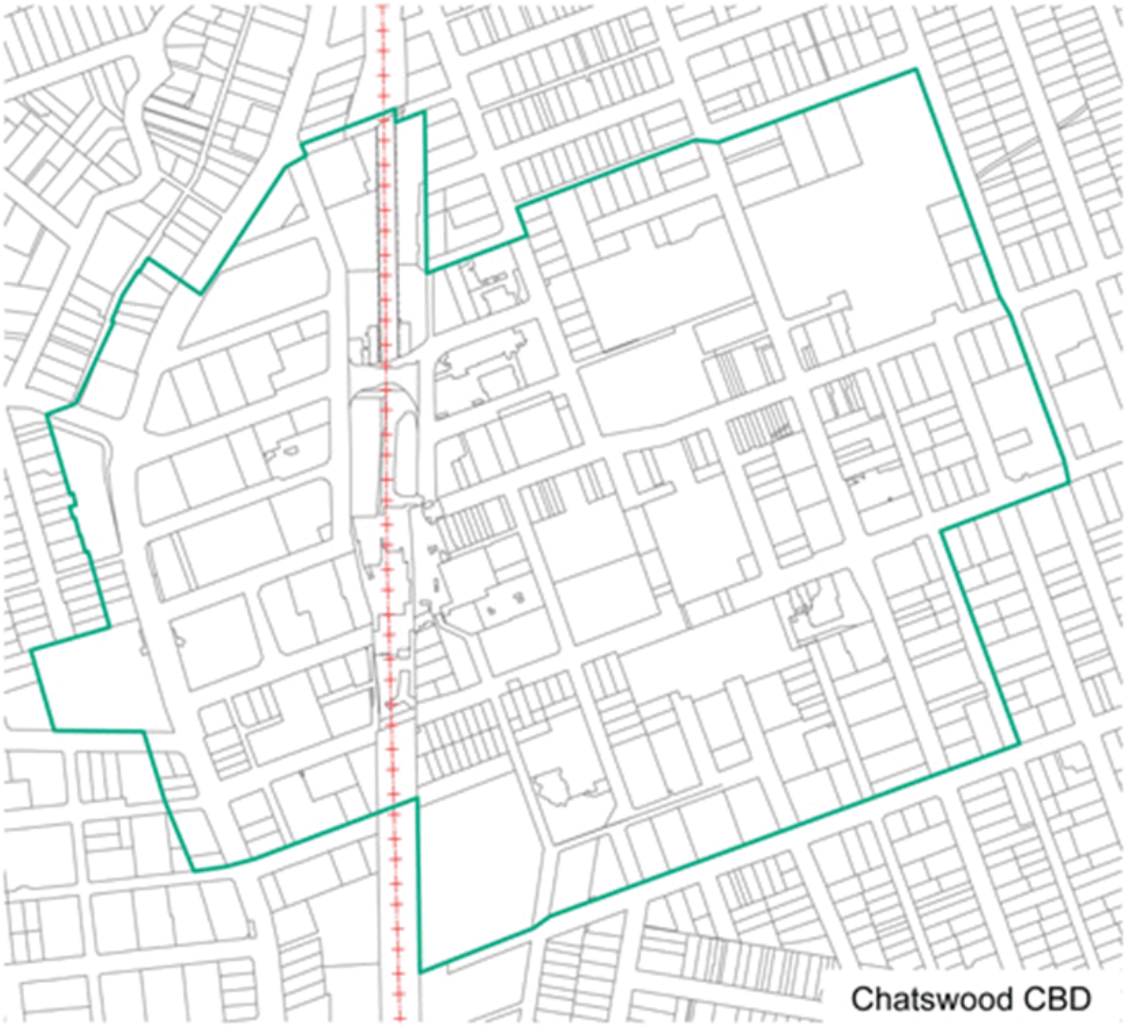
As such, the boundary of the contributions area must fall within the strategic centre as identified in the relevant strategic plan and this should be clearly reflected in planning instruments, including the local environmental plan (LEP) and development control plan (DCP).

Refer to Example 1 below in relation to the process of increasing the maximum percentage levy for Chatswood Central Business District and related updates to its LEP.

Example 1: Chatswood Central Business District (CBD) s94A (now s7.12) development contributions

In 2010 the maximum fixed contribution levy for Chatswood CBD was increased to 3% for developments over $250,000. This decision was based on planning controls for Chatswood CBD being updated through Willoughby Local Environmental Plan 2011 in recognition of Chatswood's role as a key sub-regional centre, as identified in 2005 Sydney Metropolitan Strategy.

The Willoughby Local Environmental Plan was updated then to facilitate 7,000 new jobs (30% increase) and accommodate 3,000 new residents over the 25 years to 2036, in line with the metropolitan strategy. This equates to over 233% more new jobs than additional residents, which is in line with the principle of significant employment growth.



Map of Chatswood CBD area where up to 3% section 7.12 levy applies, adapted from Willoughby Local Infrastructure Contributions Plan 2019

4. Potential criteria for discussion

The following criteria are proposed for discussion. Their intent is to assist councils and the Department with the assessment and determination of requests to increase maximum percentage levies in specific areas. The proposed criteria are based on the three principles outlined in Section 3. They are also founded on criteria used in the past to determine requests for increases to the maximum percentage levies.

Councils that want to request a higher maximum percentage would need to provide a draft s7.12 plan with a works schedule and would also need to provide evidence addressing the criteria outlined below. A request for a levy up to 2% would have to address the criteria outlined in 4.1. A request for a levy up to 3% would have to address the criteria in 4.1 and 4.2.

4.1 Criteria for a maximum levy up to 2%

C1.1 The area must be identified in the relevant strategic plan

The area must be identified in a strategic plan, which may be a regional plan, or district plan.

C1.2 The strategic plan must include a 'significant' employment growth target for the centre

The strategic plan must identify the centre as having potential for significant employment growth over the next 25 years. There are a few ways to quantify the significant increase in employment including:

- Supporting at least 25% more new jobs than the number of additional residents planned to be accommodated in the contribution area.
- Facilitating an increase of at least 25% more employment opportunities than currently available.
- An increase in additional non-residential gross floor area greater than 20% of existing total non-residential gross floor area.

C1.3 Local planning controls must reflect relevant strategic direction and targets for the centre

The planning controls for the area, including development standards and controls in the LEP and DCP, will need to reflect the strategic direction and targets for the centre in the relevant strategic plan at the time the higher maximum percentage levy starts operating.

C1.4 The contributions plan should focus primarily on delivering quality place-based community infrastructure and improvements that enhance amenity of the centre

The focus of a higher levy should to deliver quality place outcomes and the draft plan should demonstrate this. This could be measured in several ways, including:

- Open space, public domain streetscape, community facilities, and district infrastructure costs must represent at least 50% of total value of the contributions plan.
- Roads, traffic and stormwater management costs cannot constitute more than 49% of total value of the contributions plan.

Areas primarily requiring roads, traffic and stormwater infrastructure are more appropriately addressed through a s7.11 contributions plan. This infrastructure can be attributed to both residential and non-residential developments. There are established guides and modelling methodologies to apportion these types of infrastructure needs to most non-residential developments.

C1.5 Plan administration cost must not exceed 0.2% of total value of the contributions plan

This is because s7.12 contributions plans require less work and associated costs to make, and less administration when development applications are submitted. It should be noted that *2005 Development Contributions - Practice Note* does not permit costs associated with administration of a s7.12 contributions plan to be included as part of the overall infrastructure costs to be recovered through development contributions.

C1.6 The contributions plan should clearly set out the relationship between the expected types of development in the area and the demand for additional public amenities and services

A consent authority may impose a condition of development consent for the payment of a levy even though there is not a connection between the development, the subject of the consent and the public amenities or public services for which the levy is required.

However, when developing a contributions plan for the purpose of authorising s7.12 levies, the consent authority should consider whether development of a class for which the levy will be payable generates a need for, or benefit from, the relevant public amenities or services.

C1.7 Demonstrate that s7.11 has been considered and why it is not appropriate in this area

Council should show the efficiency of implementing a s7.12 contributions plan in lieu of a s7.11 plan for the centre's development context.

C1.8 Include a financial analysis that demonstrates a 1% fixed levy is insufficient, and forecast the revenue outcomes for a higher percentage levy

Financial modelling must show the estimated revenue generated by the higher percentage levy compared to a standard 1% fixed levy. It must also compare the expected revenue with total estimated cost of the infrastructure identified on the works schedule.

C1.9 Changes to the works schedule require approval from the Minister

The Minister will need to approve any future changes to items on the work schedule, otherwise the higher percentage levy will no longer apply, and the contributions plan will revert to the maximum of 1%.

This will ensure ongoing monitoring and review of eligibility for the higher maximum percentage.

4.2 Additional criteria for a maximum levy up to 3%

C2.1 The contribution plan must include funding and delivery of district-level infrastructure, representing at least 10% of total value of the contributions plan

To justify a levy that is three times the legislative maximum percentage, the area must have a significant district presence and as such it will require more interconnecting or wide-reaching level of infrastructure provision. This might include major parklands and sports-fields, or district libraries and other community facilities.

