

Submission on NSW Government infrastructure contributions changes



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Executive summary

The proposed changes will leave the City financially worse off

The City is currently positioned to lead Australia's economic and social recovery in a post Covid-19 pandemic world. The City's Central Sydney Planning Framework along with our innovative work for Oxford Street, Botany Road and North Alexandria signal our strong commitment and ability to support a growing population and economy while improving liveability and making the City attractive for investment.

The NSW Government's proposed changes to infrastructure contributions threaten this.

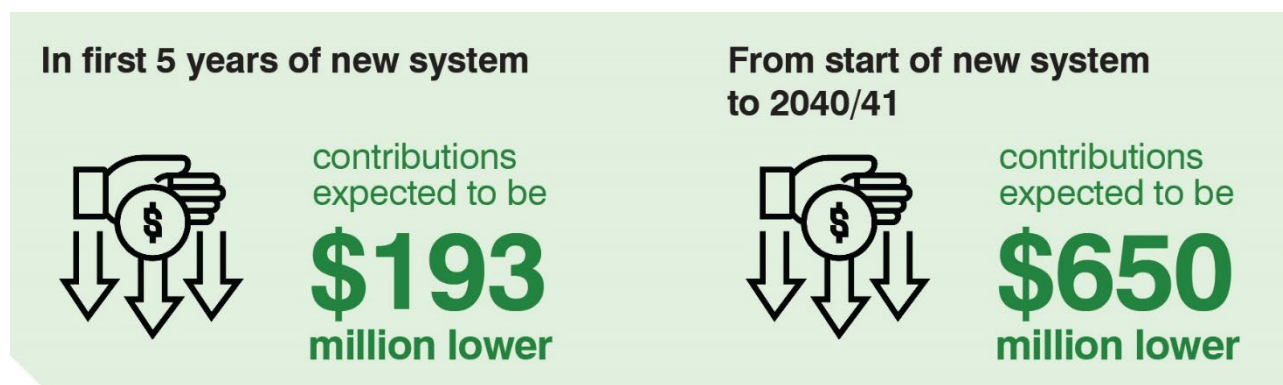
The City estimates that in the first five years of the new contributions system, **the City will receive \$193 million less in contributions income** than if the current contributions system were maintained (business as usual).

To 2040/41, the City estimates that the contributions income as a result of the changes is expected to be \$650 million lower than if the current system were maintained (business as usual).

Both the Minister for Planning and Public Spaces (the Minister) and the Department of Planning, Industry and Environment (the Department) have repeatedly provided assurances that councils will be no worse off as a result of the infrastructure contribution reforms.

There is clear evidence that the City will be financially worse off as a result of the proposed reforms. This has far reaching implications for our ability to lead Australia's recovery from the pandemic and support our communities with the infrastructure they need to work and live. The proposed changes should be abandoned. Any future proposals must keep local infrastructure as the key focus of the contributions system and be designed with early and meaningful consultation with councils.

Figure 1. Financial impact on the City from proposed changes



Sydney's global city status is at risk from these changes

Under the proposed changes the City's local contributions income will be significantly decreased. This will impact upon the City's capacity deliver critical infrastructure needed to support our status as Australia's global city and as the nation's economic powerhouse.

The City is host to over 1.3 million people daily (pre-COVID), which is predicted to grow to 1.7 million by 2036 and 2 million by 2050. The recently commenced Central Sydney planning controls will unlock an unprecedented period of growth in the CBD.

By 2036, we expect to deliver over 130,000 additional jobs on top of the existing 540,000 jobs already located in the City and house 75,000 more residents.

The City's substantial contribution to the delivery of complex public infrastructure to support urban renewal in key locations like Central Sydney, Pyrmont and Green Square is important for attracting tourism, new investment and maintaining our status as a global city.

To meet NSW Government housing targets, the City undertakes urban renewal for key sites usually resulting in higher density developments. Providing essential local infrastructure like childcare centres, libraries and sports fields as well as footpaths and drains is a critical part of the social contract we have with the community for increasing density.

Infrastructure not only supports the everyday needs of residents, workers and visitors, but also encourages stronger communities, and makes our city resilient to the impacts of climate change.

The proposed changes will severely restrict the City's ability to contribute to public infrastructure, which will mean less urban renewal and ultimately impact on the State's ability to recover from the significant economic impacts of the Covid-19 pandemic.

The proposed changes are seriously flawed

The City's review of the proposed changes has identified some serious flaws with the proposals that put into question the entire reform package. The proposed changes are significantly increasing the restrictions on local councils' collection and spending of contributions while concurrently introducing a new and unconstrained source of government revenue, in the form of Regional Infrastructure Contributions, to which none of the same restrictions will be applied.

Breaking the nexus

Infrastructure planning in NSW has long been based on the principle of **nexus** - new development contributes towards the cost of infrastructure that will meet the additional demand it generates and benefits from. The proposed changes fundamentally undermine the principle of nexus in the following ways:

- the proposed Regional Infrastructure Contributions take infrastructure dollars paid in some of Australia's increasingly densest communities and provide no guarantee that this money will be spent on infrastructure to support those communities. Regional Infrastructure Contributions generated by a new development in Penrith could be spent over 60 kilometres away benefitting communities in Bondi; and
- mandatory Essential Works Lists will dictate to all councils what types of infrastructure they are allowed to fund through local infrastructure conditions (s7.11 contributions), which breaks the connection between development and demand. This fails to recognise that the infrastructure needs of worker, visitor and residential populations vary in different locations and means that even if there is an obvious community need for infrastructure arising from new development, councils may not be able to use s7.11 contributions to deliver it.

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The Greater Sydney Region Plan, the five district plans and councils' local strategic planning statements all seek to align infrastructure with growth. These plans are agreements with the community and industry for where the city could grow and most importantly how it will grow.

By breaking the nexus between proposed development and community demand, the NSW Government is unreasonably restricting the ability for councils to plan for the needs of their communities. At the same time, the NSW Government is failing to place strong legislative restrictions on themselves, equivalent to those placed on councils, to spend contributions where they are collected.

Rather, the Government will capture new Regional Infrastructure Contributions in one part of Sydney and then spend them wherever and on whatever NSW Treasury deem appropriate. As multiple high-profile government infrastructure funding programs have demonstrated, a failure to have a transparent and fair program for the collection and spending of public money, supported by the community following full and transparent consultation, can lead to outcomes not in the public interest.

Regional Infrastructure Contributions

In terms of the proposed Regional Infrastructure Contributions, the Department's feasibility analysis:

- does not model a residential, commercial or mixed-use case study for the City of Sydney;
- does not model any form of development that could be considered commensurate with the scale of certain development seen in the City of Sydney;
- does not model proposed commercial, retail and tourist accommodation s7.12 rates at all, and;
- does not model proposed residential 7.12 rates for residential projects.

Despite these fundamental flaws, the Department's Regional Infrastructure Contributions feasibility analysis and s7.12 development contributions review of charges still conclude that "if water infrastructure charges and residential s7.12 rates were implemented together with Regional Infrastructure Contributions rates, there could be substantial impact on feasibility, resulting in development that is not feasible."

It is evident that if the impact of the proposed Regional Infrastructure Contributions was accurately modelled it would demonstrate that the proposal is entirely unfeasible and making it feasible is likely to impact on councils' ability to charge appropriate local infrastructure and affordable housing contributions.

Certainty and clarity

The rhetoric behind these reforms is that they are intended to bring increased "certainty and clarity" to the process. In practice what is currently proposed will not achieve those goals. The current proposals are more likely to bring greater complexity and opacity than the current system. For example, the proposed changes to s7.12 contributions do nothing other than to change from a simple approach to a complex one, with a mixture of calculations depending on development type and various rates based on geographical locations. The proposed changes to s7.12 will give rise to many challenges around interpretation, and it is likely that applicants will choose to game the system by manipulating proposals to reduce contributions liability. This will inevitably lead to disagreements between councils, certifiers and applicants.

The consequences of imposing a rushed and flawed system are too great. Infrastructure contributions are public monies. The public expects that strategic plans to collect and expend infrastructure contributions are well considered, justified and based on sound evidence. The new approach undermines existing evidence-based planning by councils to align infrastructure with growth in strategically important centres such as the Central Sydney.

The right infrastructure will not be delivered at the right time

Deferring the payment of contributions until the point of occupation allows development to be occupied long before councils have the financial ability to provide the necessary public infrastructure for access, safety and amenity to support growth.

Since the implementation of the temporary Covid-19 related Direction in July 2020 which allows developers to defer payment of contributions from the construction certificate to the occupation certificate stage, the City is aware of \$26.5 million in contributions where payment has been deferred. This is \$26.5 million in public monies that the City should currently be spending to deliver new infrastructure.

Infrastructure lag behind new development is already a long-held concern by the property industry, and deferring the payment of contributions will exacerbate that. Communities shouldn't have to wait to see local infrastructure to support new development in their areas. There is an increased chance of developers not paying contributions but they will still have their development. This policy takes away councils' leverage to make sure they pay before they start work.

The issue of private certifiers failing to properly attend to their obligations has been well documented and is now widely acknowledged to be a considerable factor in the current crisis regarding the safety of residential apartment buildings. If contributions are not paid but occupation certificates issued, the burden of enforcement is currently proposed to fall on councils. The risk of revenue loss to councils is significant particularly if the development company becomes insolvent and is wound up when the development is complete. It is not appropriate to force councils to accept the significant ongoing financial risks arising if this policy becomes permanent. The NSW Government should commit up front to ensuring it will compensate in full all councils who lose contributions if this proposal is implemented on a permanent basis.

The City makes the following recommendations

Recommendation 1

The Government should abandon its current proposals. Local infrastructure should remain the key focus of the contributions system, rather than being muscled out by new state-based contributions. The Government should commit to fresh engagement with local councils with a proper willingness to listen and understand the barriers that exist to the application of contributions funds in a more timely manner.

The current proposals divest the focus of the contributions system from funding local infrastructure to a new broad-based regional contribution. The proposed changes to s7.11 contributions clearly represent an efficiency drive on local infrastructure which can be traced to the NSW Government's desire for the expansion of the contributions funding regime to deliver more state infrastructure at the expense of councils' ability to deliver for their communities at a local level.

As a first step towards a better local infrastructure contributions system, the Government should undertake true and meaningful engagement with local councils to get to the core of the issues which burden the existing system. This includes gaining a full appreciation, from a council perspective, of what are the barriers to contributions funds being applied in a timely way. Any impacts from proposals that emerge from fresh engagement with local councils and other stakeholders should be carefully worked through so that no council is worse off.

Recommendation 2: Regional Infrastructure Contributions

The Government should abandon its plans for Regional Infrastructure Contributions. The proposal is fundamentally unfair to communities. The geographical size of the proposed regions means that there may be very little connection between where contributions are collected and spent. The Government has not demonstrated that Regional Infrastructure Contributions can feasibly co-exist alongside local development contributions and affordable housing contributions. The feasibility analysis they have provided is seriously flawed. The proposed legislative amendment does not address the fundamental concern, that the long term outcome of the introduction of Regional Infrastructure Contributions will be a shift of funds from councils to NSW Treasury.

Local infrastructure contributions should be prioritised. The proposed Regional Infrastructure Contributions merely serve to derogate from councils' ability to fund local infrastructure and affordable housing.

The City remains unconvinced that Regional Infrastructure Contributions, as a new Government funding stream, will not impact on development feasibility and housing affordability. In fact, the Department's own economic analysis (inadequate as it is) has shown the opposite, that Regional Infrastructure Contributions are entirely unfeasible without taking away councils' ability to charge appropriate local infrastructure and affordable housing contributions.

The proposed Regional Infrastructure Contributions framework does not guarantee the transparent prioritisation and funding of regional infrastructure. This is of grave concern given the Government's history of funding infrastructure projects which have not always been in the wider public interest.

Recommendation 3: Local levy conditions (s7.12 contributions)

s7.12 levies should remain as a percentage of development cost. Councils that already have higher rate levies should maintain them.

The proposal to implement higher rate levies for s7.12 should be maintained, but the calculation method should remain as a percentage of development cost. The Government should abandon its proposed maximum dollar rates based on geographical location and development type which are fraught with complexities which will arise at implementation stage.

Councils that have already justified the need for higher rate levies to support strategic growth should retain their existing percentage-based levies through Regulation to ensure that they are left no worse off by the reforms. In the City of Sydney, this should apply to both our new Central Sydney Development Contributions Plan 2020 and our forthcoming Pyrmont Development Contributions Plan, which is being developed in collaboration with the Department.

Recommendation 4: Local infrastructure conditions (s7.11 contributions)

Councils should retain existing levels of autonomy in decision making for s7.11 contributions. There is a lack of clarity around the s7.11 contributions proposals which means that councils are facing significant uncertainty about the financial impacts of these changes. The current IPART reviews must be ceased, as they have been subject to inappropriate restraint through the Terms of Reference which is not enabling a full and transparent assessment of issues.

