

**Draft LGNSW Submission to
Department of Planning, Industry and
Environment *Review of Infrastructure
Contributions***

June 2020

Table of Contents

1.0	Opening	3
2.0	Summary of proposed changes	3
3.0	Planning Agreements Policy Framework	4
4.0	Improving the review of s7.11 local infrastructure contributions plans	6
5.0	Criteria for councils to request a higher than 1% levy for section 7.12 plans	8
6.0	Draft Special Infrastructure Contributions Guidelines.....	9
7.0	Proposed Amendments to EP&A Regulation 2000	9
8.0	Conclusion	10
	Appendix 1 - Summary of Recommendations.....	12

1.0 Opening

Local Government NSW (LGNSW) welcomes the opportunity to make a submission to the Department of Planning, Industry and Environment (DPIE) on the review of the infrastructure contributions system.

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

Councils rely on development contributions to fund new infrastructure to support population growth and new development. Local government infrastructure responsibilities include local road, bridge, pedestrian and cycle networks, local water and sewerage utilities, stormwater and water management, buildings and facilities, regional airports and aerodromes, parks, recreation, cultural, family and community services facilities, and a range of other infrastructure vital to local communities and important for creating liveable communities. Council contribution plans are generally limited to the initial costs of providing this infrastructure. The ongoing life cycle costs of managing and maintaining infrastructure are not typically included in these plans.

Councils are facing funding shortfalls, particularly with regard to funding important liveability facilities like open space. LGNSW advocates greater flexibility for local development contributions, and the ability to apply value capture as a funding mechanism as part of approval of any planning proposals/up-zonings associated with current urban renewal projects. LGNSW has also long advocated for the removal of rate pegging and other constraints on council revenue to assist councils in meeting the infrastructure funding needs of their communities.

Infrastructure contributions are made by developers to help deliver the infrastructure needed as communities grow. This is based on a long-standing user-pays (or beneficiary pays) principle of the existing planning system i.e. new development makes a contribution towards the cost of infrastructure that will meet the additional demand it generates and benefits from.

This draft submission addresses each of the five components on exhibition as part of the DPIE's review of the infrastructure contributions system.

This is a draft submission awaiting review by the LGNSW Board. Any revisions made by the Board will be forwarded to the DPIE.

2.0 Summary of proposed changes

The DPIE released several documents outlining proposed changes to the infrastructure contributions system for consultation. The proposed changes include:

1. updated draft practice note and Ministerial Direction relating to voluntary planning agreements;
2. options to simplify and shorten the process for reviewing s7.11 local contributions plans;
3. specific criteria for s7.12 levies above the standard 1%;
4. new guidelines related to the State's Special Infrastructure Contributions (SICs);

5. amendments to regulations to require councils to publish how much they have collected in developer levies and where they have been spent.

LGNSW notes these changes are separate from the wider review of the infrastructure contributions system currently underway by the NSW Productivity Commissioner. That broad review is welcomed because it can assess how infrastructure is funded in NSW and look at matters in, and beyond, the planning system. LGNSW will be making a separate submission to the Productivity Commissioner on that review.

3.0 Planning Agreements Policy Framework

The framework for planning agreements was introduced in 2005. An updated framework was previously exhibited in early 2017 and LGNSW made a submission. DPIE has released an updated draft '*Planning Agreements Practice Note*'. We understand this updated policy responds to stakeholder feedback on the earlier draft practice note and the recommendations of the 2018 Kaldas Review of Governance in the NSW Planning System. A draft Ministerial Direction has also been published which will require councils to have regard to the practice note when negotiating or preparing a planning agreement.

LGNSW welcomes the publication of this updated practice note. In proposing an updated framework, the government is reaffirming the legitimacy and importance of voluntary planning agreements (VPAs) in the planning system.

In general, LGNSW supports the fundamental principles in 2.1 of the draft practice note, however, as discussed below, the inference that value capture should not be used in VPAs is not supported.

Value Capture

LGNSW policy advocates for new and fairer financing opportunities for local government, with particular emphasis on infrastructure e.g. value capture, VPAs and fees and charges¹. Value capture through a planning agreement is an important tool that enables councils to deliver the infrastructure needed to meet the demands of future populations, over and above what can be delivered through a s 7.11 or s7.12 plan, where the current Ministerial 'thresholds' limit the levying for such infrastructure. Value capture provides an equitable and efficient alternative for funding infrastructure – at present the only mechanism for this is VPAs. In recent years many councils have been advocating for value capture mechanisms other than VPAs to be developed and finalised urgently.

LGNSW is concerned that section 2.3 of the draft practice note infers the removal of VPAs as a tool for explicit value capture. An extract of section 2.3 states: "*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*". The explicit singling out of value capture in the practice note in

¹ https://www.lgnsw.org.au/files/imce-uploads/581/LGNSW_Policy_Platform_-_April_2020.pdf (p 9)

this way appears to depart from the existing 2005 Practice Note and the draft practice note exhibited in 2016².