C2.2 The works schedule must be prepared in consultation with the Department to identify potential district level infrastructure

A collaborative approach between State and local governments ensures strategic planning and infrastructure provision meets local needs, are place appropriate, enhance local character and aligns with broader economic strategies.

4.3 Discussion questions

To facilitate the discussion on this paper the Department has prepared the following questions:

1. Should all the criteria be mandatory for a s7.12 plan to be considered for a higher percentage levy?
2. Are there any alternative criteria that should be considered?
3. C1.2: Considering the different ways 'significant' employment growth can be measured, what would be the most effective?
4. C1.9: Is this requirement necessary? Are there other mechanisms that would ensure ongoing monitoring and review?
5. C2.1: District level infrastructure remains generally undefined. Should the Department publish a list of acceptable district-level infrastructure items or should it be determined on a case by case basis?
6. C2.1: Is 10% of the total value of the contributions an appropriate amount to be allocated for the provision of district level infrastructure? Should this be desirable rather than mandatory?

5. Have your say

The Department welcomes your feedback on the proposals in this paper. Your feedback will help us better understand the views of the community and will assist us to finalise the proposals.

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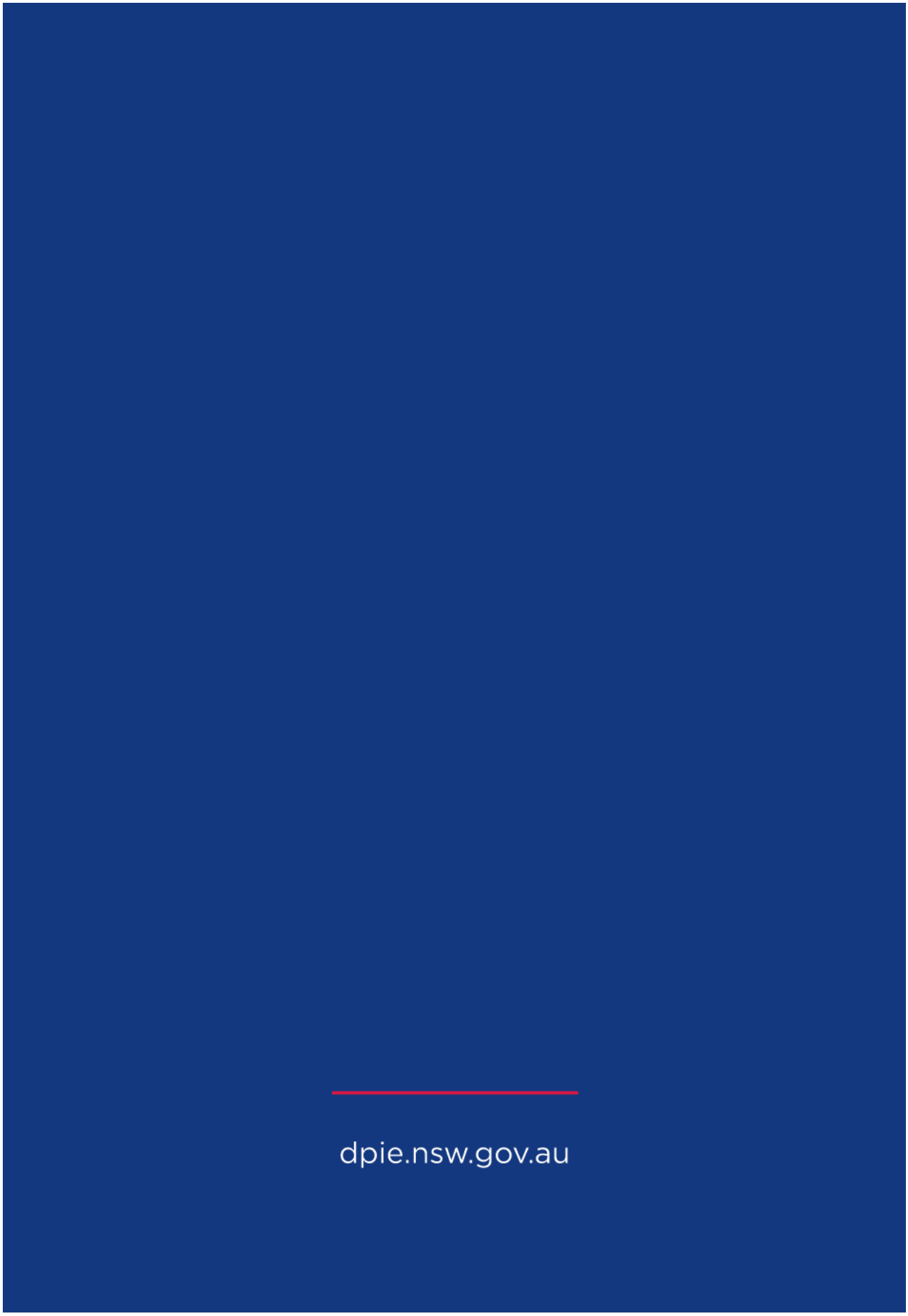
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Special Infrastructure Contributions Guidelines

Draft

April 2020

NSW GOVERNMENT

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Title: Special Infrastructure Contributions Guidelines

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The Department acknowledges the traditional custodians of the land and pays respect to elders past, present and future.

Contents

1. Introduction

Purpose of this Guideline

Infrastructure is the foundation of cities and regions. It helps transform a collection of houses, shops or factories into a community, providing a sense of place.

Ensuring that new growth makes a contribution to infrastructure is a key concept of the planning system in NSW. The development contributions framework under the planning legislation recognises different types of contributions mechanisms for infrastructure.

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

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

The Department of Planning, Industry and Environment (the Department) is responsible for the operation and management of the SIC framework, including the preparation of SIC Determinations, Ministerial Directions and Orders, the collection of SIC revenue, investment prioritisation and distribution of funds for infrastructure delivery.

The purpose of these Guidelines is to give greater clarity about:

- The purpose and objectives of the SIC framework applying to current SICs (particularly how to manage expenditure) and the development and implementation of prospective SICs.
- The key principles guiding the State Government in implementing and administering the SIC framework.
- The method for determining a new SIC.
- The process for allocating SIC revenue to infrastructure investment once a SIC has been determined.

2. Structure of the Guideline

This Guideline clarifies the role of SIC within a place-based planning system and establishes the key principles underpinning the SIC framework. This Guideline also provides information on the procedures followed by the Department in managing the SIC program.

This Guideline is structured as follows:

1. Introduction and purpose of the Guideline
2. Structure of the Guideline
3. Purpose of SICs in the planning system
4. Governance, oversight and program assurance
5. Steps to implementing a SIC
6. Key principles of the SIC framework
7. Key components of a SIC:
    a. Locations where the SIC applies
    b. Detail of the supporting strategic land use planning context
    c. Types of development subject to a SIC
    d. SIC Infrastructure list
    e. Infrastructure costs and cost apportionment
    f. Method to calculate the SIC
    g. Timing of payments and administration
8. Public consultation and transparency
9. Expending SIC revenue
10. State Planning Agreements.

The Guidelines will be reviewed and updated in response to changing government policy, advice from local government and feedback from the community. Suggestions, comments and feedback are welcome and can be made at any time by contacting the Department or via the Department's website at www.planning.nsw.gov.au.

3. The purpose of SICs in the planning system

The NSW Government is focussed on creating great places through collaborative engagement and integrated design; planning supported by infrastructure investment in the right place at the right time.

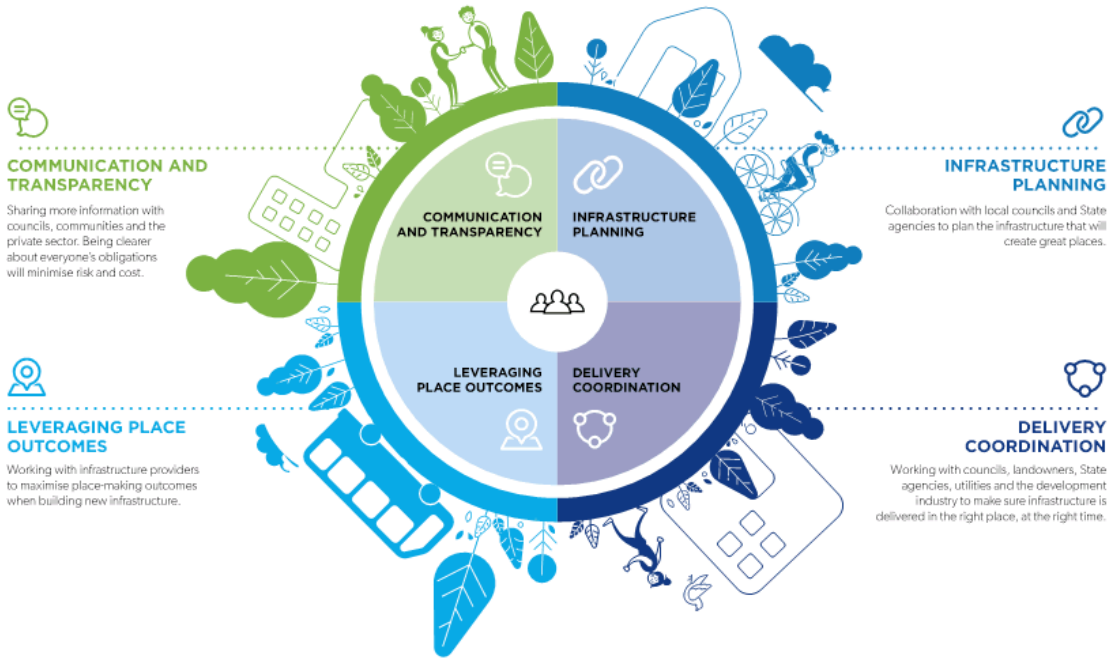
The Department is collaborating with local councils as they prepare long-term land use and infrastructure plans for growth areas in NSW. Local knowledge and expertise will be used to define a vision for places and communities and will guide planning decisions and infrastructure investment.