Despite the opportunity to do so through the current exhibition, the Government has not provided sufficient clarity in relation to proposed s7.11 changes, in particular what is proposed for the outdated caps on residential contributions. This means that councils are unable to determine the financial implications of these changes with much certainty.

The proposal to apply the Essential Works List to all s7.11 contributions plans should be abandoned.

Councils should retain the ability to fund community infrastructure works through local contributions. They are vital infrastructure needed to support growing local communities and the current apportionment methodology ensures new development does not pay for existing community needs.

Councils should be left to determine for themselves the standard of infrastructure that they consider appropriate to provide for their communities. They should not be forced to only provide infrastructure that achieves a base level of performance.

Councils are best placed to determine the costs of local infrastructure taking into account local circumstances and constraints. Councils should not be forced to apply standardised benchmark costs for local infrastructure, nor expected to prepare detailed cost estimates for projects at the contributions plan making stage. The City has strong concerns that these changes will result in significant additional imposts on resources as part of the plan preparation process, which will have the perverse effect of slowing the process down.

The current IPART reviews are fundamentally flawed, hampered by inappropriate terms of reference and a completely inadequate timeframe. It is not appropriate for IPART to form any conclusions or produce any reports based on the current process.

Recommendation 5: Proposal to make permanent deferral of contributions payment to Occupation Certificate stage

The Government must not proceed with making permanent the deferral of payment of contributions from construction certificate to occupation certificate stage for certain large-scale developments. Once the current Ministerial Direction allowing this expires, the payment time for contributions should permanently revert to the construction certificate stage.

The City maintains strong opposition to this proposal. It is in direct conflict with the NSW Government's aim of delivering the right infrastructure at the right time and presents a further challenge to the ongoing stability of councils. It is also at odds with the Government's proposal to encourage councils to forward fund infrastructure. Councils cannot reasonably be expected to borrow to forward fund infrastructure if their contributions payments are significantly delayed.

Should this unjustified and unsupported policy be implemented, the NSW Government should legislate for a full indemnification of all local contributions not paid due to the insolvency, the winding up of shell development companies or other default of developers prior to payment. This is the only way to ensure that councils are not left out of pocket and unable to deliver infrastructure when these situations arise.

Recommendation 6: Land Value Contributions

Land value contributions should apply to infill councils as well as greenfield release areas. There needs to be sufficient flexibility to allow councils to adopt an approach which best suits their specific circumstances.

The current land value contributions proposal has been designed for greenfield release areas, but high and rising land values in metropolitan areas makes it important that infill councils are also captured. Metropolitan councils should have the choice to use a land value contribution mechanism in urban renewal areas where land and monetary contributions are required to deliver necessary public infrastructure.

It is critical that the proposed land value contributions system does not prevent existing measures for capturing a proportion of land value either now or in the future.

Recommendation 7: Land use planning process changes

The Government should develop more precise criteria to determine if a new or updated contributions plan needs to be prepared alongside a planning proposal, so that there is less discretion in the assessment of the direction. Clarity is also needed on procedure to be followed when there is disagreement as to whether a new contributions plan is warranted.

For inner city councils dealing with urban infill areas, planning proposals can be frequent. It is an additional administrative burden for councils to have to document an assessment of each planning proposal against the new Direction for submission with a Gateway Determination request and will inevitably delay outcomes. There may also be disagreements between councils, proponents or the NSW Government about whether a new contributions plan is warranted. There needs to be clear procedural guidance as to how those situations should be resolved to avoid delays in the planning proposal process.

Regional Infrastructure Contributions

The feasibility analysis is seriously flawed and misleading

The Department engaged a consultant to prepare a feasibility analysis in relation to the current Regional Infrastructure Contributions proposal. The feasibility analysis identifies case studies to model the impact of Regional Infrastructure Contributions on different land uses in isolation and alongside the proposed changes to water infrastructure charges and s7.12 contributions. A summary of the case studies is reproduced in Figure 2 below:

Figure 2. Case study areas by land use

Land use	Case study location	Existing schemes (AH = Affordable Housing Levy)	Modelled development (st = storey)
Houses	Edmondson Park	s7.11	34 detached dwellings
	Schofields	s7.11	16 townhouses
	Warriewood	s7.11	10 detached dwellings
Other residential	St Marys	s7.11	9 st mixed use (30 units)
	Bankstown	s7.11	6 st residential (50 units)
	Chatswood	s7.11, AH	7 st mixed use (30 units)
Industrial	Erskine Park	s7.12	Industrial strata units
	Auburn	s7.12	Warehouse/offices
	Alexandria	s7.12	Industrial units/offices
Commercial	Penrith	s7.11, s7.12	6 st commercial office
	Sydney OP	ICF, AH	6 st commercial office
	Macquarie Park	s7.11	8 st commercial office
Retail	Leppington	s7.11	Mixed use
	Marsden Park	s7.11	Mixed use
	Green Square	s7.11, AH	Mixed use

The City raises the following concerns regarding the case studies:

- the only case studies that are located within the City of Sydney relate to industrial and retail land use categories;
- none of the modelled developments could be considered commensurate with the scale of residential and commercial developments seen in the City of Sydney, and;
- a tourist accommodation case study is not modelled.

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The feasibility analysis applies three scenarios to the case studies. A summary of the three scenarios is reproduced in Figure 3 below. For the City, our interest and focus are on Scenario 3 where the feasibility impact of the Regional Infrastructure Contributions is tested alongside the proposed changes to water infrastructure charges and the local levy condition (s7.12 contributions).

Figure 3. Scenarios and assumptions

Scenario	Contributions assumed
1. Baseline feasibility	<ul style="list-style-type: none"> all applicable fees and charges, including s7.11 or s7.12, affordable housing contributions Special Infrastructure Contribution (if applicable) 3% pa net market growth
2. Regional Infrastructure Contribution impact testing	<ul style="list-style-type: none"> all baseline applicable fees and charges, including s7.11 or s7.12, affordable housing contributions Proposed Residential Regional Infrastructure Contribution rates <ul style="list-style-type: none"> \$12,000 per dwelling (house) \$10,000 per dwelling (residential unit) Proposed non-residential Regional Infrastructure Contributions Alternate Regional Infrastructure Contribution rates (as required)
3. Regional Infrastructure Contribution, Water Charges, Residential s.7.12 impact testing	<ul style="list-style-type: none"> all baseline applicable fees and charges, including s7.11 or s7.12, affordable housing contributions Proposed Residential Regional Infrastructure Contribution rates <ul style="list-style-type: none"> \$12,000 per dwelling (house) \$10,000 per dwelling (residential unit) Proposed non-residential Regional Infrastructure Contributions Water infrastructure charges: <ul style="list-style-type: none"> \$7,500 per dwelling (house) \$4,000 per dwelling (residential unit) Residential s7.12 rates (replacing existing s7.12 rates where applicable) <ul style="list-style-type: none"> \$10,000 per dwelling (house) \$8,000 per dwelling (residential unit)

Of concern, Scenario 3:

- doesn't model proposed commercial, retail and tourist accommodation s7.12 rates;
- only models proposed residential s7.12 rates where they replace an existing s7.12 rate;
- there are no existing s7.12 rates for the 'house' and 'other residential' case studies, so it is assumed the proposed s.7.12 residential rates have not been modelled, and;
- if the proposed residential s.7.12 rates have been modelled, they are the lower Regional NSW and Greater Sydney West rates, not the higher Greater Sydney Central (\$12,000 per dwelling) or Greater Sydney East rates (\$15,000 per dwelling).

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These concerns are considered to be significant and put into question the utility of the feasibility analysis in supporting the proposed Regional Infrastructure Contributions. To reflect the true impact of the Regional Infrastructure Contributions, an accurate feasibility analysis would model:

- a commercial, other residential and tourist accommodation case study within Central Sydney;
- the proposed commercial, retail and tourist accommodation s7.12 rates across each of the case studies (where applicable), and;
- assume a s.7.12 plan is in place for Central Sydney and the Pyrmont Peninsula.

Whilst the feasibility analysis was prepared at the time when a s.7.12 plan was not in place in Central Sydney or the Pyrmont Peninsula, the Department was aware of and involved in the plan preparation process for Central Sydney and a new contributions plan is recommended for the Pyrmont Peninsula as part of the Department's Infrastructure Delivery Plan. For the Department to know this and fail to address this as part of the feasibility analysis is potentially misleading and could be construed as deliberate for the purpose of trying to present a more favourable picture of feasibility than if all the relevant information was included.

Despite all of these fundamental inadequacies, the Department's feasibility analysis still concludes that the Regional Infrastructure Contributions could still substantially impact feasibility:

If water infrastructure charges and residential s7.12 rates were implemented together with Regional Infrastructure Contribution rates, there could be substantial impact on feasibility, resulting in development that is Not Feasible

**Regional Infrastructure Contributions Feasibility Analysis,
Atlas Urban Economics, September 2021**

With the residential case study scenarios, the introduction of Regional Infrastructure Contributions, Water Charges and residential s7.12 rates turns projects from "feasible" to "not feasible" (see Figure 4). The Manly case study appears to remain feasible, however this result is highly questionable given its feasibility reduces after a 1% market growth rate is applied (all other case studies improve after applying a 1% market growth rate). This is clearly an error, meaning the conclusion of the feasibility analysis that high value markets like Manly are at less risk of impact is incorrect and misleading.

Projects remain marginally feasible for the industrial, commercial and retail case studies but the proposed commercial, industrial and retail s7.12 rates are not modelled, so the results are meaningless and don't provide councils, industry and the community with the evidence required to make a meaningful assessment of the proposal.

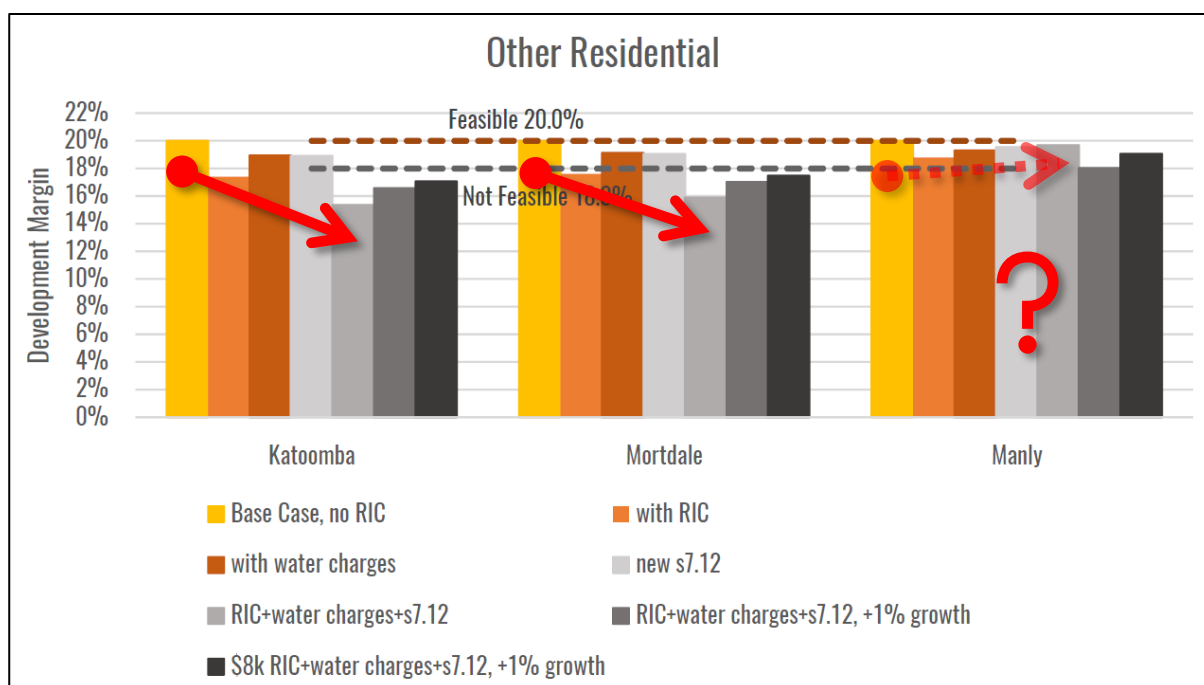
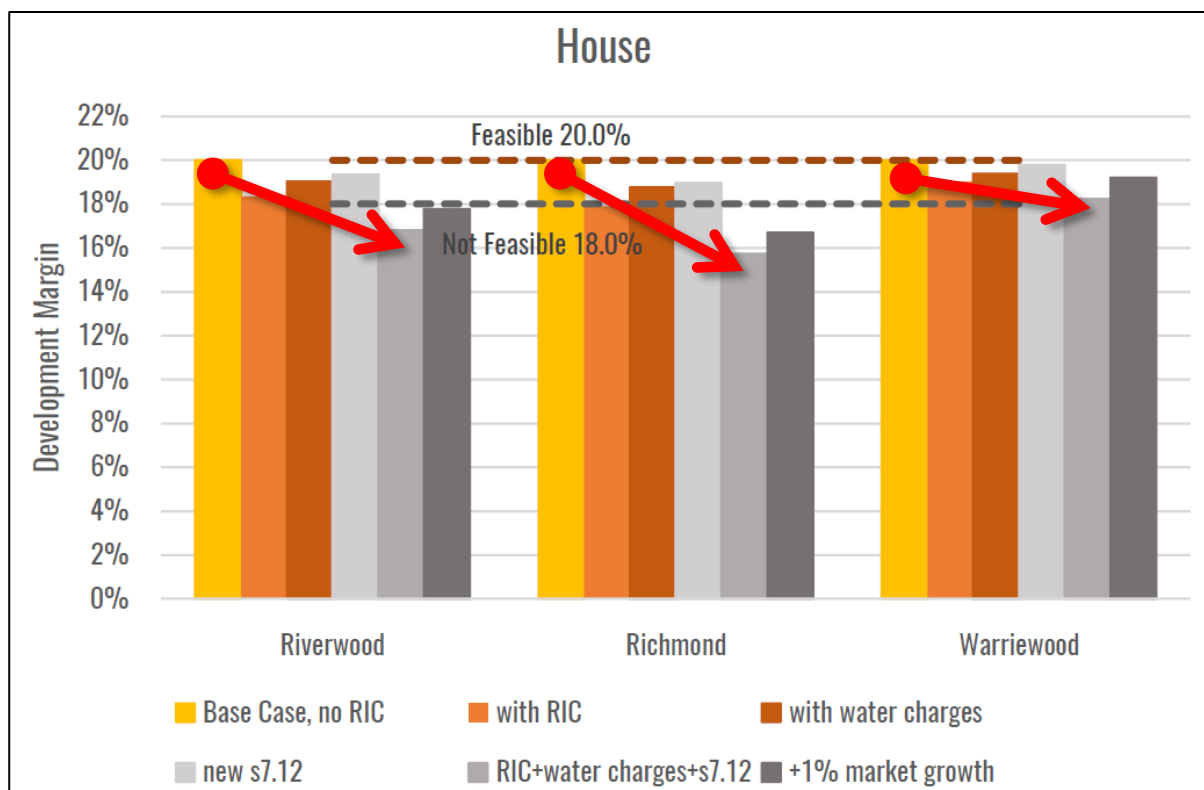
As the feasibility analysis notes, "All development contributions cumulatively have an impact on development feasibility". However, no guarantee is provided that implementing Regional Infrastructure Contributions will not derogate from a council's ability to fund local infrastructure and affordable housing.