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

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

LGNSW strongly objects to the proposed removal of value capture as an explicit use for VPAs. The practice note should be amended to provide for value capture as an accepted provision in VPAs.

Ministerial Direction

LGNSW questions the proposed use of a Ministerial Direction to impose statutory force to the Practice Note. The effect of the Ministerial Direction is to compel all councils to “have regard to” the Secretary’s Practice Note. If adopted, this direction effectively elevates the standing of the Practice Note from a guidance document to a mandated set of considerations and actions applicable to all NSW councils. The use of the Ministerial Direction in this manner is heavy-handed and unnecessary; it is not supported by LGNSW.

Recommendation 1: LGNSW strongly objects to the draft Practice Note’s direction that value capture is not an acceptable approach upon which to base VPAs. LGNSW recommends that section 2.3 of the draft practice note be amended to confirm that value capture is an accepted provision in VPAs.

Recommendation 2: LGNSW recommends that the Ministerial Direction not be issued as it is considered unnecessary to enforce practice notes which are essentially guidance documents.

² [Draft Practice Note, Planning Agreements](#), Nov 2016, p 14: “The provision of planning benefits for the wider community through planning agreements involves capturing part of development’s profit. The value of planning benefits should always be restricted to a reasonable share of development profit.”

4.0 Improving the review of s7.11 local infrastructure contributions plans

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

LGNSW has always opposed the maximum caps on s 7.11 local infrastructure contributions on behalf of its members. The IPART review process has been typically long and complicated, potentially delaying the collection and expenditure of funds. LGNSW therefore welcomes proposed measures in the discussion paper to make the review of contributions plans by IPART more efficient.

Increased thresholds

Currently, the local infrastructure contribution plan triggers review by IPART where a council's contribution plan proposes to levy s 7.11 local infrastructure contributions above the following amounts:

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

These thresholds were introduced in 2010, and no evidence or analysis was provided at the time to support the use of these figures. The discussion paper proposes to increase the thresholds that trigger the review process. The options include:

- Indexing the \$20,000 and \$30,000 thresholds by CPI
- Increased thresholds to \$35,000 and \$45,000 for infill and greenfield areas
- One increased threshold of \$45,000 across the state

The IPART review adds another resource-intensive and lengthy stage into the complex process of preparing and adopting contributions plans. Historically, LGNSW has opposed the imposition of these thresholds due to the burden of the IPART review process on councils. LGNSW does not support the thresholds and maintains that councils should be empowered to do the planning for infrastructure within their local areas and to recoup contributions for the provision of infrastructure for the benefit of the community.

In the ten years since the caps were introduced, there have been significant increases in land values and construction costs – particularly in the greater metropolitan area, so it is reasonable for the thresholds to be reviewed. However, LGNSW is concerned that there is no data provided to justify the threshold amounts proposed here. A 2018 report³ which reviewed contributions caps indicates that the contribution rate for a metropolitan council is in the vicinity of \$100,000 and for a fringe metropolitan council in excess of \$70,000 per lot or dwelling. This

³ Melissa Ballinger, *Development Contributions in NSW: A Review of the Section 7.11 Contributions Cap*, 2018

data confirms that contribution rates are irrefutably above the current thresholds, particularly for metropolitan areas, reinforcing the need to review and increase the thresholds. This is further ratified by the fact that IPART regularly approves development contributions significantly higher than (often double) the cap in some areas – this validates what the true costs of development actually are.

In conclusion, LGNSW maintains that the thresholds would need to be increased to a more realistic level before commencing any form of indexation. They have not been indexed for 10 years which means they have declined in real terms during this period. Also, it is questionable whether the CPI is the appropriate index, and whether the index should be one that more accurately reflects the changes in construction and land value costs.

Process changes

It is proposed to remove the existing requirement for councils to re-exhibit an IPART reviewed contributions plan following the receipt of the Minister's advice in order to reduce the length of the process. As councils are required to undertake consultation on the draft plan earlier in the process, LGNSW supports this proposed change to shorten the process and improve efficiency as re-exhibition following receipt of the Minister's advice is considered to be of limited value.

IPART terms of reference

LGNSW considers that IPART's terms of reference are too narrow and these should be broadened to allow review of particular elements of a contributions plan without triggering a full review of the entire plan. This would promote efficiency and prevent IPART from re-assessing an entire plan a second time where only specific elements in the plan have changed and the original plan has already been assessed.

Removing existing exemptions to the review process for grandfathered contributions plans

Several councils have contributions plans that are "grandfathered" and have been in place for a number of years and are close to the end of their operation as the development areas are substantially completed. It would be inefficient to remove the exemptions for these plans and to trigger a review of these plans. LGNSW does not support removing grandfathered plans from Schedule 1 of the Minister's Direction.