SICs will be part of this coordination process by supporting new infrastructure in high growth areas as part of the land-use planning system. They provide a source of funding to State and local governments, and a basis for partnering with the private sector on the delivery of infrastructure. The SIC aims to help achieve the objectives for a place, facilitate development and protect public safety and amenity.

The Department works closely with government agencies and councils who are responsible for delivering and maintaining State and regional infrastructure during the development of a SIC and when scheduling SIC-funded infrastructure investments.

This partnership is part of a wider collaboration with local councils, utility providers and the development industry to coordinate capital investment in growth areas and to deliver infrastructure that supports housing and employment growth. Types of infrastructure that are typically funded by the SIC include (but are not limited to), road upgrades, school or education facilities, health infrastructure and emergency services facilities.

DELIVERY AND INFRASTRUCTURE



4. Governance, Oversight and Program Assurance

The SIC framework is broadly aligned to the Infrastructure *NSW Infrastructure Investor Assurance Framework*.

Similar to the concepts that underpin the Infrastructure Investor Framework, the Department will be guided by the following when developing a SIC:

- **Governance and oversight** Major decisions relating to the SIC will be overseen and informed by collaboration with NSW government agencies. Where appropriate other infrastructure and service agencies will be invited to advise on proposals.
- **Service need and alignment to government policy** The SIC will help deliver on an established Government policy, in relation to growth, renewal or major infrastructure investment associated with new housing or employment.
- **Needs analysis and outcomes** The SIC should be critical to meeting service need for a defined area such as a region or sub-region. Strategic land use plans will form the basis of the needs analysis and define the outcomes to be achieved by future infrastructure investment.
- **Investment decision** Projects to be funded by the SIC should demonstrate economic, social and environmental benefit. Delivery agencies who receive SIC funding will adhere to the Government's budget-setting and assurance processes in relation to expenditure and procurement of infrastructure.
- **Delivery** Agencies will be responsible for the delivery of infrastructure including managing risk, budget and schedule. The Department will oversee SIC funding allocation and disbursement and monitor progress in the delivery of the SIC program.
- **Benefits realisation** The Department will monitor the program to prioritise investment of SIC revenue towards projects that will achieve the stated objectives of the SIC and the broader strategic planning context.

5. Steps to implementing a SIC

The SIC implementation process is guided by the statutory framework of the *Environmental Planning and Assessment Act 1979*, and supported by the Department's SIC preparation, program management, governance, assurance and delivery framework outlined in this Guideline.

A SIC framework is put in place through the making of three instruments:

- **SIC Determination** The legal instrument that defines the level and nature of the Special Infrastructure Contribution and identifies:
  - the cost and items of infrastructure to be funded
  - the kinds of development required to make a contribution
  - the method of calculating a SIC
  - requirements for payment and timing of the contribution.
- **Ministerial Direction** Applies to consent authorities and imposes the requirement to place a SIC condition on development consents within Special Contribution Areas, and for developers to make contributions towards State and regional infrastructure.
- **Ministerial Order** Establishes the Special Contributions Area through an amendment to the *Environmental Planning and Assessment Act 1979* to include a map of the Special Contributions Area (SCA) boundary in Schedule 4 of the Act.

Before a SIC is finalised, if the cost of the infrastructure exceeds $30 million the Minister will consult with the Treasurer on the proposed level and nature of the contribution, and the expected SIC revenue and expenditure program in relation to State capital planning and budget processes. Once approved by the Minister, the SIC Determination is published in the *Government Gazette of the State of New South Wales*. At this time, the SIC can be applied to new development consents.

Periodic reviews of the SIC Determination will allow for ongoing alignment to strategic land use planning, updated planning assumptions or changes to infrastructure requirements.

6. Key principles of the SIC framework

SICs will be applied in specific circumstances that relate to new growth areas or urban renewal. The SIC framework should seek to be fair, reasonable and simple. The key principles underpinning the SIC framework and informing this Guideline are:

Principle 1 - The SIC will relate to new growth and urban renewal

- The SIC will support the objectives of the broader planning system, such as a major State or council led rezoning, land release or urban renewal process.
- A SIC will be applied only to new development and growth.
- SIC revenue will be used to provide land and/or capital works that support new growth.

Principle 2 - The SIC will support the achievement of place objectives

- SIC revenue will be spent on the infrastructure identified in this Guideline.
- SIC revenue will be invested in State and regional infrastructure projects that contribute to the identified place outcomes and strategic objectives for a place.
- SIC revenue will be invested in projects that are consistent with infrastructure or service requirements identified in relevant State or local planning strategies.
- Over the planning cycle, the amount of the SIC revenue collected in a SCA will be used to fund SIC infrastructure that supports and services that SCA.

Principle 3 - The SIC will be reasonable and fairly apportioned

- The contribution will be determined according to the share of the cost of infrastructure used by the development being charged.
- The SIC will maintain a reasonable balance between funding infrastructure and facilitating private sector investment in development.
- The SIC will not duplicate charges for infrastructure covered by local contributions.

Principle 4 - The SIC will be relevant, current and outcome-focused

- The SIC will be regularly reviewed to reflect infrastructure needs and strategic priorities.
- SIC expenditure will be scheduled for a SIC area when sufficient funds for delivery and construction have accumulated (or earlier if budget allows).
- SIC expenditure will be programmed in accordance with an understood and accepted investment decision framework.
- SIC expenditure will align to capital planning programs managed by other State agencies, State-owned corporations and councils.

Principle 5 - The SIC will be transparent and predictable

- The SIC will be clear and simple; providing clarity on financial obligations of the development industry and landowners.
- A set of standard SIC instruments will be used across NSW. They will apply to greenfield residential, infill residential and industrial/commercial development.
- Stakeholders will be consulted before a SIC is made. Consultation could occur by publishing (and seeking feedback on) an initial proposed approach and/or a final Determination.
- Introduction of a SIC will include transition arrangements, in consideration of implications for development outcomes and timing.
- SIC revenue and expenditure of funds will be published for transparency.

7. Key components of a SIC

A SIC will include mandatory information as required by the *Environmental Planning and Assessment Act 1979*. It will also include information that demonstrates adherence to the principles set out in this Guideline.

In order to achieve consistency and simplicity, three standard SIC instruments will generally be applied across NSW. These will relate to greenfield, infill and industrial/commercial developments.

Each SIC will include the following information:

a. location where the SIC applies

b. detail of the supporting strategic land use planning context

c. types of development subject to a SIC

d. the SIC infrastructure list

e. infrastructure costs and apportionment

f. method to calculate the SIC

g. when the SIC is payable.

a. Location where the SIC applies

A location or area where the SIC applies is called a Special Contributions Area (SCA). A SCA can be declared over any location where an integrated land use and infrastructure planning process identifies the need for additional state and regional infrastructure linked to development outcomes. Where possible, the boundary of the SCA will support multiple high growth areas. This will assist with simplicity, consistency and clarity.

A SCA will be applied where:

- There is sufficient new demand for new State and regional infrastructure to justify introducing a SIC.
- The SIC will be able to generate sufficient revenue to support place outcomes and strategic objectives.

b. Detail of the supporting strategic land use planning context

Each SIC is aligned to the broader strategic land use planning context, forecasting likely infrastructure needs - based on planning assumptions – and allocating a share of the cost of that infrastructure to forecast growth. Elements of the land use planning process that inform the preparation of a SIC include:

- The boundary and extent of the land use planning area and its relationship to the SCA.
- The range, types and locations of intended future land uses.
- The proposed development and urban design outcomes, including proposed planning controls where available.
- The proposed structure plan including the spatial relationships and alignment of key infrastructure.
- Supporting technical information such as site analysis, land valuation and economic analysis, and infrastructure scoping studies.

c. Types of development subject to a SIC

A SIC establishes a financial contribution for new developments that generate a need for additional State and/or regional infrastructure. The SIC will apply only to land rezoned after the SIC takes effect.

A land-use strategy can facilitate a range of planning outcomes, so a SIC must contemplate a range of development types that will contribute to the cost of infrastructure. This includes residential, commercial and industrial development, and subdivisions.