Councils' ability to levy appropriate levels of local infrastructure contributions (s7.11 or s7.12) must be protected first and foremost, and affordable housing contributions must also be protected as a primary consideration.

It is evident that if the impact of the proposed Regional Infrastructure Contributions was accurately modelled it would demonstrate that the proposal is entirely unfeasible. This means that the Regional Infrastructure Contributions model will not be able to exist without taking away councils' ability to charge appropriate local infrastructure and affordable housing contributions. The current legislative proposals, including the recently introduced amendments, do not guarantee that the local contributions will not be the first to be reduced when the foreshadowed feasibility issues arise. The Regional Infrastructure Contributions proposal should not proceed on this basis.

Figure 4. Impact of Regional Infrastructure Contributions, water charges and s7.12 contributions

Source: Adapted from RIC Feasibility Analysis, Atlas Urban Economics, September 2021



The NSW Government is restricting councils while granting itself unrestrained flexibility

To be able to levy local infrastructure contributions, councils must prepare contributions plans with work schedules that detail the type of infrastructure to be delivered on specific sites, the estimated cost of that infrastructure and a timeframe for delivery.

Councils are required to place draft local infrastructure plans on public exhibition, and consider any submissions made on draft plans.

Councils are required to demonstrate a direct nexus between the contribution to be imposed and the demand for the infrastructure, or at least describe the relationship between the expected types of development in an area to which the plan applies and the demand for additional public amenities and services to meet that development.

The NSW Government proposal now introduces layers of additional procedural consideration for councils around Essential Works Lists and benchmark costs under the guise of “certainty and clarity”.

At the same time, the NSW Government is introducing their own Regional Infrastructure Contributions framework that places no strong legislative restrictions on themselves in spite of the fact that it is being used to capture infrastructure contributions in one part of Sydney and then spend them wherever and on whatever NSW Treasury deem appropriate.

The Regional Infrastructure Contributions “Guideline” outlines oversight arrangements, addressing how regional infrastructure will be prioritised and funding allocated, **but as a guideline, it is non-statutory and non-binding**. The proposed amendment to the Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021 (“the Infrastructure Bill”) does not significantly increase rigour, as Regional Infrastructure Contributions will still be able to be spent in any part of the Greater Sydney region with no requirement for proximity or relationship to the development in relation to which they were collected. Even the existing Special Infrastructure Contributions framework is area specific with funds collected in an area required to be spent in that area. There are no such requirements included in the Regional Infrastructure Contributions framework.

As multiple high-profile government infrastructure funding programs have recently demonstrated, a failure to have a transparent, consulted upon and fair program for the collection and spending of public money leads to outcomes not in the public interest.

The proposals demonstrate that the NSW Government does not believe it necessary to adhere to the same level of transparency and accountability as it requires for local councils in how it plans for infrastructure and how it spends contributions that end up with NSW Treasury.

Local levy conditions (s7.12)

Section 7.12 contribution plans

The City is strongly opposed to the proposed changes to how levies could be collected under s7.12 contributions plans. The City estimates that under the proposed s7.12 changes, it would receive an average of \$35.7 million (or 67 per cent) less contributions income each year compared to the what it would receive under the new Central Sydney Contributions Plan 2020. This equates to a projected \$607 million loss of contributions to fund public infrastructure for Central Sydney from 2024/25 to 2040/41.

A loss of contributions funding on this scale seriously jeopardises the City's ability to deliver the infrastructure needed to support Central Sydney's status as the core of our global city and the key driver of the national economy. The recently adopted planning controls for Central Sydney position the CBD for unprecedented growth over the coming years.

The proposed changes also place at risk the NSW Government's vision for the Pyrmont Peninsula under the Pyrmont Peninsula Place Strategy, where a new s.7.12 contributions plan is recommended. The Department has undertaken extensive economic analysis, utilising external consultants, which has confirmed that there will be significant additional infrastructure required in the Peninsula to support the growth proposed under that Strategy. As a result, a 3% contributions levy has been recommended. Any departure from this position would need to be accompanied by a commensurate reduction in the proposed development growth proposed for the Peninsula.

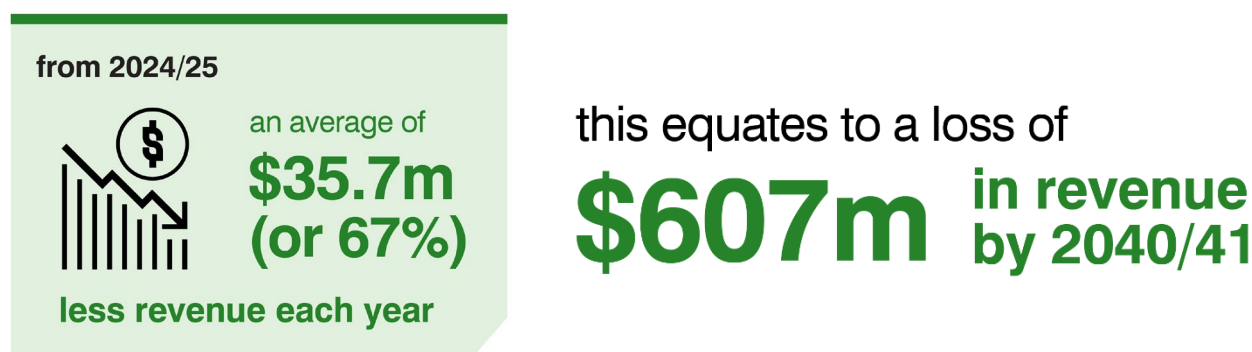
When compared to existing s7.12 contribution plans where levies are charged as a percentage of development cost, the City does not consider that the proposed changes to a maximum dollar rate meet the Government's intention to achieve administrative efficiency, consistency and simplicity.

While the City notes that the proposed maximum dollar approach was recommended by the Productivity Commissioner (without adequate justification or consultation), the current proposal demonstrates the significant challenges with implementing such an approach in practice. The provisions establishing the new rates in the draft Regulation cannot be considered simple or transparent on any interpretation. As proposed, multiple factors will need to be considered for each calculation including geographical location, development type, whether a development is a new build or an alteration and which measure applies (eg. square metre of floor space / dwelling / bedroom / bed). Even this complex model does not adequately cover all situations and circumstances because it is impossible to prepare an exhaustive list of development types.

This approach will not provide "mum and dad" renovators with any more clarity than the current system. However, it will create significant loopholes for developers and private certifiers who will be able to manipulate proposals to reduce compensation liability and game the system.

The current overcomplicated proposal should be abandoned. The NSW Government should retain fixed percentage levies which are simple, transparent and provide certainty for all parties.

Figure 5. Financial impact on City as a result of s.7.12 changes



A new approach to s7.12 contributions

The Infrastructure Bill and draft Regulations seek to make changes to how levies can be collected under s7.12 contribution plans. It is proposed to change from the current maximum percentage levy (as a percentage of development cost) to new ‘local levy condition rates’ which will charge dollar rates for named development types by geographical area. It is proposed that the City of Sydney be in the “Greater Sydney – East” area with the contribution rates as set out in Figure 6.

As recommended by the NSW Productivity Commissioner, the intention is for the proposed s7.12-dollar rates to be equivalent to three per cent of the cost of residential development and one per cent of the cost of non-residential development.

It is proposed that these new local levy condition rates be reviewed every four years, and that they be indexed each quarter using the Producer Price Index (Road and Bridge Construction – NSW).

Figure 6. Proposed Greater Sydney East rates

Development type	Rate	Per
Dwelling House	\$15,000	dwelling
Other residential (e.g. multi-unit, dual occupancies)	\$15,000	dwelling
Residential additions	\$6,000	room
Commercial (new / alterations)	\$50 / \$25	sqm
Retail (new / alterations)	\$35 / \$17.50	sqm
Industrial (new / alterations)	\$35 / \$17.50	sqm
Boarding houses/group homes/student accommodation/hotels/motels/serviced apartments	\$6,000	bedroom
Aged care facilities/nursing homes/hostels/backpackers accommodation	\$6,000	bed

Our economic and social recovery from Covid-19 is at risk

The Central Sydney Development Contributions Plan 2020 came into effect on 26 November 2021. This Plan allows the City to levy contributions at a sliding scale up to maximum rate of three per cent¹ for both residential and non-residential development, based on development cost. This Plan seeks to ensure appropriate funding to enable the delivery of the public infrastructure needed to support the significant population increases expected as a result of large increases in development potential that have recently been created through changes to the planning controls for Central Sydney. The proposed changes to s7.12 seriously risk undermining the City's capacity to deliver the infrastructure enhancements needed in Sydney's CBD.

In their November 2021 Ministerial Media Release addressing their much-delayed endorsement of the City's Central Sydney Planning Framework, the Premier and Minister stated:

Sydney's heart is shaping up for its comeback, with planning complete on the next steps to unlock a potential 2.4 million square metres of new commercial and employment floor space in Central Sydney and Pyrmont.

Sydney is the nation's only global city and we have a once in a generation opportunity, as we come out the other side of the pandemic, to continue transforming it into one of the world's greatest cities.

The proposed changes to s7.12 threaten this “comeback”. The proposed changes to s7.12 will result in a loss of around two thirds of local contributions income to fund public infrastructure in Central Sydney when compared to what is projected to be derived under the new contributions plan.

Figure 7 demonstrates the difference in the projected s7.12 contributions income under the new Central Sydney Development Contributions Plan 2020 compared to the NSW Government's proposed dollar levy rates.

There are huge ramifications for Central Sydney in terms of infrastructure provision if the City is required to replace its new contributions plan with an alternative one aligning with the proposed regime by mid-2024. The City's new contributions plan contains a Schedule of Works which describes almost \$650 million of infrastructure that the City has identified for part or whole funding through development contributions collected under the plan. The works items on this list include significant projects critical to transforming our public domain, open space and transport facilities to ensure they befit our status as Australia's global city. A reduction in contributions on the magnitude of 67 per cent per annum for Central Sydney would put many of these important projects at serious risk.

This will not only have direct impacts on the workers, residents and visitors to Central Sydney, but will impact on our status as Australia's most important economic region. Major landowners and businesses tell us they are willing to invest and provide world class buildings in our CBD because they have confidence in the City's ability to provide and maintain public domain infrastructure that is commensurate with their level of investment. A reduction in contributions on this scale will impact our ability to fund and deliver the infrastructure that stimulates and supports other economic activity and investment.