Essential Works List

The Essential Works List is relevant to the s 7.11 plans that propose contribution levels above the relevant cap. The DPIE prescribes a list⁴ of essential infrastructure that these plans can contain. This list does not include community facility buildings, only the land component of these facilities.

Councils aim to create healthy and thriving communities by funding local facilities such as community and neighbourhood centres, halls, libraries, youth and childcare facilities. To create healthy and liveable communities, it is important for infrastructure to be in place when residents move into areas. Moreover, contemporary community expectations are that these

⁴ NSW Planning and Environment, *Local Infrastructure Contributions Practice Note*, January 2019

essential services and facilities will be available when they move into an area. As community facility buildings are not included on the current essential works list, local government faces significant funding shortfalls for providing community facilities. For example, in 2015 Blacktown City Council had a funding shortfall in excess of \$135 million⁵. This situation is not sustainable for councils and not in the public interest. LGNSW recommends that the “essential works list” be reviewed and amended to include the capital costs of providing community facility buildings.

Recommendation 3: LGNSW objects to the imposition of unrealistic thresholds, which are not evidence-based, to trigger the IPART review process. Councils should be empowered to plan for their local areas and not be burdened by the lengthy IPART review process.

Recommendation 4: LGNSW supports the change in process to remove the requirement for councils to re-exhibit an IPART reviewed contributions plan following the receipt of the Minister’s advice.

Recommendation 5: LGNSW recommends that DPIE amends IPART’s terms of reference to allow IPART to review particular elements of a contributions plan without triggering a full review of the entire plan.

Recommendation 6: LGNSW recommends that the current exemptions for grandfathered contributions plans be retained to reduce the burden of unnecessary reviews where these plans are close to the end of their life.

Recommendation 7: LGNSW recommends that the “essential works list” be reviewed and amended to include the capital costs of providing community facility buildings.

5.0 Criteria for councils to request a higher than 1% levy for section 7.12 plans

Under section 7.12 of the *Environmental Planning and Assessment (EP&A) Act 1979*, councils may charge contributions as a percentage of the estimated cost of the development. The maximum percentage that can be charged in most areas is 1%, although there are a small number of areas that are permitted to charge a higher percentage. The DPIE has released a series of proposed criteria which are intended to provide clarity where councils wish to apply a levy under s 7.12 of the EP&A Act above the standard 1% maximum.

LGNSW considers the value of 1% should be reviewed as it was introduced about 15 years ago with no justification or financial analysis. A review, in consultation with local government, is recommended to confirm whether the value of 1% is sufficient or whether a higher baseline contribution amount is more applicable.

The impact of the changes proposed by DPIE mean that if councils would like to request a higher percentage contribution above 1% they are required to provide a draft s 7.12 plan with a works schedule and also provide evidence addressing the criteria outlined in the discussion paper for requests for levies up to 2% or 3%.

⁵ LGNSW Annual Conference Business Paper 2015, p 48

LGNSW supports the inclusion of the criteria to apply a contribution levy above the 1%. LGNSW supports these criteria being documented and the clarity that this provides to councils and developers. Due to the diversity of councils across NSW, this additional flexibility to charge higher levies for development located within strategic centres, local centres or economic corridors is appropriate due to the higher standards of service required in these areas.

The proposed criteria “C1.2 The strategic plan must include a “significant” employment growth target for the centre” is too narrow and should be amended to also allow higher levies to fund public infrastructure provision associated with new residential development. Existing and future residents of high-density developments within inner-city areas tend to use the public domain as an extension of their living space. Therefore, higher levies are required to fund appropriate infrastructure and amenity improvements associated with residential development.

Recommendation 8: LGNSW recommends that DPIE undertake a review of the current percent sliding scale, in consultation with local government, to confirm whether the current thresholds are still appropriate and also whether the maximum 1% levy amount is sufficient or whether a higher baseline contribution amount is more applicable.

Recommendation 9: LGNSW recommends that DPIE amend the criteria to allow the higher levies of 2% and 3% to also fund public infrastructure provision associated with new residential growth, not only employment growth.

6.0 Draft Special Infrastructure Contributions Guidelines

These guidelines aim to provide greater clarity regarding the purpose and objectives of special infrastructure contributions (SICs), key principles to guide the implementation and administration of the SIC framework and the process for allocating SIC revenue to infrastructure investment.

LGNSW strongly supports section 8 of the guidelines that requires public consultation of the SIC before it is implemented. LGNSW also recommends that these guidelines be amended to require consultation to be undertaken between local and state government throughout the entire process of preparing a SIC, not only during the phase of public exhibition.

Recommendation 10: LGNSW recommends that DPIE amend the guidelines to require consultation to be undertaken between local and state government throughout the entire process of preparing a SIC, not only during the phase of public exhibition.