Some development types will be exempt from a SIC charge. Depending on the nature of development expected in the SCA, this could include certain types of developments, development under certain types of zoning,

types of development approvals or for temporary developments that are necessary to support the Government's broader strategic objectives. Examples of development typically not required to make a contribution include public schools, emergency services, affordable housing, open space and public recreation facilities.

Land that may not be required to make a contribution includes flood-prone land, public utility easements, public roads and transport corridors.

All exemptions and exclusions will be published in supplementary guidance, for clarity.

Exemptions and exclusions may vary across SIC Determinations to cater to the specific needs of each place.

d. SIC Infrastructure list

Infrastructure that can be funded under a SIC must be consistent with the strategic land use planning context, be related to development being charged and support the objectives for a place. Table 1 identifies the state and regional infrastructure categories and components that can be included in an infrastructure schedule within a SIC. Note that a SIC will not necessarily provide funding towards all the categories of infrastructure identified below.

Table 1 – SIC Infrastructure

Category	SIC infrastructure
Transport	• Roads being land and/or works for State and regional roads (new roads and upgrades to existing roads and intersections), including active transport components. • Bus infrastructure being land and/or works for bus interchanges, transit routes and bus stops (infrastructure to be owned by a public authority, but services may be operated by a contractor appointed by the state government). • Active transport infrastructure aligned with regional networks identified in a relevant adopted strategy or plan (e.g. Green Grid, Principal Bicycle Network or Regional Cycle Plan).
Open space and green infrastructure	• Land acquisition for regional open space in greenfield locations, and land and/or works for regional open space in urban renewal locations (including works for regional recreation facilities, tree planting and strategies for urban canopy). • Regional green infrastructure in the form of open space connections or linear parks where identified in a relevant state strategy or an adopted local recreation study where they form part of a regional network.
Education facilities	• Education facilities and land covering public primary schools, special schools, high schools and TAFEs. • Land acquisition in greenfield locations for new education facilities. • Land and/or works in urban renewal locations to contribute towards new education facilities or expansion of existing facilities (based on the additional expected student population).
Health facilities	• Heath facilities and land for regional and community health facilities. • Land acquisition in greenfield locations for new or expanded health facilities. • Land and/or works in urban renewal locations to contribute towards new health facilities or expansion of existing facilities.

Table 1 – SIC Infrastructure (CONT.)

Category	SIC infrastructure
Justice and emergency services facilities	• Justice and emergency services land and facilities covering police stations, court facilities, fire and rescue and ambulance facilities. • Land acquisition in greenfield locations for new or expanded justice and emergency services facilities. • Land and/or works in urban renewal locations to contribute towards new justice and emergency services facilities or expansion of existing facilities.
Biodiversity	• Biodiversity certification offsets for specific land release areas.
Public space, community and cultural facilities	• Regionally significant public space and community or cultural facilities (such as regional libraries and regional sporting facilities). • Land acquisition in greenfield locations. • Land and/or works in urban renewal locations to contribute towards new facilities or expansion of existing facilities.
Planning and delivery	• A contribution towards the strategic land use and infrastructure planning costs, and the cost of preparing, administering and monitoring the SIC system. This is generally a maximum of 1.5% of the cost of infrastructure.

An integrated infrastructure planning process considers the full range of infrastructure to support desired place outcomes. The draft SIC infrastructure list forms part of the package of information in the SIC consultation and exhibition process. Feedback from consultation on the draft SIC will inform the preparation of a final infrastructure schedule which is reflected in a SIC Determination.

Key information used to identify the infrastructure to be nominated in a SIC includes:

- Technical studies Analysis of growth scenarios, economic feasibility and key assessments including transport, open space and community infrastructure. This considers the existing infrastructure capacity and forecast future infrastructure requirements.
- Design studies Urban design and public realm studies to provide the spatial context and inform infrastructure needs.
- Agency and council advice Input and feedback from State agencies and councils on growth-related infrastructure needs, including relevant cost information where available.
- Existing Government strategies and plans This includes statutory planning instruments and land-use planning and infrastructure strategies and policies.

e. Infrastructure costs and cost apportionment

The SIC aims to balance the funding of infrastructure with broader development objectives and provides funding towards infrastructure related to growth in the SCA.

Where an infrastructure item is only partly required to service growth with the remainder required to service either existing demand, background growth, or growth from outside the SCA, the cost of the infrastructure will be apportioned to users outside of the SCA (i.e. the cost will be recovered from other sources than the SIC).

The mechanism for calculating apportionment varies according to infrastructure type.

Table 2 – Approach to apportionment

Infrastructure type	Approach
Education, health, justice, community, cultural and emergency services facilities	• Advice is sought from relevant agencies during the planning stage on infrastructure requirements. Boundaries of the planning area and the catchments for education, health, justice, community, cultural and emergency services facilities planning often do not coincide with the SCA. • Where the need for new or upgraded facilities is identified and a link to growth in the precinct is established the SIC can contribute towards the facility. Apportionment is based on the proportion of the cost of the facility serving growth as a component of the overall facility's service catchment.
Open Space and open space connections	• The availability of and need for open space and active transport connections is analysed during the planning stage. Technical studies will identify the need and opportunities for new and/or improved regional open and public spaces forming part of a regional network. The costs and apportionment are based on the purpose of the park and its catchment.
Biodiversity	• Any applicable biodiversity offset will be subject to the requirements identified in the wider biodiversity policy and specific land release areas.
Transport (roads, public transport and active transport infrastructure)	• Transport analysis will identify the proportion of new and upgraded transport infrastructure generated by growth compared to other demands, usually through traffic modelling across the growth horizon. For example, where modelling indicates that 75% of traffic on an item of road infrastructure is due to growth in the SCA, the SIC will recover 75% of the cost of that item.
Funding for investigations	• The SIC can recover funding for investigations such as scoping studies, concept design and business case preparation to assist agencies and councils in progressing the item towards delivery.

Cost estimates for the SIC infrastructure are derived from three primary sources:

- Delivery agencies' or councils' strategic cost estimates where available.
- Costs identified in an executed planning agreement (for example, where a developer is delivering an item as works-in-kind).
- Quantity surveyor and/or licensed land valuer advice for items where information is not available from the relevant developer, delivery agency or council.

SIC Infrastructure costs include project overheads and on-costs.

Sufficient contingency must be allowed for unexpected costs or cost escalation. Contingencies vary according to the infrastructure type, the quality of information available and the standard practices of the responsible delivery agency.

As a general guide, the following criteria and benchmarks are used to inform a consistent approach to costs and contingencies at the early infrastructure identification stage, where advice from a quantity surveyor is required:

- **Roads** Delivery agency or council estimate, or a benchmark of 40% where other information is not available.
- **Active transport** Benchmark 40% within a road, or 30% elsewhere.
- **Open space embellishment** Benchmark 30%.
- **Social infrastructure and community facilities** Benchmark 20%.

These benchmark rates reflect the general nature of the high-level strategic information available at the planning stage. Alternate contingencies may be developed for individual projects as more information becomes available to reflect project-specific risk factors, a unique design or project scope.

f. Method to calculate the SIC

Applying a consistent charging approach across all SICs will improve predictability, simplicity and certainty. Equally, it is important to ensure that a SIC can be applied to a range of land uses that generate infrastructure demand and this can require a range of SIC calculation methods to be utilised. The standard calculation method approaches are:

- A charge per net developable hectare in greenfield areas.
- A charge per dwelling and/or gross floor area in urban infill areas.

In some exceptional cases, a charge based on percentage of the capital investment value (CIV) will be considered to further simplify the calculation method.

The Department will seek to ensure a SIC does not unreasonably impact on development feasibility and will, prior to implementing a SIC, investigate the impact of the SIC charge on general development viability.

Table 3 below provides a general overview of the approach to a SIC feasibility analysis.

Table 3 – Approach to SIC Feasibility

Item	Approach
Planning uplift	• When sites are rezoned, there can be some increase in land values. This uplift will vary across a SCA and may make a SIC more feasible. A statistical analysis is used to identify an average or representative SIC feasibility thresholds post-uplift, across the SCA.
Development and construction costs	• Industry benchmarks will generally be used to determine average development costs across the SCA.
Affordable housing	• The impact of any affordable housing contributions (in place under State Environmental Planning Policy 70) is considered before setting a SIC rate.
Local developer contributions	• It will be assumed that local developer contributions will be imposed on development to which a SIC applies. The higher of the adopted local contributions charge or the rate cap will be used. Advice is sought from councils on any proposed updates to local contributions plans at the time of the SIC feasibility study.

If development feasibility is to be impacted, consideration is given to strategic development priorities, and the SIC may be adjusted to:

- Reduce the scope of infrastructure to align with the revenue forecast to be received under a feasible SIC charge.
- Cap the SIC charge.
- Consider a percentage-based cost recovery target for the SIC.

In some situations, the government may consider growth areas for early release and rezoning on the basis that the release will incur no additional cost to government in relation to State or regional infrastructure. In this instance the SIC rate will be set with an assumption the developers have considered feasibility before making the offer to develop.