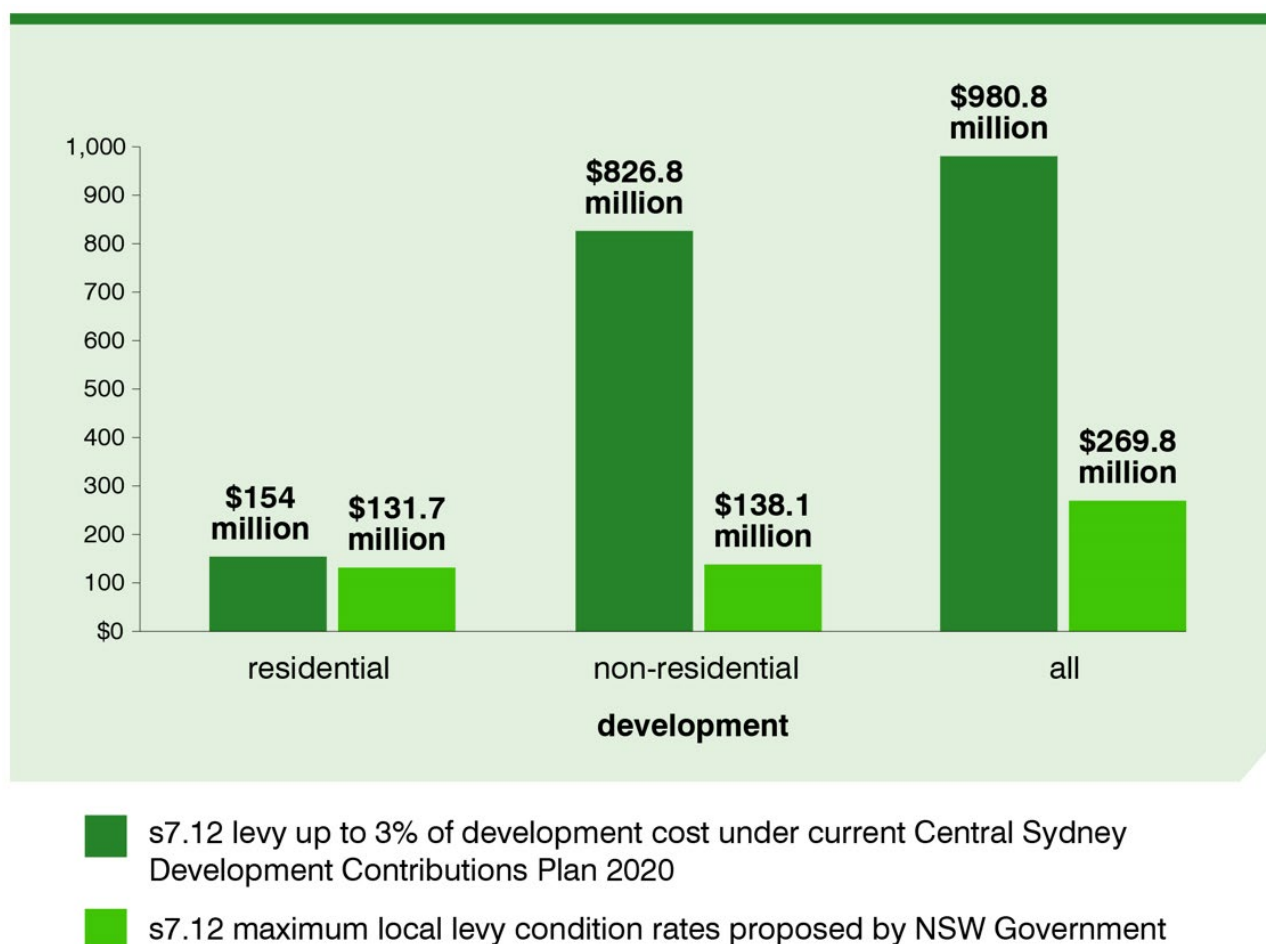
¹ A transitional introduction rate of 2% applies to developments with a cost of more than \$1 million. On 1 July 2022, this rate will increase to 3%.

The City estimates that for non-residential development in Central Sydney, the projected s7.12 contributions income is estimated to be on average \$32.7 million (or 69 per cent) less each year over the 20 years to 2040/41.

Most of the forecast decline in s7.12 contributions income in Central Sydney would result from non-residential development because:

- under the new Central Sydney Contributions Plan 2020, the contribution rate for non-residential development is up to three per cent of the development cost, while the proposed maximum dollar rates for non-residential development only are intended to be the equivalent of one per cent of the development cost;
- around 88 per cent of the income under the new Central Sydney Contributions Plan 2020 is projected to derive from non-residential development, and;
- contributions for ‘alterations’ are only proposed to be charged at half of the maximum rate applicable and there is a high volume of refurbishment activity in Central Sydney.

Figure 7. Comparison of forecast s7.12 contributions to 2040/41: current contributions plan vs proposed rates



The approach undermines existing evidence-based planning

Clause 25K(1)(b) of the EP&A Regulation lists areas that are subject to higher maximum s7.12 levies. There are currently ten areas within NSW where higher rate maximum percentage levies

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can be charged, including Central Sydney. There is no differentiation between residential and non-residential development under these current provisions.

It is likely that each council with an existing higher rate levy plan will incur financial loss on their s7.12 plans as result of the proposal to limit the dollar rate for non-residential development to the equivalent of 1% of the development cost. In the City's case, this financial loss is substantial given the high volume of non-commercial development coupled with high development costs associated with the dense urban environment. This also reflects the significantly higher cost of developing and delivering infrastructure in the CBD.

It is unreasonable to expect these councils to forgo higher rate levies that have previously been justified to the Department, typically to support strategic areas of growth through the funding and delivery of infrastructure.

In the process of seeking the Minister's approval for a higher rate levy, the City provided the Department with extensive justification of why a contribution levy of up to three per cent was appropriate. This included an economic analysis which demonstrated that the proposed contributions increase would not impact on development feasibility, or that the impact on the overall cost of development would be relatively minor.

Pymont Peninsula Place Strategy

Case study in collaborative evidence-based planning

The City has been working in collaboration with the Department on the implementation of the Pymont Peninsula Place Strategy. This NSW Government strategy forecasts that in the next 20 years as a result of new development there could be 8,500 more residents and up to 23,000 more jobs in the Pymont Peninsula. Delivery of significant infrastructure to support these large population increases is identified as a key aspect of the Strategy itself. A local infrastructure contributions plan is currently being prepared to ensure that this significant growth is supported by adequate infrastructure.

As part of the work to prepare a local contributions plan, income forecasts have been modelled for s7.11 and s7.12 plans to inform decisions about the infrastructure to be funded through local contributions. The Infrastructure Delivery Plan exhibited by the Department recommends a 3 per cent residential and non-residential rate for the Pymont Peninsula to appropriately support the growth envisaged by the NSW Government's strategy for the Peninsula. It states:

"This Infrastructure Delivery Plan considers a s7.12 plan with a 3 per cent levy may be the optimum approach for funding the local works included in the Infrastructure Schedule. Preliminary analysis by GLN suggests that a draft plan which seeks a 3% levy would meet the criteria set out in the Department's 2021 Practice Note, which addresses higher rate levies."

The proposed changes jeopardise the NSW Government's vision for the Pymont Peninsula under the Place Strategy and fail to specifically address the significant evidence-based planning already undertaken by the Department in collaboration with the City.



Discounted rates for alterations have adverse financial impacts

It is proposed that where a development is an alteration to an existing development, the maximum rate chargeable will be 50 per cent of that which would apply if the development were new or the addition of floorspace. This differs from the existing s7.12 regime, where contributions are payable on certain alterations and additions at the same rate as for new buildings. The implication of this proposed change is that it would reduce the quantum of contributions that can be collected. This is a particular concern for the City, where there is a high volume of refurbishment activity in Central Sydney.

It is the City's experience that 'alterations' of non-residential floor space typically lead to the intensification of use of that floor space. In Central Sydney, there is a strong depth of market demand which drives high rental potential and asset performance. Furthermore, there is a large proportion of buildings, including heritage items, where comprehensive redevelopment is not an option. Upgrades to buildings, including fit outs, typically assist in unlocking increased density of use and therefore revenue generation potential. While this work requires expense, it typically enables the proponent to secure stronger financial outcomes by avoiding vacancy, securing higher rent or more robust lease arrangements.

The Department's own economic analysis on the proposed s7.12 charging methodology also observed the trend in intensification of non-residential floorspace. In fact, it cites the City's 5 yearly Floor Space and Employment Survey (FES) to demonstrate this. For the CBD and Harbour village, the City's FES shows that the average floorspace occupied per worker fell in the ten years between 2007 to 2017 from 11.5 workers to 8.8 workers. This trend was evident in several of the City's village groupings throughout the local government area. The Department's study² of the s7.12 charging methodology stated that the FES data suggests that:

floorspace is increasingly being used more intensively (that is, accommodating more workers per square metres of floor space), regardless of whether new floor space is added

s7.12 Development Contributions Contributions Reform - Review of Charging Methodology, Atlas Urban Economics, September 2021

There is clear evidence that in Central Sydney, alterations lead to intensification of land use and a decrease in workspace ratios. This results in a higher worker population and more business activity and subsequently more demand for public infrastructure.

The Department's study of the s7.12 charging methodology recommends that s7.12 rates be levied on alterations and additions activity. Notably, this recommendation does not suggest any discount to the levy rates for alterations. Therefore, there is no justification for a 50 per cent discount for alterations.

Alterations have the potential to generate equivalent infrastructure demand as new development or additions. Consequently, the levies charged should be commensurate with this. Furthermore, providing a discount for alterations adds complexity to what is already an over complicated proposal.

² Atlas Urban Economics for Department of Planning, Industry and Environment (DPIE), *s7.12 Development Contributions. Contributions Reform – Review of Charging Methodology*. September 2021.

The new approach adds considerable complexity

The City currently administers both s7.11 and s7.12 contributions plans and therefore has the benefit of understanding at a practical level the full extent of work involved in preparing and implementing both types of plans.

The City considers that the existing s7.12 regime, where contributions are calculated as a percentage of development cost, is administratively efficient and simple in terms of plan preparation and implementation. The link to development cost provides developers with certainty as to what local development contributions are likely to be payable, given that budgeting and costings are fundamental components of the development process (including being required to be nominated for the purposes of development application fees and consent authority thresholds). An additional advantage is that indexing is also captured through the calculation of the development cost, which cuts out the need to index rates as a routine exercise each quarter or year.

The proposed changes will add considerable complexity to the s7.12 contributions regime at implementation stage. For each development application / Complying Development Certificate (CDC), planners and certifiers will need to:

- determine the region within which a site is located;
- determine which development type applies to the proposed development (for mixed use sites, this could be several);
- decide if the development is ‘new’ or ‘altered’ floorspace (sometimes this is not readily obvious e.g. enclosure of existing balconies, indoor/outdoor rooms);
- decide if the development is an ‘alteration’ to an existing development, and;
- decide if the development involves a change of use (this is not always straightforward).

Difficulties are likely to arise for planners and certifiers when making the decisions set out above. The proposed development types are not exhaustive and fail to capture all types of uses, which inevitably means that there will be times when planners and certifiers do not know how to categorise certain land uses for contributions purposes. There may also be times when there are mixed uses, and the applicant argues that one use is ancillary to the other – should the planner / certifier apply contributions charges based on the mixture of uses, or opt to go with the dominant use? Even when undertaking such calculations, it may not be easy to differentiate which floorspace is used for what activity (e.g. indoor amusement centre combined with a licensed bar use).

The requirements to make decisions about how to categorise developments for contributions purposes will inevitably give rise to opportunities for developers and applicants to game the system. Information provided with an application will be presented in a way which minimises the amount of contribution payable (for example, whether additional rooms being added to a residential dwelling constitute “bedrooms”) and developers and applicants will be able to exploit loopholes to their advantage.

While the Department has indicated that a digital tool will be made available to assist with contributions calculations, it remains that there will be new layers and complexities involved in determining what information should be input in the tool. A digital tool might only help with mechanical calculation – not in the multiple layers of decisions that will need to be made before determining what data to input.

From an implementation perspective, similarities can be drawn between the existing s7.11 contributions regime and the proposed regime for s7.12 plans. These similarities indicate that the proposed 7.12 regime will require more input from planners/certifiers to determine the contributions payable than the current s7.12 regime. It is well known that the existing s7.11 regime is not only more resource intensive in terms of plan preparation but also in terms of implementation. The additional resource implications of the new s7.12 regime should not be underestimated and will place additional and unreasonable administration burdens on councils.

Transitional arrangements

The City faces the very real possibility that its new Central Sydney Development Contributions Plan 2020 will only have a short life, given that the draft Regulation's transitional arrangements (Clause 33B) states that a council must review existing plans and approve new plans prepared in accordance with the new regime by 1 July 2024 (*"the review date"*).

The draft Regulations state that if a council fails to do this by 1 July 2024, the existing plans cease to have effect. While the draft Regulations propose that councils may seek extensions to this review date, there is no indication of the circumstances under which such extensions may be granted.

These transitional arrangements completely underestimate how resource intensive the preparation of contributions plans is for councils. The newly commenced Central Sydney Development Contributions Plan 2020 was over two years in the making, including a wait of 11 months for the Department to amend Clause 25K of the Regulation to give effect to the higher rate levy.