7.0 Proposed Amendments to EP&A Regulation 2000

More detailed reporting

It is proposed to amend the Environmental Planning and Assessment (EP&A) Regulation 2000 to require councils to undertake and publish additional and more detailed reporting on development contributions including contributions received via planning agreements.

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

LGNSW supports the principle of transparency, however we urge DPIE to consider the significant reporting and compliance burdens which already apply to local government. Details of these sometimes onerous and unnecessary requirements were outlined in a report by IPART in 2016⁶. These latest proposed changes will add to this burden.

The proposal to require additional reporting may negatively impact resources and may incur additional financial costs and unreasonable administrative burdens on councils. Although councils may have this information, for some councils, it is maintained in separate systems which may not be integrated. The proposed additional reporting requirements could also necessitate councils having to implement software system changes at considerable expense.

Some councils have in excess of 50 contributions plans, particularly merged councils, so the proposed additional reporting requirements could impose significantly higher workloads and require additional levels of resourcing.

Despite these potential cost burdens, the exhibited material contains no proposition of financial support for councils to offset these additional requirements. Councils are not currently set up for undertaking this additional reporting. Local government's current priorities are job creation to stimulate the economy post-Covid 19, and rebuilding communities after bushfires and floods. LGNSW questions the rationale and timing of this additional expectation on councils, particularly at this time, when they are focused on prioritising infrastructure delivery to create local jobs and supporting their communities to recover after a string of emergency events.

Recommendation 11: LGNSW objects to the proposal to introduce additional reporting requirements on councils, with no compensatory financial support, as this will place increased financial and administrative burdens on councils, at a time when their current priority is on responding to and recovering from the impacts of recent natural disasters and the current pandemic.

8.0 Conclusion

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

This submission acknowledges and supports many of the changes proposed in this current review of the infrastructure contributions system. However, this submission highlights some

⁶ Independent Pricing and Regulatory Tribunal NSW, *Review of reporting and compliance burdens on Local Government*, 2016

key areas opposed by LGNSW. In conclusion, LGNSW opposition to the proposed departure from current practice of using VPAs as a tool for value for value capture is discussed in Section 3. LGNSW also opposes the imposition of unrealistic thresholds for s 7.11 contributions, which are not evidence-based as discussed in section 4. Another important recommendation which has been a longstanding policy of LGNSW is the amendment of the “essential works list” to include the capital costs of providing community facility buildings (also discussed in section 4). The proposal to impose extra reporting requirements on councils for local infrastructure contributions is also opposed by LGNSW for the reasons outlined in section 7. A summary of all recommendations is provided in Appendix 1.

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

Appendix 1 - Summary of Recommendations

Recommendation 1: LGNSW strongly objects to the draft Practice Note's direction that value capture is not an acceptable approach upon which to base VPAs. LGNSW recommends that section 2.3 of the draft practice note be amended to confirm that value capture is an accepted provision in VPAs.

Recommendation 2: LGNSW recommends that the Ministerial Direction not be issued as it is considered unnecessary to enforce practice notes which are essentially guidance documents.

Recommendation 3: LGNSW objects to the imposition of unrealistic thresholds, which are not evidence-based, to trigger the IPART review process. Councils should be empowered to plan for their local areas and not be burdened by the lengthy IPART review process.

Recommendation 4: LGNSW supports the change in process to remove the requirement for councils to re-exhibit an IPART reviewed contributions plan following the receipt of the Minister's advice.

Recommendation 5: LGNSW recommends that DPIE amends IPART's terms of reference to allow IPART to review particular elements of a contributions plan without triggering a full review of the entire plan.

Recommendation 6: LGNSW recommends that the current exemptions for grandfathered contributions plans be retained to reduce the burden of unnecessary reviews where these plans are close to the end of their life.

Recommendation 7: LGNSW recommends that the "essential works list" be reviewed and amended to include the capital costs of providing community facility buildings.

Recommendation 8: LGNSW recommends that DPIE undertake a review of the current percent sliding scale, in consultation with local government, to confirm whether the current thresholds are still appropriate and also whether the maximum 1% levy amount is sufficient or whether a higher baseline contribution amount is more applicable.

Recommendation 9: LGNSW recommends that DPIE amend the criteria to allow the higher levies of 2% and 3% to also fund public infrastructure provision associated with new residential growth, not only employment growth.

Recommendation 10: LGNSW recommends that DPIE amend the guidelines to require consultation to be undertaken between local and state government throughout the entire process of preparing a SIC, not only during the phase of public exhibition.

Recommendation 11: LGNSW objects to the proposal to introduce additional reporting requirements on councils, with no compensatory financial support, as this will place increased financial and administrative burdens on councils, at a time when their current priority is on responding to and recovering from the impacts of recent natural disasters and the current pandemic.