The SIC will provide clarity on costs as early as possible in the development cycle. In addition to the public consultation process outlined in Part 8, SIC rates may be introduced in stages. Where appropriate, the Department will apply incrementally increasing rates each year from the date of implementation until a time when the full SIC rate will apply. These transitional rates will be outlined in the SIC determination.

The base SIC rate will be increased at the start of each financial year.

g. Timing of payments and administration

The timing of a SIC payment can have significant implications on development feasibility and cash-flow. However, the timing of the SIC payment should also align to relevant stages of the land-use planning system. Therefore, the payment should be required as late as possible in the development process but no later than the issuing of final development consents.

A SIC is generally payable at the subdivision or construction certificate stage, depending on the type of development making the contribution. The development consent will specify when the SIC must be paid.

Developers can also propose to meet their obligations under a SIC by providing SIC infrastructure in lieu of paying a charge. This is known as 'works in kind' (WIK).

If agreed by the Minster or the relevant delegated authority, the planned cost of the WIK infrastructure (or actual cost, whichever is lesser), will be set off against the relevant SIC charge for the development.

Before accepting a WIK proposal, the Minister or Minister's delegate will consider the priority of the infrastructure and the value for money represented by the proposed alternative delivery method.

In relation to monetary contributions, a SIC Certificate of Payment is issued when SIC's obligations are satisfied. In relation to WIK, the obligation is met when the obligations are fulfilled in accordance with a works-in-kind agreement between the developer and the Minister or the relevant delegated authority.

SIC financial contributions are paid into a special deposits account known as the '*Special Contributions Area Infrastructure Fund.*' The Secretary of the Department administers the Fund in consultation with the NSW Treasury.

8. Public consultation and transparency

Public consultation and opportunities for feedback will occur before a SIC is implemented. The Department will consider a range of public consultation opportunities such as:

- Publish draft proposals (proposed SIC, SCA and infrastructure list).
- Release draft determination, direction and order (proposed statutory instruments).
- Organise community feedback session and industry engagement workshops.

Feedback will be sought on all aspects of the proposed SIC, including the contribution, the SCA, the infrastructure list and the types of development that will be required to make a contribution.

All submissions received during the public consultation period will be made available on the Department's website.

A range of supplementary materials and publications will be made available for all SICs. These are:

- User guides, including information about amendments to the SIC, how to apply for works-in-kind and how to nominate a project for SIC investment.
- Financial reports, detailing SIC annual revenue and total revenue.
- SIC project delivery including investment prioritisation and selection.

9. Expending SIC revenue

The principles of nexus and apportionment appropriately constrain the SIC's ability to fully recover the full cost of new infrastructure even in areas with the highest rates of growth. The SIC is therefore not a commitment to the delivery of any infrastructure item.

However, the SIC is derived according to a reasonable assumption of infrastructure needs and costs, fairly apportioned to the users of that infrastructure. SIC revenue is to be directed to the infrastructure required to support the new or growing communities to which it applies.

SIC revenue will be programmed for disbursement as soon as practical. Where possible, SIC funding will be aligned to capital planning programs, to create a forward pipeline of asset delivery. Councils, State-owned corporations and the private sector will be consulted on investment programming, through Infrastructure Coordination Committees and local collaboration frameworks.

This will minimise delays in the development process and help to progress land-use plans from conception to completion.

The SIC funding cycle will only commence when sufficient revenue is collected in a SCA and there is sufficient confidence that a substantial delivery program can be committed to.

SIC revenue can take some years to accumulate to an adequate level to fund a major capital investment program. SIC funding can be disbursed to discrete project components including the preparation of business cases, strategic planning, concept design, detailed design or construction funding. In some cases, SIC funding will be made available for planning and business cases; in others the SIC will fund the project through to construction.

Where appropriate, delivery programs and investment decisions will be considered according to the objectives and priorities of the whole SCA.

The SIC program will inform the broader Government expenditure and capital allocation programs.

The SIC expenditure program is supported by:

- A project nomination and selection process with clear objectives and a statement of intended benefits.
- Alignment with the investment decision process of the NSW Treasury and the Infrastructure NSW Infrastructure Investor Assurance Framework.
- Oversight and scrutiny by key Government agencies.
- Advice and feedback from stakeholders including local councils, utility providers and developers.
- Annual reporting on program investments, expenditure and revenue.

Investment programs will need to be prioritised according to the broader objectives for the area to which the SIC applies. The primary considerations for the effective programming and coordination of infrastructure for a place include:

- The land use planning strategy for the relevant area.
- Monitoring of development activity in an area, including dwelling or employment land completion and the pipeline of new development approvals.
- Assumptions about growth, demographic changes and infrastructure demand forecasts.
- Broader infrastructure planning for the place, including State government, local council, utility provider and private sector investment planning.

Investment decisions will be aligned to a SIC-specific prioritisation process and the Infrastructure NSW Infrastructure Investor Assurance Framework as outlined in Part 4 of this Guideline.

Information about SIC revenue and funds allocation will be published annually on the Department of Planning, Industry and Environment's website. This will:

- Improve collaboration between infrastructure providers, state and local governments and the private sector on development and growth management.
- Better inform investment decisions across public and private sectors.
- Improve confidence in the SIC program.

The information will be further supported by ongoing improvements to ePlanning. A web-based map browser will allow users to access information on projects funded from the SIC.

10. State Planning Agreements

In some cases, a development proponent will seek to progress a major development proposal prior to a SIC being implemented. In these instances, the assessing authority may approve the proposal, subject to conditions including satisfactory provision being made by the proponent for the provision of State and regional infrastructure.

To meet their obligations under the planning approval, the proponent may offer to enter into a Planning Agreement with the Minister for Planning and Public Spaces or the relevant delegated authority. The State Planning Agreement could, for example, commit the proponent to dedicating an infrastructure asset to a State agency or to making a financial contribution towards the provision of State and regional infrastructure.

State Planning Agreements will generally apply to major re-zoning in areas of high growth or renewal, unless a SIC is contemplated or already in place. Planning Agreements can still be considered where a SIC is in place if it provides a better infrastructure or planning outcome in the opinion of the Minister or delegate.

11. Have your say

The Department is committed to ensuring a transparent and predictable SIC program to meet the community needs of each contribution area.

The SIC aims to effectively and efficiently collect contributions towards state and regional infrastructure that relates to development growth and in doing so will:

- Align with new place-based models for planning.
- Generate funding for a pipeline of state/regional infrastructure that relates to development growth.

The Department invites your feedback. This will help us better understand the views of stakeholders and the community and will assist us to finalise the Guidelines.

Submissions can be made via the Department's website:

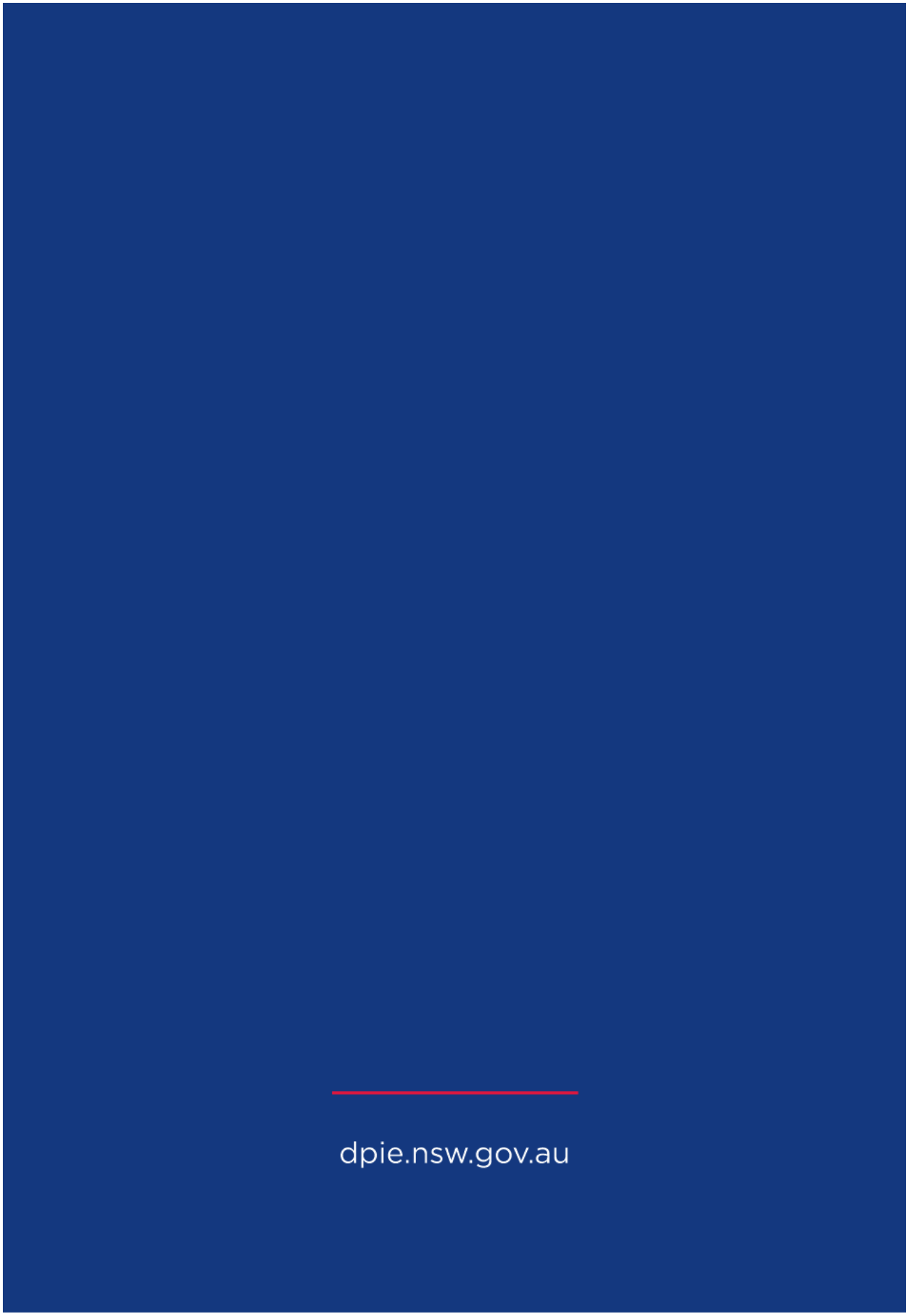
www.planningportal.nsw.gov.au/exhibition