The proposed transitional arrangements mean that this plan will only benefit from a two-and-a-half-year life span and most of that time will be spent preparing a replacement plan.

There is no guarantee that councils with an existing higher rate under Clause 25K of the Regulation will be able to retain their existing 7.12 contributions plan for the life of the plan. This is despite repeated assurances by the Minister and the Department that no councils will be worse off under the proposed reforms.

The only way to ensure that the commitment to councils being "no worse off" can be met, as noted above, is for councils with existing s7.12 rates above the current one per cent threshold to retain the ability to levy at their existing rates upon the expiry of their current plans should they provide adequate evidence to demonstrate ongoing demand to justify the higher rates. There is no reason why councils should not be able to retain the ability to levy at higher rates in perpetuity should they be able to adequately justify this approach. It is accepted that this should be reassessed when each new plan is proposed to ensure the underlying assumptions remain current. However, as currently proposed, the Infrastructure Bill and draft Regulation do not leave this option available, regardless of whether or not councils can demonstrate ongoing need for higher levies.

Other matters that require justification

No justification for certain dollar rates

There is no explanation or justification as to how the proposed dollar rates have been derived for the following development categories:

- additional bedroom(s);
- boarding houses/group homes/student accommodation/hotels/motels/serviced apartments;
- aged care facilities/nursing homes/hostels/backpackers' accommodation;
- caravan parks/manufactured home estates, and;
- solar and wind farms.

Are these rates also intended to be the equivalent of 3% of residential development costs and 1% of non-residential development costs? If not, what else has been used to determine them?

Additional bedrooms

The proposal to levy contributions on 'additional bedrooms' will add complexity to the proposed s7.12 regime. It is likely that some applicants will choose to game the system by notating new bedrooms on development application plans as 'media rooms' or 'studies' to avoid paying

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contributions. This is made even more likely by the fact that there is no proposal to charge contributions where there are substantial renovations to dwellings that do not involve additional bedrooms. This approach will add time and complexity to contributions decisions on development applications and complying development certificates, which in turn increases workloads.

As currently drafted, for residential alterations and additions, where more than two additional bedrooms are proposed, the contributions would exceed those levied for a new dwelling (of any size). This is a significant inconsistency and demonstrates the challenges in adopting the approach recommended by the Productivity Commissioner, rather than the current fixed percentage of cost.

Non-private residential and tourist accommodation

The rationale behind the development type groupings of 'boarding houses/group homes/student accommodation/hotels/motels/service apartments' and 'aged care facilities/nursing homes/hostels/backpackers accommodation' is not clear. No justification has been provided as to why some of these use types are charged a per bed rate and others a per bedroom rate.

In the City's experience, boarding houses, group homes, student accommodation, hostels and backpackers accommodation are typically intensive uses, sometimes with up to 8-10 beds proposed per bedroom. Residents of these accommodation types are often heavily reliant on public infrastructure such as libraries and parks due to the constrained nature of common areas within these properties. It is illogical that intensive uses which drive infrastructure demand have not all been grouped together, but instead some of these intensive uses have been grouped with less intensive uses like aged care facilities and nursing homes.

Local infrastructure conditions (s7.11)

s7.11 changes raise significant uncertainty for councils

The NSW Government has introduced an amendment to the Infrastructure Bill to defer the mandatory application of the proposed Essential Works List to all s7.11 contributions plans for three years. Department staff have advised councils that the purpose of this deferral is to enable an assessment of the impacts of the other proposed changes. However, the Government is still proposing to proceed with the legislative changes to s7.11 as part of the current package, meaning that the implementation of those changes is inevitable regardless of the assessment to be undertaken at the three year point. More troublingly, IPART has not been asked to pause or defer its current work to factor in this deferral period and enable a more fulsome consideration of all the issues. In the interim, what is on exhibition and what the City is required to comment on is an incomplete and unclear package with uncertainty as to many aspects of its future implementation.

The proposed changes to the s7.11 infrastructure contributions regime raise significant uncertainty for local councils, including:

- what will happen to the current IPART trigger thresholds³ beyond the three-year deferral period?
- why does IPART have to conduct a review of the Essential Works List and benchmark rates at this time, with strongly limited terms of reference and inadequate timeframes for proper assessment and consideration, when the Government has committed to deferring the introduction of these requirements for a further three years?
- why does the Government need to legislate to introduce these provisions at this time if the reason for the three-year deferral period is to enable an assessment of the impacts of the first tranche of reforms?
- once the mandatory Essential Works List is implemented, what will be the criteria for the IPART review of s7.11 contribution plans?
- will councils who are currently recouping contributions for works items which will not be on the mandatory Essential Works List (such as community facilities works) be able to continue doing so under new plans?
- how stringently the “development contingent” tests are implemented by the Government, as significant judgement is required in this process?
- when the benchmark cost proposals will be implemented – will this commence in mid-2022 or is a three year deferral also proposed? and;

³ The IPART trigger thresholds serve as a trigger for when a s7.11 contributions plan is to go through the IPART review process. The City is subject to a \$20,000 trigger threshold per lot/dwelling. This means that if the City wishes to charge a contribution rate above \$20,000 per lot/dwelling, its contributions plan would need to go through the IPART review process.

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- given that the Cardno technical reports⁴ prepared for IPART appear to be in draft form and further analysis is being undertaken, when will there be certainty around what exactly is proposed in terms of benchmark items and costs as well as adjustment factors?

The uncertainty around what the NSW Government is proposing demonstrates why the package of s7.11 changes is premature and should be abandoned so that the individual circumstances of councils can be properly understood to inform any future changes to the current system.

Financial impacts are uncertain

While the current IPART trigger thresholds (\$20,000 for infill councils like the City and \$30,000 for specified greenfield areas) will continue to apply for this three year deferral period, there is no indication of what will happen to the trigger thresholds at the end of this three year period. In practice, these thresholds still serve as a maximum cap on the development contributions that can be charged per residential dwelling in many councils, including the City. As a result of this uncertainty, councils cannot be guaranteed that they will not be financially worse off as a result of the proposed s7.11 reforms.

The City has previously advocated for the review or removal of the \$20,000 trigger threshold. In its April-June 2020 consultation⁵ on the issue, the NSW Government stated that the trigger threshold should increase because “the thresholds that trigger the review process do not currently reflect increasing infrastructure delivery costs and land values over the past 10 years”. In this consultation, the NSW Government led councils to believe that the trigger threshold for the IPART review of plans would be increased. Three options were provided as to how this could be done. Making the review or removal of the threshold contingent upon s7.11 plans being more restrictive (both in terms of application of the Essential Works List and benchmark costs) was not put forward as an option.

It is disappointing that the NSW Government seems to have disregarded its previous proposals to increase the threshold, instead opting to replace them with recommendations arising from the NSW Productivity Commission’s Final Report, much of which was not the subject of the original consultation process. **Given that the NSW Government acknowledges itself that the trigger thresholds are inadequate, it is grossly unfair to councils for a decision on the thresholds to be delayed by a further three years and to be tied to the significant negative impacts of the current s7.11 proposals.**

Based on two different scenarios, the City raises concern that if the existing \$20,000 cap on residential contributions continues beyond 2025/26:

- Under scenario 1⁶, s7.11 contributions income would be reduced by \$4.0m per annum on average, or \$65m in total by 2040/41;
- Under scenario 2⁷, s7.11 contributions income would be reduced by \$8.7m per annum on average or \$139.3m in total by 2040/41.

⁴ Cardno Pty Ltd for the Independent Pricing and Regulatory Tribunal (IPART). *Draft Benchmarking Items and Costing Methodology: Benchmark Costs for Local Infrastructure*. 27 October 2021; Cardno Pty Ltd for the Independent Pricing and Regulatory Tribunal (IPART). *Supplementary Report – Benchmark Datasheets: Benchmark Costs for Local Infrastructure*. 10 November 2021.

⁵ Department of Planning, Industry and Environment. *Improving the review of local infrastructure contributions plans – Discussion Paper*. April 2020.

⁶ Scenario 1: \$20,000 cap on contributions continues beyond 2025/26. Mandatory application of Essential Works List means community facilities works cannot be funded through contributions.

⁷ Scenario 2: \$20,000 cap on contributions continues beyond 2025/26. Mandatory application of Essential Works List means no ability to fund community facilities works through contributions. Application of IPART benchmark costs results in 25% reduction in all works items costs (i.e. open space embellishment, transport and drainage works costs) eligible to be funded through contributions.

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These scenarios were produced before IPART's benchmark costs were released, which was during the current exhibition period. Scenario 2 sought to test the impact of applying benchmark costs, as they are intended to be efficient costs for infrastructure that achieves a base level of performance. Scenario 2 was based on the assumption that there may be a 25 per cent reduction in the works items that could be funded through contributions. **Having reviewed the benchmark costs and applying them to real life examples, the City now believes that there will be a greater percentage reduction in the works costs for which contributions can be levied. The effect of this is that the financial impacts on s7.11 contributions could be worse than estimated in this scenario.**

The City continues to raise strong objection to the ongoing existence of the \$20,000 contributions cap because when combined with the proposed s7.11 changes, our ability to fund vital local infrastructure is further jeopardised.

Figure 8. Financial impacts on City from s.7.11 changes



Note: Assumptions in this scenario were developed prior to release of benchmark costs. On the basis of the benchmark costs released, the City now believes that **the financial impacts could be worse than estimated in this scenario**

IPART's five step framework for s7.11 plans

IPART proposes the following five step framework apply to the preparation and implementation of all s7.11 contributions plans:

Step	Description
Step 1: Essential Works List	Determine if the proposed infrastructure is on the proposed Essential Works List
Step 2: Development contingent	Determine if the proposed infrastructure is development contingent
Step 3: Efficient design and delivery	Determine if the proposed infrastructure meets efficient design and delivery principles
Step 4: Determine costs to be levied	Determine what costs can be included in the initial contributions plan
Step 5: Plan updated over time	Determine how and when costs within a plan can change.

This framework represents a multi-layered divestment of councils' autonomy to provide communities with vital local infrastructure. Councils are best placed to determine the infrastructure needs of their local communities.

Under the proposals, for an infrastructure item to be included within a Schedule of Works in a s7.11 plan, the infrastructure will need to be listed on the proposed Essential Works List, considered to be "development contingent" and meet the principles of efficient design and delivery. Demonstrating cumulative compliance with each of these criteria represents a significant resource impost on councils, who should be left to determine for themselves what infrastructure their communities need rather than having to onerously justify why and how the infrastructure they wish to provide meets State mandated criteria.

Step 1: Essential Works List

Application of the Essential Works List to all s7.11 plans

The City raises strong objection to the proposal to apply an updated Essential Works List to all s7.11 contributions plans, notwithstanding the NSW Government's three year pause on implementation so that the existing arrangements can continue in the meantime (including in relation to the IPART review trigger thresholds). **The proposal is fundamentally unfair and does not give councils the autonomy they need to tailor the provision of infrastructure according to need.**

Section 7.11 contribution plans are based on the principle of **nexus**, where there is a connection between the proposed development and the demand for infrastructure it creates. This proposal fundamentally undermines this principle. By dictating to councils what types of infrastructure they can fund through s7.11 contributions, the connection between development and demand is broken. If there is a community need or demand for a particular type of infrastructure, why should this be artificially restricted through the mandatory application of the Essential Works List?

The mandatory application of the Essential Works List introduces a "one size fits all" approach for s7.11 contributions plans. This approach does not recognise that the infrastructure needs of worker, visitor and residential populations differ in different locations. The infrastructure needs of populations in urban infill councils like the City will differ to the needs of populations in regional and rural areas. **It is therefore unreasonable to restrict councils across NSW to an arbitrary infrastructure list which may not allow them to collect contributions to fund the infrastructure that their communities need.**

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In the Terms of Reference⁸ provided to IPART requesting a review of the Essential Works List, the Minister for Planning and Public Spaces specifically stated that the “essential works list must not expand beyond the current parameters and community facilities works must not be included”. This unexplained and troubling directive from the Minister to IPART was pre-emptive, and in the context of the proposal to apply the Essential Works List to all plans, served to break the principle of nexus for s7.11 plans. It deliberately prevented the opportunity for full, thorough and transparent consultation on what infrastructure items councils consider to be essential. This direction effectively sets restrictive parameters for the delivery of infrastructure, meaning that even if there is an obvious community need or demand for type of infrastructure not listed on the Essential Works List, there is no way of funding it through s7.11 contributions.

Proposed Essential Works List

IPART propose the following Essential Works List apply to all s7.11 plans:

Land and/or facilities for open spaces
Land or strata space for community facilities
Land and/or facilities for transport
Land and/or facilities for stormwater management
The costs of plan preparation and administration
Borrowing costs to forward fund infrastructure

The proposed Essential Works List demonstrates a lack of true understanding about the infrastructure infill councils need to deliver to make communities liveable to align with growth. It does not adequately address the infrastructure needs of dense infill areas where there is less demand for new roads, footpaths and stormwater management (compared to greenfield areas) and more demand for open space and community facilities (including buildings).