You may also post your submission to:

Executive Director
Planning Policy
Department of Planning, Industry and Environment
GPO Box 39, SYDNEY, NSW 2001.

All submissions will be made public in line with our objective to promote an open and transparent planning system. If you do not want your name published, please state this clearly at the top of your submission. The Department will publish all individual submissions and a submission report shortly after the exhibition period has ended.

The Department will provide regular updates on the SIC program via its website, and will provide ongoing opportunities for councils, agencies, development industry and the broader community to participate in the design of the SIC program.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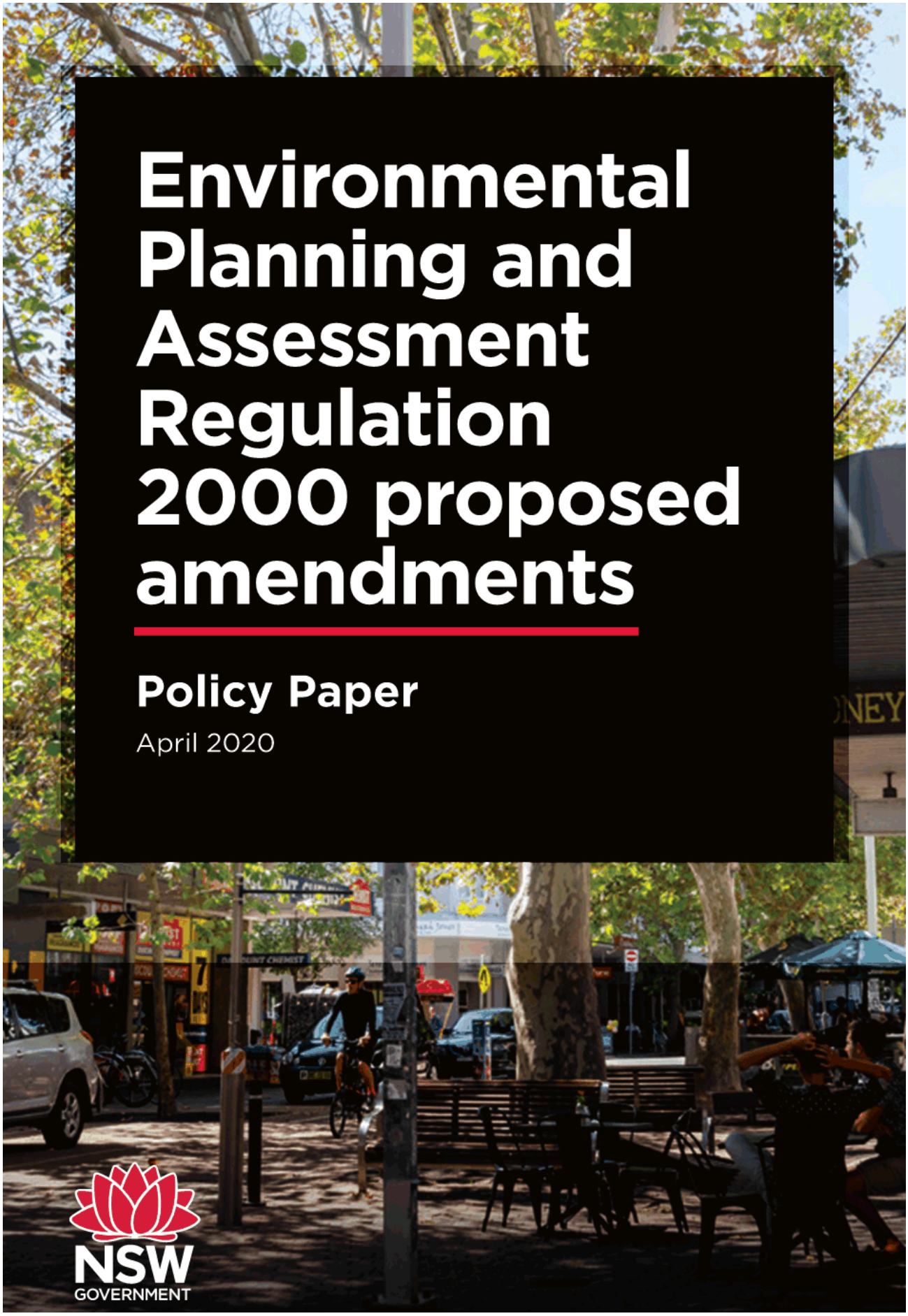
Environmental Planning and Assessment Regulation 2000 proposed amendments
Policy Paper
April 2020
NSW GOVERNMENT

Published by NSW Department of Planning, Industry and Environment

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Title: Environmental Planning and Assessment Regulation 2000 proposed amendments

Subtitle: Policy Paper

Contents

Executive summary

An underlying principle of the NSW planning system is that new development should pay a contribution towards the cost of infrastructure needed to support that development. Transparency and accountability underpin the system to help maintain public confidence in the collection and use of contributions for infrastructure.

The *Environmental Planning and Assessment Act 1979* (the EP&A Act) and *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation) set out the statutory requirements for infrastructure funding contribution collection and use in NSW.

The EP&A Regulation sets out a scheme where infrastructure costs are passed on in an equitable manner.

The Department of Planning, Industry and Environment (the Department) is proposing changes to the EP&A Regulation for:

- Reporting and accounting on contributions received through contributions plans and planning agreements.
- Online publication of reports and information related to infrastructure contributions received by councils and planning authorities via development contributions plans and planning agreements.
- The making of contributions plans requiring Independent Pricing and Regulatory Tribunal (IPART) review.
- Minor administrative amendments related to fixed development levies (s7.12) in Gosford and Wollongong City Centres.

More detail is outlined in section 4 of this paper.

The changes respond to issues raised by local government and industry stakeholders. They implement recommendations from Government reviews to address outstanding issues in the NSW planning system following recent reforms to the EP&A Act. They also implement proposed policy changes described in Policy Papers exhibited with this paper.

The changes aim to:

- Improve transparency and accountability in how contributions are received and used via contributions plans and planning agreements.
- Streamline existing processes.

The proposed changes are important incremental steps to increase transparency and consistency in the contributions system. They will assist in improving public understanding of and trust in the infrastructure contributions system and in reducing the risk of delays in the development assessment process by streamlining some contribution plan-making requirements.

The proposed changes can be viewed in the draft Environmental Planning and Assessment Amendment (Development Contributions) Regulation 2019 (draft instrument).

1. Introduction

1.1 Purpose

The EP&A Act provides the overarching framework for the NSW planning system. The EP&A Regulation supports the day-to-day requirements of this system. It contains key operational provisions including those relating to development contributions and planning agreements.

A number of proposed amendments to the EP&A Regulation were exhibited in 2017 and following changes to the EP&A Act in 2018. This paper outlines proposed amendments to the EP&A Regulation relating to infrastructure contributions levied under development contributions plans and planning agreements. It also explains the rationale for and effect of the proposed changes.

1.2 Improving the infrastructure contributions system

These proposals are part of a wider suite of system improvements intended to fix the uncertainty in the infrastructure contributions system. More information on other current proposals can be found on: planning.nsw.gov.au/infrastructure-contribution-reforms

2. Planning context

Development contributions are a means of funding infrastructure and services needed to support new development. Contributions may be in the form of payment, the dedication of land or the provision of a material public benefit such as works in kind.

State government planning provisions for development contributions are in Part 7 of the EP&A Act (infrastructure contributions) and Part 4 of the EP&A Regulation (planning agreements and contributions plans).