It is unclear whether public domain improvement works are on the EWL as a form of open space. Public domain improvement works, such as town squares, plazas and civic spaces are important areas for social interaction, recreation and congregation. This is particularly the case in high density urban areas where public domain areas can often function as crucial open space areas in much the same way as more traditional parkland open space does in less densely populated areas.

In dense urban environments, indoor recreation facilities are also highly utilised and provide a strong community benefit. This is particularly the case where there is a mix of housing types, including newer residential models such as student accommodation. Indoor recreation facilities, such as basketball courts, provide valuable spaces for exercise and recreation. They serve the same community purpose as outdoor recreation facilities such as football fields and tennis courts. They only differ from outdoor courts because they are roofed and enclosed.

The proposed Essential Works List is silent on whether land and facilities for transport includes car parking, while the existing list expressly excludes car parking. The City raises strong objection if car parking is now considered to be essential works. The City would never categorise car parking as ‘essential’ and therefore it should not be on any essential works list.

⁸ NSW Department of Planning, Industry and Environment. *Essential Works List and Nexus Terms of Reference*. July 2021. <https://www.ipart.nsw.gov.au/documents/terms-reference/terms-reference-essential-works-list-and-nexus-july-2021>

Community facilities works are essential works

The City's concerns regarding the mandatory application of the Essential Works List are compounded by the fact that important items of infrastructure needed to support our communities have been expressly prohibited from being even considered for inclusion on the list.

The City strongly asserts that community facilities buildings are essential works which should be eligible to be funded and delivered through infrastructure contributions.

In its Final Report on the Infrastructure Contributions System, the NSW Productivity Commission defined "public infrastructure" as "infrastructure where the government plays a leading role to ensure its delivery, and lists community facilities such as "community centres and libraries, schools and hospitals" as public infrastructure. By not allowing for s7.11 contributions to be collected for this important public infrastructure, the NSW Government will effectively be forcing councils and their communities to go without, or to use general revenue to fund them. Reliance on general funding demonstrates that this proposed policy represents a cost shift from new development (bringing new populations) to rate payers.

The Ministerial directive to prohibit the inclusion of community facilities works on the proposed Essential Works List is entirely unjustified. Community facilities such as child care centres, integrated multipurpose facilities, local community centres and libraries are vital to the fabric of urban life. They provide spaces for the City's diverse communities of residents and workers to enjoy creative and recreational pursuits, education and training, entertainment and rest and respite in an increasingly dense inner-city environment. Leaving these facilities off the Essential Works List means that councils may not be able to strike the right balance of infrastructure to be funded through their contributions plans, with it potentially being skewed too heavily towards "hard" infrastructure types such as roads, footpaths and stormwater drainage.

The City argues that community facilities buildings can be development contingent, with need driven by new development rather than simply general population growth, as demonstrated by the Green Square case study (see page 30 of this submission). It is reasonable that new development continues to pay local contributions to fund the community facilities buildings that their future populations will be using.

The City is also in the process of recouping \$41.3 million from community facilities works that it forward funded to ensure the timely delivery of this vital infrastructure for our communities, which will also provide benefit to future residents, workers and visitors. Expenditure on community facilities works had been anticipated to be recouped over time, as the forward funding of these works has drawn from other contributions categories and general funds. Removing community facilities off the Essential Works List and potentially Council's ability to recoup funds already spent for that purpose puts the City at considerable financial risk. Based on average contributions over the last four years, recoupment of this forward funding is likely to take in the order of 11 years, although this time frame is also at risk given that the City is already feeling the financial impacts of the current deferral arrangement for the payment of contributions from construction to occupation certificate stage.

Green Square

Fulfilling the need for community facilities buildings

Green Square is one of the largest urban renewal projects in Australia. It includes the suburbs of Zetland and Beaconsfield and parts of Alexandria, Waterloo and Rosebery. An average of 50 new apartments are completed in Green Square each week. Currently, there are around 42,000 residents, which means that more than half of the expected residential population of 70,000 have already moved in. As Green Square continues to grow, the planning and management of community facilities is of paramount importance. The City has spent decades planning Green Square, and prepared an Infrastructure Strategy and Plan in 2015 to identify and guide the delivery of the physical and social infrastructure required to support growth. The City of Sydney Development Contributions Plan 2015 apportioned approximately \$73 million of community facilities to the new population in the South Precinct (which contains Green Square).

These facilities are of critical importance to the communities of Green Square. The newly opened Gunyama Park aquatic centre provides families with a local swimming pool where children can learn to swim - a valuable life skill. The Green Square library provides an important educational, social and community space for the community. The Waranara Early Education Centre provides 74 much needed child care spaces for children in the area. These facilities fulfil the community demand for high quality, safe and accessible places which respond to their needs and supports their wellbeing.

These community facilities in Green Square are “development contingent”. They would not have proceeded if there was not the huge scale of development bringing new populations to the Green Square area. The need for new community facilities in the Green Square area was driven almost entirely by these large-scale developments, rather than underlying population growth trends.



The Gunyama Park aquatic centre is a vital piece of infrastructure for the high density communities of Green Square and offers swimming lessons – a vital life skill.

Proposal risks future provision of community facilities buildings

Between 2013 and 2020, the City managed to acquire approximately 2.2 hectares of land for the provision of new open space and/or community facilities in Mandible Street, Alexandria. The City funded approximately 85% of this land acquisition through local infrastructure contributions collected under its s7.11 plan.

The proposed changes to the s7.11 regime mean the City would not be able to use s7.11 contributions to fund any community facilities buildings on this land. Any community facilities buildings which the City needs to provide would have to be funded through other income sources, such as rates. This is fundamentally unfair to existing rate payers, who will in effect be funding infrastructure resulting from demand generated by new development. If rate increases are required to fund community facilities buildings, this could have the perverse effect of making existing rate payers less accepting of new development.

Step 2: Development contingent

The City does not support the NSW Productivity Commissioner's view that only "development contingent costs" should be funded by new development, where these costs were defined as having a "causal connection to a development because they would be avoided in the event the development did not proceed".

This proposal is overly strict and does not recognise that new development across a geographical area cumulatively creates demand for new infrastructure. Having to directly identify causal demand between a particular development and an infrastructure item in a contributions plan is an onerous and impractical requirement on councils.

IPART propose that costs included in a s7.11 contributions plan should relate to the provision of "development contingent" local infrastructure. Local infrastructure will be considered to be "development contingent" where the following three criteria are met:

- the expected development creates a demonstrable increase in demand for public amenities and services;
- the types of public facilities proposed in the contributions plan are required to meet that demand, and;
- the proposed facilities consider the extent to which existing facilities have capacity to meet that demand.

A broader interpretation of "development contingent" infrastructure, as suggested by IPART, is more realistic than the direct causal relationship recommended by the NSW Productivity Commissioner.

The principle of nexus is already well established under the existing s7.11 contributions system and this should be respected without further undue restriction. The existing apportionment methodology already ensures that new development does not pay for existing community needs.

In preparing our current s7.11 plan, the City prepared category specific Infrastructure Strategies for Open Space, Community Facilities, Traffic and Transport and Stormwater drainage, supported by population forecast data. Each of these Infrastructure Strategies identified the new population's demand for the particular category of infrastructure and set out how the City would use contributions to address this demand. Relevant technical studies specific to each infrastructure category were relied upon to inform decisions. The Infrastructure Strategies were included in the Plan as appendices.

The City is comfortable with different approaches to demonstrating nexus according to infrastructure category as we consider this achieves the best infrastructure outcomes for our new communities. It is however a resource intensive approach. It is important that plan administration costs can include all costs associated with technical studies, including the council's administration of any contracts for the delivery of such.

Step 3: Efficient design and delivery

IPART proposes that for the cost of land and/or facilities to be included in a contributions plan, councils must identify the most cost-effective means of providing that infrastructure to meet development contingent demand. IPART proposes that councils achieve these principles of efficient design and delivery by:

- restricting infrastructure delivery to a base level of performance having regard to relevant government regulations or industry standards and community needs, and;

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- providing value for money by selecting the most cost-effective option for delivering base level infrastructure (noting this may not be the option with the lowest up-front cost).

Base level of performance

It is the City's view that, in line with the impactor pays principle, development contributions should continue to be the primary funding source for infrastructure needed to support new populations. Further, the standards to which this is done should remain a matter for individual councils taking into account their specific community needs.

Whether councils choose to top-up infrastructure costs should remain a matter for individual councils. It should not be a given that councils will top-up funding from other revenue sources as a result of Government-imposed assumptions around what constitutes "base level" infrastructure. It is also worth noting that the ongoing existence of the \$20,000 cap on residential dwelling contributions has meant that councils have been inadequately compensated for the infrastructure costs imposed by development for well over a decade. Putting this additional pressure on councils to find funding from other sources to meet the standards expected by their communities will not assist in ensuring the timely delivery of infrastructure.

This proposal has the potential to result in financial uncertainty for councils. It fails to acknowledge that while councils list works items in their contributions plans to respond to new demand, it is rarely the case that they have prepared detailed proposals for that infrastructure. Given that contributions plans typically have a 10-15 year horizon, this situation is to be expected. Under this proposal, by listing an infrastructure item in a s7.11 plan, councils will be committing to only using contributions to fund base level infrastructure that is the minimum necessary to meet design standards/technical specifications and community needs. Often, community expectations around infrastructure exceed what may be deemed base level. This may result in difficulties for councils who may attract criticism for providing infrastructure below the standards expected or who may need to find "top up" funding from other sources to deliver infrastructure commensurate with community expectations.

With regard to design standards and technical specifications being a factor for consideration when designing base level infrastructure, many councils, including the City, have their own technical standards, codes and drawings for infrastructure such as streets, footpaths and stormwater drainage. These technical standards, codes and drawings have been specifically developed to take into account local circumstances and respond to particular needs and therefore they differ between councils.

For example, the Sydney Streets Code 2021⁹ sets the guidelines, design coordination requirements and material palettes for land owned/managed by the City as well as land that is to be dedicated to the City. This Code recognises our particular circumstances as a local government area with a diverse range of streets which have different functions ranging from those which support our world class CBD through to local residential roads. If developers are undertaking works-in-kind infrastructure in the City, they are required to build according to the City's technical standards, codes and drawings. Many developers who work in this City appreciate this, as this provides certainty around what is expected to be delivered. Ultimately, the delivery of infrastructure to an appropriate quality and consistent standard adds to the desirability of an area and is to the benefit of all stakeholders, including developers.

We note that it is proposed for updated advice about design standards and technical specifications to be included in a future Practice Note. The Practice Note should include references to councils' individual technical standards and drawings and provide sufficient flexibility to account for changes to standards and specifications.

⁹ <https://www.cityofsydney.nsw.gov.au/design-codes-technical-specifications/sydney-streets-code>

Value for money

The City agrees that all communities deserve infrastructure that represents good value for money. As IPART acknowledges, “lowest up front cost” does not necessarily translate to value for money in relation to infrastructure provision. A more relevant consideration is “lowest lifecycle cost” taking into account capital and operating costs over the life of an infrastructure item.

The City notes the example used by IPART in relation to the turfing of playing fields in its Draft Report (pg. 41). This situation is relevant in the City, where our open spaces need to withstand the impacts of high intensity use. Our playing fields and all the associated facilities that go along with them (eg. change rooms) need to be designed for at least 60 hours of use per week, rather than the 20 hours of use that may be reasonable elsewhere. We know that synthetic turf is more expensive up front than regular turf, but once installed it can withstand the high intensity of use required of it in the City without the ongoing maintenance costs of regular turf. In this instance, if the City were required to provide infrastructure according to the lowest up front cost, the perverse outcome would be that we would need to acquire more land for open space as regular playing fields would not withstand the intensity of use.

Additional resource implications

The City objects to the extent to which councils will be expected to demonstrate value for money through the assessment of options for meeting performance outcomes in their contributions plans. The City’s current s7.11 contributions plan has 161 items listed within the Schedule of Works. It would be a resource intensive task to have to demonstrate the decision making framework used to determine the preferred option, explain how that option will meet performance outcomes and address different cost levels for each individual works item.

Contributions plan preparation is already a resource intensive process often taking years, and the additional resource implications involved in having to justify how options were arrived and how they are cost effective is likely to result in plans taking even longer to prepare. This, coupled with the possibility that councils may need to prepare more contributions plans alongside planning proposals, does not bode well for the timely and responsive preparation of plans. The City is concerned that unreasonable expectations on timing will be imposed, particularly in relation to the preparation and consideration of planning proposal specific contributions assessments.

Upgrading existing infrastructure

In infill areas, it is not always possible or appropriate to provide new infrastructure. Upgrading of existing infrastructure to reflect the size and expectation of a growing community is the appropriate response in many cases in urban infill areas, not only from an economic perspective but also to ensure the sustainability and resilience of that existing infrastructure.

Forward funding

IPART encourages borrowing to forward fund and support the early delivery of infrastructure to reduce the need for staging and temporary facilities. In the City’s experience, forward funding of infrastructure does not reduce the need for staging or temporary facilities – as there can be other factors at play that influence this. For example, Gunyama Park in Green Square was delivered in two stages as it involved land not owned by the City. It is also important to note that in brownfield environments such as the City, the staging of works can be a major but unavoidable cost.