Legislation requiring development contributions towards the provision of public infrastructure was first introduced in NSW in 1980 through section 94 (now s7.11) of the EP&A Act. This was subsequently amended to expand the types of and methods for funding infrastructure to include percentage levies, planning agreements, levies for affordable housing as well as special infrastructure contributions (SICs) for state-provided infrastructure. There are also other mechanisms for funding local infrastructure, such as rates and user charges.

Through the enabling provisions of the EP&A Act and the detailed requirements of the EP&A Regulation, economies of scale can be achieved as infrastructure is strategically planned rather than on a development-by-development basis. The legislative framework also reduces the need for individual developers to negotiate with other developers regarding the provision of larger infrastructure items.

2.1 Environmental Planning and Assessment Act 1979

The EP&A Act requires developers to contribute to public infrastructure and ensures provision of infrastructure is considered in the decision whether to proceed with the development.

The EP&A Act provides mechanisms for State and local government to levy contributions:

- **Planning agreements** – commercial agreements between developers and planning authorities to deliver innovative infrastructure outcomes.
- **Section 7.11 Local infrastructure contributions** – fund local infrastructure with a relationship to development, generally used in high growth and planned precincts.
- **Section 7.12 Local infrastructure contributions** – fund local infrastructure with a relationship to overall development, collected as a flat rate percentage and generally used in rural, infill and mixed-use areas.
- **Special infrastructure contributions** – fund state and regional infrastructure.
- **Affordable housing contributions** – allows conditions to be imposed requiring land or contributions for affordable housing.

In conjunction with other funding sources such as rates these mechanisms provide for the costs of infrastructure and other public benefits to be recovered, or to be delivered, through the planning system.

2.2 Environmental Planning and Assessment Regulation 2000

The EP&A Regulation contains requirements for councils to achieve accountability and monitoring within the developer contributions framework. This includes the way funds received are managed, record keeping, public participation requirements and the procedure for approving, amending, reviewing and repealing contributions plans.

The EP&A Regulation:

- Prescribes the form and subject matter of planning agreements as well as requirements for making, amending and revoking them. It includes requirements for public notice, explanatory notes and public inspection for councils, the Planning Secretary and other planning authorities.
- Details the method of indexation for s7.11 development consent contributions and determination of the cost of development and maximum contribution percentage for the s7.12 levy.
- Prescribes the form and content requirements for contributions plans including that they have regard to practice notes and that councils must not approve them without adhering to any directions from the Minister.
- Requires that draft contributions plans are publicly exhibited, copies are made available and that any person can make a submission.
- Sets out the process for the approval, amendment, review and repeal of contributions plans by councils including any public notice requirements.
- Requires councils to maintain accounting records in a specified format for contributions, and records for inclusion in council's annual financial report and annual statements.
- Identifies public access requirements for contributions plans and their records.

3. Rationale for the Regulation amendments

3.1 Policy intent

The role played by contributions in council and planning authority income and expenditure varies significantly depending on how and when development occurs in different areas. Regardless of the amounts received, probity and governance is essential to ensure the contributions framework fulfils its intended function under the EP&A Act.

Retention and amendment of some provisions in the EP&A Regulation ensures transparency and consistency within the framework, assisting stakeholders to identify what they can expect from the framework and how it should be applied.

The proposed amendments to the EP&A Regulation are aimed at:

- Providing greater direction and transparency in the practical application of the contributions framework.
- Improving accountability and monitoring within the contributions framework.
- Facilitating necessary probity and governance including auditing.
- Promoting efficient infrastructure provision for development.

3.2 Implementation of planning system review recommendations

The proposed changes address recommendations in the Kaldas Report *Review of Governance in the NSW Planning System*[1] , as well as the Legislative Assembly – Committee on Environment and planning *Land Release and Housing Supply in NSW*[2] report.

Kaldas Report

In 2018 Nick Kaldas, former NSW Deputy Police Commissioner and Director of Internal Oversight Services for the UN's Relief Works Agency, was engaged to undertake a holistic review of governance across the planning system including a review of decision-making.

Among other matters, the Kaldas Review identified areas for improvement to ensure best practice against international standards, including in interactions between levels of government.

The NSW Government accepted all of the review's recommendations, including an infrastructure contribution audit.

The proposed changes to the EP&A Regulation respond to the report's recommendations:

Recommendation 10. That the Department of Planning and Environment consider undertaking an audit of all infrastructure contributions and spending of same in NSW to enable evidence-based decision-making on the collection and monitoring of those contributions.

Recommendation 12. The updated Voluntary Planning Agreement framework[3] should also include requirements for reporting and auditing where the funds are being allocated. This will further ensure transparency, compliance and accountability.

Legislative Assembly Committee on Environment and Planning - Land Release and Housing Supply in NSW Report

The Legislative Assembly's Land Release Report also called for greater transparency in funding and delivering infrastructure.

The proposed changes respond to the report's recommendation 6:

The Committee recommends that the NSW Government ensure infrastructure funding mechanisms are simple and made transparent by:

- *Undertaking an audit of current infrastructure funding arrangements and funds available, publishing the results, and ensuring ongoing transparency.*
- *Consulting with local government, professional planners and the development industry on the most effective ways to simplify the current arrangements.*

1 Kaldas Review, December 2018, available at www.planning.nsw.gov.au/Assess-and-Regulate/About-compliance/Kaldas-review

2 Land Release Report, October 2018, available at www.parliament.nsw.gov.au/tp/files/74614/Land%20release%20and%20Housing%20Supply%20in%20NSW.pdf

3 Refers to Recommendation 11 calling for an update to the VPA Practice Note which does not require but is being progressed concurrently with the proposed Regulation amendments.

4. Proposed changes

4.1 Improve reporting on development contributions

Part 4, Divisions 5 and 6 of the EP&A Regulation set out accounting and public access requirements for contributions, levies and contributions plans.

It is proposed to amend the EP&A Regulation to:

- Require reporting by councils on development contributions generally rather than just monetary contributions ie works, services or facilities accepted in part or full satisfaction of the contribution obligations, land dedicated in part or full satisfaction of the contribution obligations in addition to monetary contributions.
- Require more detailed reporting on infrastructure contributions such as specific project and location.
- Require councils to publish contributions plans, indexed s7.11 contribution rates, annual statements, and contributions registers on their website or on the NSW Planning Portal.

Councils currently report on contributions as required under the EP&A Regulation and the *Local Government Act 1993* (LG Act). Currently the wording of the EP&A Regulation allows for this to be high level and for monetary contributions only.

The following is a typical layout of councils annual financial statements for developer contributions which follows the *Local Government Code of Accounting Practice and Financial Reporting*[4] (the Code).

Figure 1: Aggregated monetary amounts typically provided by councils now in annual financial statements

Purpose	Opening balance	Total annual contributions received Cash $,000 & Non-Cash $,000		Total annual interest & investment income $,000	Total annual expenditure $,000	Total annual internal borrowings $,000	Total annual held as restricted assets $,000
Drainage							
Roads etc							

4 www.olg.nsw.gov.au/sites/default/files/General%20Purpose%20Financial%20Statements%20_1.pdf Update 27 March 2019) General Purpose Financial Statements

Detailed reporting requirements (to be outlined in separate guidance to support councils):

- Retain the aggregated report currently required under the EP&A Regulation and the Code, but also require more information on contributions provided as land or material public benefit.
- Require additional information in published reports already required such as contributions registers and annual financial reports required under both the EP&A Regulation and the LG Act including:

Contributions received

- relevant Contribution Plan name
- DA reference, consent authority/ies, date consent was granted and mechanism (s7.11 or s7.12)
- the purpose eg open space
- amount received (monetary)
- details of land, or works in kind including value and location.

Contributions expended/used (for each contribution plan)

- project identification and description
- amount expended
- use of or development of the land or works in kind
- internal borrowings
- percentage of project funded.

Effect of the changes

The new requirements will:

- Allow greater transparency about contributions received and how they are used or expended (in the case of monetary contributions).
- Draw on information councils already collect and hold in their financial management systems.
- Allow for auditing of all infrastructure contributions and use in NSW.

4.2 Improve reporting on contributions received via planning agreements

Part 4 Division 1A of the EP&A Regulation sets out requirements for contributions received via planning agreements.

It is proposed to amend the EP&A Regulation to:

- Require planning authorities to provide additional reporting and accounting information for planning agreements as follows:
  - planning agreements register to include the type of development proposed
  - annual financial reports to include:
    - monetary amounts actually received and expended
    - works in kind delivered, value and location including of assets held by receiving agencies
    - land dedications received, value and location.
- Require planning authorities to publish a Register of Agreements, copies of planning agreements and annual reports on their website or on the NSW Planning Portal (in line with current Departmental practice of publishing planning agreements entered into by the Minister for Planning)[5].
- Remove prescriptive requirements related to explanatory notes for proposed planning agreements and address through a Practice Note (see Draft Secretary's Practice Note on Planning Agreements in infrastructure contributions improvements package).
- Require explanatory notes for planning agreements to be prepared in accordance with the Practice Note.

5 Published planning agreements entered into by the Minister for planning are available at www.planningportal.nsw.gov.au/SVPA

Effect of the changes

There are currently limited reporting and publication requirements for planning agreements in the EP&A Regulation. Recommendations 11 and 12 of the Kaldas Report specifically dealt with planning agreements.