Stormwater

The City notes that whole of catchment stormwater planning may not be practical or feasible in established brownfield areas. In the City, we have small catchments, each of which already has a Floodplain Risk Management Plan which has been informed by modelling and identifies and prioritises infrastructure options. In our LGA, catchment behaviour (generally floods which occur rapidly) and constraints (for example, existing development, road alignments) mean that we need onsite stormwater detention systems which serve as smaller basins as larger, whole of catchment basements are not feasible. In some extreme situations, viable infrastructure solutions do not exist

and therefore other means of addressing stormwater disposal are required such as education and emergency planning.

A new special purpose authority or a water utility would have been beneficial at the time when there was an urgent need for the delivery of a 2.4 kilometre stormwater drain to address serious flood risk in Green Square. This trunk drain was a critical piece of enabling infrastructure to support development in Australia's largest urban renewal area. The City instigated action to secure the delivery of this drain, with a \$140M joint funding agreement reached with Sydney Water. The City funded 53% of the works, with funding sourced from s7.11 contributions and general revenue. The City supports collaboration between interested parties if it serves to deliver the right infrastructure in a timely manner. Councils must retain the flexibility to come up with innovative and responsive solutions in order to facilitate the orderly development of their areas where appropriate.

Step 4: Determine costs to be levied

The Infrastructure Bill proposes that “the cost of providing public amenity or public services must be calculated in accordance with the regulations and relevant Ministerial directions”. The NSW Government proposes to allow IPART to “develop and maintain standardised benchmark costs for local infrastructure that reflect the efficient cost of provision”¹⁰.

In their October 2021 Draft Report, IPART proposes that costs can be levied for infrastructure in a contributions plan in two ways:

1. by using standardised benchmark costs, and;
2. by using a site specific costing approach (including actual costs, whether the infrastructure has already been constructed).

IPART note that the use of site specific cost estimates should be minimised, with standardised benchmark costs as the preferred approach to simplify the infrastructure contributions system.

Standardised benchmark costs

The City raises serious concerns about the proposal to introduce standardised benchmark costs for the costing of infrastructure to be funded through development contributions.

Setting infrastructure delivery costs in contributions plans should remain a council responsibility. Councils are best placed to understand the delivery costs associated with infrastructure delivery within their local context in order to reduce the risk of there being inadequate funds to allow for the timely delivery of infrastructure.

Proposed benchmark costs are too low

The City asserts that the proposed benchmark costs are grossly inadequate and are not representative of the actual delivery costs of base level infrastructure items within the City of Sydney local government area.

To demonstrate this, one base level item from each of the three infrastructure categories (i.e. transport, stormwater and open space) is listed below with the benchmark costs recommended by Cardno in their benchmark costs report¹¹ for IPART against the actual costs to deliver as set out in the City's Schedule of Rates for infrastructure delivery. The City's Schedule of Rates reflect market pricing for infrastructure items. Figure 9 demonstrates the significant cost differences:

¹⁰ <https://www.ipart.nsw.gov.au/Home/Industries/Local-Government/Reviews/Contributions-Plan/Review-of-benchmark-costs-for-local-infrastructure>

¹¹ Cardno Pty Ltd for the Independent Pricing and Regulatory Tribunal (IPART). *Supplementary Report – Benchmark Datasheets*. 10 November 2021.

Figure 9. Comparison of IPART benchmark costs and City Schedule of Rates

Infrastructure	Proposed benchmark cost	Proposed benchmark cost (+40 per cent adjustment factor)	City Schedule of Rates ("market rates")	Cost difference (between City rate and IPART benchmark plus 40 per cent)
Standard streetlights	\$12,600 each	\$17,640 each	\$30,000 each	\$12,360
Gross pollutant trap (750mm)	\$65,000 each	\$91,000 each	\$200,000 each	\$109,000
Turfing	\$40 per sqm	N/A*	\$200 per sqm	\$160 per sqm

* No adjustment factor is proposed for open space infrastructure items.

Figure 9 demonstrates that even if a 40% adjustment factor to account for site constraints were incorporated, the proposed benchmark costs would still fall far short of market prices for the delivery of infrastructure items in the City. **If the City were to use the benchmark costs for preparing the cost estimates in our contributions plans, we would be forgoing millions of dollars in critical infrastructure funding.**

The City has applied the proposed benchmark costs to two real life examples for the purposes of determining how these costs compare to actual delivery costs. These examples demonstrate the gross inadequacy of the benchmark cost approach for the City.

In the Shannon Reserve Playground example in Surry Hills (see page 40 of this submission), if IPART's benchmark costs approach were used, the City would be able include a cost estimate of around \$389,000 in the contributions plan, which means that contributions could be collected for this amount. The actual cost to the City of delivering the playground upgrade in 2020 was in the order of \$1.5 million. This huge price discrepancy can be attributed to:

- the benchmark costs not being reflective of market prices and entirely insufficient for works in highly constrained areas;
- no price variables being proposed for open space works to account for the inner city location;
- no benchmark costs being proposed for certain items of infrastructure which are considered reasonable for "base level" infrastructure in a park, such as site preparation works and furniture (garbage bins, water bubblers, signage).

In the Gadigal Avenue and Lachlan Street intersection example (see page 41 of this submission), if IPART's benchmark costs approach were used, a cost estimate of almost \$1.1 million could be included in a contributions plan for the collection of levies. The actual cost to the City to deliver this work in 2020 was in the order of \$4.1 million. This huge price discrepancy can be attributed to:

- the benchmark costs not being reflective of market prices and entirely insufficient for busy inner city intersections and streets;
- benchmark costs for the intersection works only being provided for street lights and kerb ramps, despite there being other associated works involved such as the construction of cycle ways and public domain improvements (e.g. widening and repaving of footpaths).

Use of benchmark costs is inappropriate at plan preparation stage

The proposal to introduce standardised benchmark costs does not recognise that the preparation of a contributions plan is an early stage in the process of infrastructure delivery, involving forecast

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population demand and the identification of infrastructure items. IPART's Draft Report (pg. 47) states that "the aim of setting benchmark costs is to simplify the process of contributions plan preparation, enabling plans to be prepared earlier and exhibited with rezoning proposals". The proposal makes this aim entirely unachievable.

Requiring councils to provide detailed cost estimates in contributions plans, even with the aid of standardised benchmark costs and scopes, would require the preparation of detailed design proposals for each piece of infrastructure in a schedule of works so that all the component parts can be factored into costings. This is an incredibly resource intensive task to be expected to do the point of preparing a draft contributions plan. Detailed project planning often takes place for separate infrastructure items listed in contributions plans over the course of years in consultation with local communities. **Being required to know the detail of projects upfront to provide detailed cost estimates is not practical, would have major resourcing implications for many councils and may have the perverse effect of slowing down the preparation of plans.**

It is not considered practical to require a council to know how many BBQ areas or shade sails it may need for a planned park at the time of preparing a contributions plan. It is also not in the public interest as the community are an important stakeholder in contributing to the final design of our infrastructure.

If the City had been required to frontload the plan preparation process by providing detailed costings for each of the 161 works items listed in its current s7.11 plan, this would have required detailed proposals to have been prepared for each item upfront to know which of the 63 benchmarked costs and scopes to apply. This proposed requirement would result in significant additional resource being expended in the plan preparation process and slow it down considerably. Ultimately, this would not be a helpful or efficient use of public monies.

Even if councils were able to prepare detailed design proposals taking into account benchmark costs and scopes to work out cost estimates, it would be impossible to cover all potential scenarios that may arise in the development process. It is not uncommon for unforeseen issues to be discovered during the construction phase itself. Dealing with unforeseen issues in the construction stage often adds costs to a project. While IPART propose standardised allowances for inclusion such as contingency, project management and design, the costs proposed for this are seriously underestimated.

List of infrastructure items for benchmarking is deficient

The current list of infrastructure items for benchmarking is deficient. The list does not cover all components that work together to deliver an infrastructure project. The effect of this is that councils may be financially disadvantaged by not being able to levy contributions for certain component items of infrastructure.

The benchmark costs are poorly resolved in relation to brownfield environments. For example, the benchmark costs for transport relate to new infrastructure delivery only, however in the City, upgrades to transport infrastructure are a major priority to support population growth.

In the Shannon Reserve Playground example in Surry Hills (see page 40 of this submission), the following items were either not provided with benchmark costs or were provided with insufficient benchmark costs:

- demolition and alterations: insufficient benchmark costs provided given that demolition can be a complex process and often requires demolition and / or alteration of works other than buildings e.g. retaining walls, hard landscape / paved areas etc;
- site preparation: no benchmark scope or cost provided to allow for site preparation works - this is essential work that will always be required;
- pavement works: insufficient benchmark costs provided with no allowances made for steps, ramps (including handrails), tactile indicators etc;
- furniture: no benchmark costs provided for basic items such as garbage bins, water bubblers, signage;

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- service works: no benchmark costs / allowances made for services which will be required e.g. new power / water supply for open spaces, modification of existing services.

In the Gadigal Avenue and Lachlan Street intersection example (see page 41 of this submission), the proposed benchmark costs are not suitable for brownfield urban renewal areas. The following items were not provided with benchmark costs or were provided with insufficient benchmark costs:

- cycleways: no benchmark cost has been provided for cycleways (although one has been provided for a cycleway bridge);
- public domain improvements: no benchmarks have been provided for associated widening / re-paving of foot paths;
- pedestrian improvements: no benchmarks have been provided for associated kerb extensions;
- trees and planter beds: no benchmarks provided for associated tree/planting works but these are important in the fight against climate change.

Adjustment for complexity

IPART propose that “adjustment factors” be included in benchmark costs to account for variations between different sites and circumstances. The Draft IPART report (pg. 51) lists congestion, location and ground conditions as factors that can be considered to recognise additional costs of construction in some areas. IPART consider that by allowing for adjustments for complexity, benchmarks will be applicable to a broader range of projects which will minimise the need for councils to use the site-specific costing approach.

Notwithstanding the City’s serious concerns about benchmark costings, it is noted that the inclusion of adjustment factors is considered one way to account for the range of site and locational circumstances that impact on construction costs. However, even with the inclusion of adjustment factors, the base benchmark costs from which the adjustment factors stem would have to be reflective of a realistic base level scope of works, and that the adjustment factors be calculated based on a detailed review of the price differentials that need to be considered.

Additional costs for infill sites

The Cardo technical report¹² prepared for IPART notes that infill (brownfield) sites “*present a large number of additional costs that are not necessarily comparable between sites*”. However, Cardno have not determined what the range of additional costs that can be incurred on infill sites will be. This again demonstrates the premature and deficient nature of the proposal package. **It is clear that an entirely inadequate timeframe has been provided to IPART for the current process and therefore the current IPART review should be abandoned.**

In the City’s experience, traffic management and night works, remediation works, demolition and utility relocation can seriously impact the cost of works on infill sites. Remediation works can increase construction costs considerably, while night works can increase construction costs in the order of 30%. In addition, new utility items or conduits for new utilities can also add considerable cost to infrastructure delivery. It is often the case that utility providers will only approve plans on the condition that new utilities and associated conduits are provided.

Chapter 7 of the Cardno technical report looks at the components of cost estimates and also seeks to develop ranges within which adjustment factors can be set to reflect site circumstances. Page 10 of this report specifically states that the recommended site constraint factors to apply for minimally/ moderately/ highly constrained sites would apply in relation to roads and stormwater infrastructure (Refer to Table 7.3, page 10). The proposal is flawed in that it doesn’t include any constraint factors for open space as these are often constrained by similar issues.

¹² Cardo Pty Ltd for the Independent Pricing and Regulatory Tribunal (IPART). *Draft Benchmarking Items and Costing Methodology: Benchmark Costs for Local Infrastructure*. 27 October 2021

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The Cardo technical report specifically states that the site constraint factors listed would not be appropriate for use for the Sydney CBD, as this area is a special case. The City asserts that not only is our CBD a special case, but also many areas throughout the City's local government area where site constraints can increase costs in the order of 200%. This is far in excess of the 30-40% additional cost proposed for highly constrained sites in the technical report.

Pages 11 and 12 of the Cardo technical report refer to ground conditions impacting on development costs, but adjustments seem only to be proposed in relation to bearing capacity, with no adjustments proposed for other ground conditions. The City notes that contamination, ground water levels and acid sulphate soils are all matters that impact on development costs in our area (as will be the case for most urban infill councils, particularly where brownfield land is being redeveloped to support population targets). Remediation costs can regularly have a significant cost implication and are not an "optional extra". If no adjustment factors are proposed for these other ground conditions, councils will have little choice other than to use the site specific costing approach to ensure that the significant costs of dealing with these ground conditions are properly accounted for.