The new requirements will:

- Provide greater transparency through new publication and expanded reporting requirements.
- Apply to planning agreements entered into by all planning authorities.
- Promote a strategic approach by councils in the use of planning agreements.
- Ensure detailed guidance on the preparation of planning agreements is contained in the Practice Note.
- Support update and use of the Practice Note for Planning Agreements.
- Allow for auditing of where contributions received via planning agreements are being allocated.

4.3 Streamline the process for making a contribution plan following receipt of the Minister's (or Minister's nominee) advice

Part 7 of the EP&A Act sets out requirements for making contributions plans including that a council, or two or more councils, may, subject to meeting the requirements of the EP&A Regulation, prepare and approve a contributions plan. Schedule 1 specifies a minimum 28 day exhibition period for draft contributions plans.

Part 4 Divisions 1C, 2, 3 and 4 of the EP&A Regulation set out requirements for preparing, exhibiting, approving, amending and repealing contributions plans. Clause 32 of the EP&A Regulation states that to amend a contributions plan, a council must make a subsequent plan.

It is proposed to amend the EP&A Regulation to:

- Allow for contributions plans to be amended to give effect to the advice of the Minister (or Minister's nominee) in relation to implementing IPART recommendations without requiring a further 28 day exhibition following IPART review (see below).

Effect of the changes

In preparing a contributions plan, councils must publicly exhibit a contributions plan for a minimum of 28 days and consider any submissions received.

Where contribution plans are required to be submitted to IPART for review[6], IPART also has a practice of publicly exhibiting their draft recommendations 14 days, prior to releasing final recommendations.

When the Minister (or Minister's nominee) issues advice to council on amendments required to the contributions plan following the IPART review and prior to being able to levy their proposed contribution amount, council is currently required to re-exhibit the contributions plan for a further 28 days. Council must then consider submissions received. However council is constrained in their ability to make any further changes as a result of any submissions received.

The amendment will remove the 28 day re-exhibition requirement for contribution plans reviewed by IPART.

To facilitate public review of final approved contributions plans, it is proposed to require councils to publish contributions plans on their websites or on the NSW Planning Portal (see section 4.1 above)[7]. See also paper on improving the Improving the review of local infrastructure contributions plans.

6 Is required if councils propose to levy contribution amounts which exceed specified cap.

7 Clause 31 requires public notice to be given by a council within 28 days of its decision to approve a plan as exhibited, with alterations or to not proceed.

4.4 Limit the maximum percentage s7.12 levy that can be imposed in Gosford City Centre

Part 4 Division 1B cl25K of the EP&A Regulation specifies a maximum percentage of the proposed cost of carrying out development that may be imposed by council under s7.12 of the EP&A Act (fixed development consent levies) for several environmental planning instruments (EPIs). This includes a maximum 4% levy for development over $250,000 in Gosford City Centre Local Environmental Plan 2007 (LEP).

A Special Infrastructure Contribution (SIC) for the Gosford City Centre was made on 12 October 2018. As a result, council is no longer required to fund regional infrastructure through the s7.12 levy. It is no longer appropriate for council to levy in excess of 1%.

It is proposed to amend the EP&A Regulation to limit the maximum percentage levy amount council can impose in Gosford City Centre.

Effect of the changes

Clause 25K of the EP&A Regulation establishes a maximum percentage levy Central Coast Council can impose under a local contributions plan, being 4%. However the intention of the Gosford City Centre SIC was to create a contribution rate in Gosford of 3% (2% under the SIC and 1% under the local contributions plans made under s7.12).

The amendment will achieve consistency between the intended levy amount specified in the Gosford City Centre SIC with that which can be imposed by Gosford City Council.

4.5 Update the cl 25K outdated reference to Wollongong City Centre LEP

Part 4 Division 1B cl25K of the EP&A Regulation also specifies a maximum percentage for development levies under s7.12 of the EP&A Act for 'Land within the Commercial Core zone under 'Wollongong City Centre Local Environmental Plan 2007'. This Plan was repealed by the Wollongong Local Environmental Plan 2009 in 2010. The current (2009) LEP includes B3 Commercial Core land.

It is proposed to amend the EP&A Regulation to update cl25K references to the 'Wollongong City Centre Local Environmental Plan 2007' to refer to 'Wollongong Local Environmental Plan 2009'.

It should be noted that some other LEPs referred to in cl25K have also been repealed however retention of the LEPs as currently named is necessary to maintain the effect of clause.

Effect of the changes

The amendment is required as the boundary of the Wollongong City Centre was changed in the 2009 LEP and will provide consistency for land in the Wollongong Commercial Core.

5. Have your say

The Department welcomes your feedback regarding the proposals outlined in this paper and on the draft instrument. Your feedback will help us better understand the views of the community and will assist us in finalising the proposals outlined in this paper.

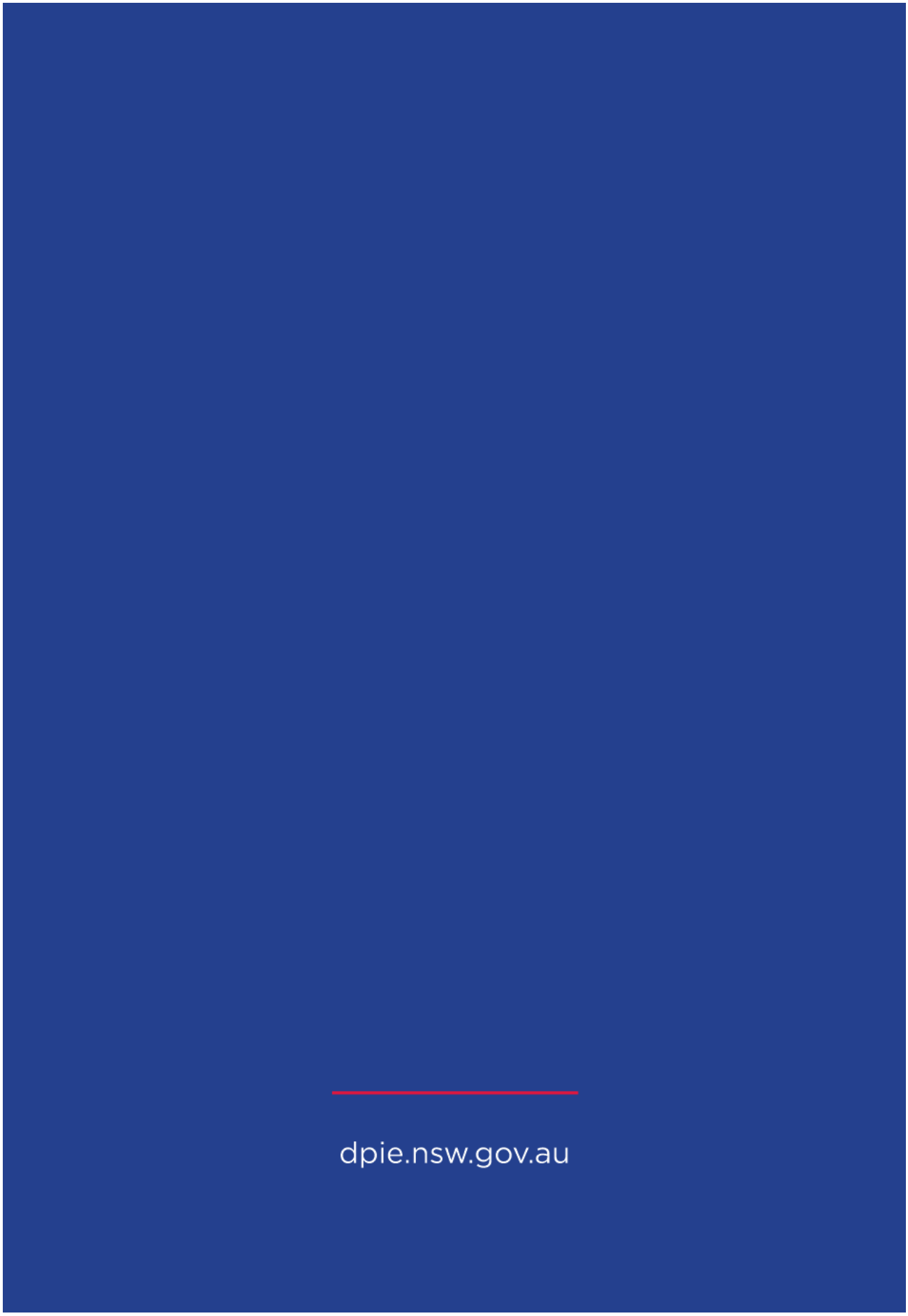
Submissions can be made via the Department's website:

www.planningportal.nsw.gov.au/exhibition

You may also post your submission to:

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

All submissions will be made public in line with our objective to promote an open and transparent planning system. If you do not want your name published, please state this clearly at the top of your submission. The Department will publish all individual submissions and an assessment report on all submissions shortly after the exhibition period has ended.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