Level of functionality

The proposals fail to consider the level of functionality of infrastructure, which takes into account likely intensity of use in relation to population demand. In the City, we must design infrastructure that accounts for a high intensity of use by our high worker, visitor and resident populations. Using open space as an example, the City already experiences significant challenges in providing local open space to fulfil demand, particularly in terms of accommodating sports fields. We are unlikely to meet the needs of our new populations in our constrained urban environment. Therefore, part of our strategy to respond to demand and constraints is to ensure that new open space has high functionality and amenity through appropriate embellishment, and that upgrades to existing open space also increases functionality. There is a relative relationship between new population demand, availability of land and intensity of use.

Flooding

The design and construction of infrastructure is significantly more complex when a site is subject to flooding, and this impacts on cost. In the City where land choice is limited, there are times when we have little choice but to select sites for infrastructure provision which are burdened by constraints such as flooding. In a recent case in the City, we were required to raise ground levels for a whole playing field by a minimum of 900mm to mitigate flood impacts. This added significant cost to the project both at the design phase where additional expert studies were required, and construction costs have increased to account for additional material required (imported fill and retaining walls) as well as additional labour costs. Infrastructure built today must be constructed taking into account the challenges of the future, particularly in relation to the impacts of climate change. It is important that these restrictive proposals do not force councils to construct infrastructure which fails to address significant future issues, such as increased flood risk. The necessity for consideration of these issues will only increase over time to ensure that infrastructure is resilient in the face of climate change impacts.

Project allowances

The proposed standardised council on-cost rates for the internal and external activities involved in infrastructure delivery (for example detailed planning and design, geotechnical investigations, heritage studies etc) do not reflect the City's circumstances.

In the City, most of our infrastructure projects require multiple technical studies and approvals to facilitate delivery. The costs of these studies, along with project design that takes addresses complex site factors means that for small scale projects the City's on costs would be in the order of 30-35% (not the 17-22% proposed) while for a larger project, the on-costs would typically be 20-25% (not the 12% proposed).

The City does not support the proposed contingency rates. The City's complex urban environment is such that there are often multiple uncertainties in projects that may result in additional costs. The

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proposal to include a contingency relating to the design stage is impractical as this level of detail is not typically known at the contributions plan preparation stage. A contingency rate of at least 25 – 30% of estimated project costs is more realistic at the contributions plan preparation stage, in order to provide a sufficient buffer against unforeseen circumstances.

Shannon Reserve Playground, Surry Hills

Benchmark costs versus actual costs

The City's current s7.11 plan collected contributions for an upgrade to the Shannon Reserve Playground located on Crown Street in Surry Hills. Acquiring land for open space is challenging in constrained urban environments, therefore part of our strategy in response to new demand is to provide high functionality upgrades to improve capacity in existing parks. This park upgrade caters for the needs of young children aged 6 months to 8 years and incorporates inclusive play elements so that all children can enjoy the reserve as well as an accessible entry point. The upgraded playground significantly increases the amenity of the existing park, provides capacity improvements and also greater safety and accessibility.

Estimated cost in s7.11 contributions plan: \$1.14 million (100% apportionment)

Estimated cost using IPART's proposed benchmark costs

Item	Quantity	Rate	Total Cost (\$)
Mature tree	1	\$300 per unit	300
Shrubs	200	\$45 per sqm	9,000
Steel edging	400	\$70 per lm	28,000
Park lighting	3	\$1,500 per unit	4,500
Paving - brick	420	\$200 per sqm	84,000
Playset	3	\$9,000 per unit	27,000
Soft-fall single colour	250	\$250 per sqm	62,500
Seat - Aluminium frame - timber slats - back rest	10	\$3,800 per unit	38,000
Shade structure	60	\$350 per sqm	21,000
Construction Total			274,300*
On-costs		22 per cent	60,346
Contingency		20 per cent	54,860
TOTAL			389,506

*Adjustment factors not included noting that "constraint considerations" in IPARTs technical reports only apply to transport and stormwater projects.

Actual cost for council to deliver (2020)

Construction total \$1,216,357 (including contingency)

On Cost \$351,891 (29% of construction costs)

FINAL TOTAL \$1,568,248



Gadigal Avenue and Lachlan Street intersection, Lachlan Precinct

Benchmark costs versus actual costs

The Lachlan Precinct is a 10-hectare former industrial area located within the north-east of the Green Square Urban Renewal Area. Since 2011 it has transitioned from an industrial to a residential mixed-use precinct. By 2030 it will accommodate 6,600 residents, 3,500 homes and neighbourhood retail shops and businesses. Its renewal has required the delivery of enabling physical infrastructure including 15,000 square metres of new public open space, high quality streetscapes, cycleways, trees and planting that enhances habitats for local wildlife and natural ecosystems.

A new signalised intersection at Gadigal Avenue and Lachlan Street was required to provide enhance pedestrian and cycle safety and access to and from the Lachlan Precinct.

Scope of works deemed to be 'base level' improvements by the City:

- construction of a four-way signalised intersection;
- footpath widening/improvement adjoining intersection;
- construction/adjustment of separated cycleway, and;
- planter beds.

Estimated cost using IPART's proposed benchmark costs

Item	Quantity	Rate	Total Cost (\$)
Signalised intersection and one turning lane	1	\$550,000 per intersection*	550,000
Sub-total			550,000
Adjustment factor (highly constrained site)		40 per cent	220,000
Construction total			770,000
On cost		22 per cent	169,400
Contingency		20 per cent	154,000
TOTAL			1,093,400

*IPART's benchmark costs for transport related infrastructure **do not** include any allowance / scope for general public domain improvements such as pavement works, planter beds etc

Actual cost for council to deliver (2020)

Construction Total **\$3,810,503 (including contingency)**

On Cost **\$312,398 (8% of construction costs)**

FINAL TOTAL **\$4,122,091**



Costing approach as an alternative to using benchmark costs

The proposed benchmark costs will not be applicable to the vast majority of infrastructure delivered within our area which is home to some of the most important economic centres in Australia (e.g. the CBD and our southern employment lands) and some of Australia's densest urban communities (e.g. Green Square, Potts Point and Kings Cross). Even taking into account adjustment factors and project allowances, the complexity of delivering infrastructure in the City where there are significant site constraints means that the proposed benchmark costs would not provide the most accurate estimate of efficient costs for base level infrastructure. Furthermore, infrastructure in areas such as the City, which serves a significant worker and visitor population in addition to an increasing residential population, needs to be of high functionality to withstand high intensity of use.

Under the proposals, the City would have to replace benchmark costs with alternative costings for the vast majority of infrastructure items it intends to fund through s7.11 contributions or risk being significantly worse off financially. It is acknowledged that the City already does prepare costings for its infrastructure projects, often using historical costs of similar projects and actual costs where available. The key difference with this proposal is that these costings will be required very early on in the infrastructure delivery process, so that they can be included in a contributions plan. Noting again that the City's current s7.11 contributions plan has 161 works items, using a costing approach to develop cost estimates to be included at the plan preparation stage would be a hugely resource intensive task at such an early stage of the process. In their Draft Report, IPART describe the site-specific cost estimate process as both "lengthy" and "costly for councils". The City is not convinced that this is a viable alternative.

IPART's Draft Report notes that "ideally costs estimates should be based on competitively procured tenders for the specific project or infrastructure in question" (page 65). This is wholly unrealistic. For the vast majority of infrastructure items proposed to be funded through contributions, it is unrealistic for a competitive tender process to have been undertaken (or completed) at the point of contribution plan preparation. If this approach were to be adopted all council contributions plans would be in a constant state of recoupment, which is not a financially realistic option for most councils.

IPART propose governance arrangements to support the use of specific estimates or actual costs, and that councils will need to explain the costing approach followed for estimating costs. These proposals unreasonably place the onus on councils to justify and explain their proposed costings, including with reference back to benchmark costs for comparative purposes. IPART state that the level of information and justification to be provided by councils on their cost estimates is to be proportionate to the cost in the contributions plan, and note that for larger costs, specialist reports may be required. Again, these proposals represent unrealistic resource imposts on councils.

Step 5: Plan updated over time

Process for updating the benchmark costs over time

The NSW Government has asked IPART to not only develop standardised benchmark costs for local infrastructure, but also to maintain them into the future. IPART propose to:

- update benchmark costs annually to escalate them to ensure they keep pace with cost increases;
- undertake regular reviews (possibly every 4 years but more frequently in the early years) of benchmark scope and whether it continues to reflect changes to standards, current practices or technologies, or other changed or emerging trends.

Notwithstanding the City's strong objection to benchmark costs, indexing is important to avoid the ongoing financial loss that councils currently face with the caps on residential contributions which have not been indexed since their implementation around 10 years ago.

It is important for any indexing of the benchmark costs to align with indexing of s7.11 contributions rates both in terms of the index to be applied and the frequency of indexation. This will ensure that the benchmark costs that can be applied for infrastructure and the contribution rates that can be levied remain in lockstep. In this regard, it is noted that the ABS PPS Road and Bridge Construction Index for NSW is proposed to apply for both the transport and stormwater benchmark categories, but the ABS PPI Non-Residential Building Construction Index for NSW is proposed for the Open Space benchmark category. However, when it comes to indexing 7.11 contributions rates themselves, the draft Regulation only refers to the ABS PPI Road and Bridge Construction Index, which means that for there will be a misalignment between the indexing of benchmark costs and the contributions rates for open space.

Without regular reviews of benchmark scopes, their accuracy and relevance would be questionable. Only through thorough and meaningful consultation directly with councils will it be understood how standardised benchmark costs are working on the ground.

Updates over the life of a contributions plan

The NSW Government proposes that s7.11 contributions plans be reviewed every four years, starting from 1 July 2024. IPART propose that contributions plans which are developed using benchmarks or cost estimates will require updating to maintain currency and ensure costs in the plan continue to remain cost reflective. IPART propose that all higher value contributions plans should be reviewed at a fixed four year period, but they are less clear as to when reviews should be undertaken in relation to other contributions plans.

It is important to acknowledge the process of updating and reviewing contributions plans is resource intensive. It is the City's views that the proposed reforms will significantly increase councils' workloads, particularly to front load costings at the plan preparation stage. The preparation the City's current 7.11 plan took around two years from the start of the process to its commencement. Many councils, including the City, have more than one contributions plan, and the new requirement to prepare contributions plans at the same time as planning proposals means that councils are likely to end up with multiple contributions plans. The new requirements for providing cost estimates for infrastructure projects will require councils to know much more detail about potential projects earlier in the process, which equates to much more upfront work.

The combination of more contributions plans and the higher volume of work required to develop cost estimates, means that there will be more impost on council resources. This in turn means more public money spent on the administration of these matters and consequently unable to be spent on the actual construction, maintenance and operation of public facilities and infrastructure.

Deferral of contribution payments

Although not expressly part of the exhibition package, it is clear that the NSW Government still proposes to use the Infrastructure Bill to make permanent the temporary Covid-19 related Direction currently in place which allows a “payment holiday” of contributions from construction certificate to occupation certificate stage.

The City has consistently argued against this policy change and is strongly opposed to the proposal to make it permanent. This approach is fundamentally flawed, undermines the entire purpose of development contributions and presents a further challenge to the ongoing financial stability of councils.

This policy change is in direct conflict with the NSW Government’s aim of delivering the right infrastructure at the right time to improve the productivity of communities and deliver jobs. If infrastructure contributions are only payable to councils at occupation certificate stage, then councils will have received the funding too late to ensure that infrastructure is delivered and operational when the occupants of a new development move in. Infrastructure lag behind new development, already a long-held concern by the property industry and a key challenge under the current infrastructure system, will inevitably be exacerbated as councils are receiving fewer contributions and only after populations have increased.

This proposal represents an additional impost on councils who will already have their income significantly reduced under the proposed reforms. It will force many councils to either borrow or will lead to them being unable to build and maintain infrastructure. This may ultimately lead to the risk of them being in breach of their obligations under the guiding principles established in the Local Government Act.

Millions in contributions payments already deferred

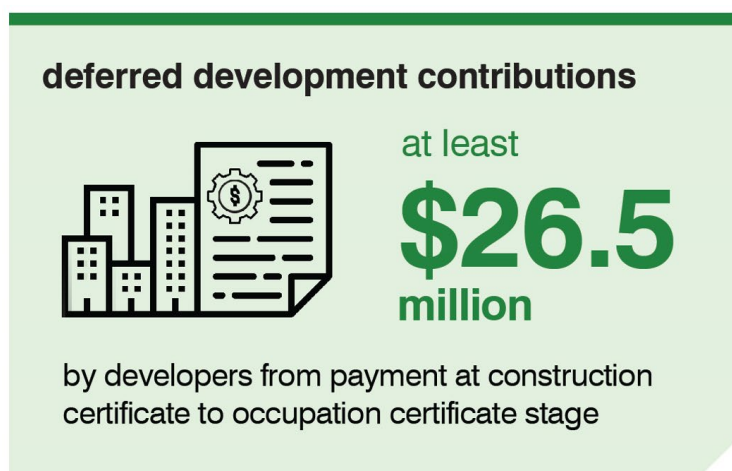
In the City, the Covid-19 related Direction is in place in relation to our s7.11 contributions plan. As a result of this Direction which commenced in July 2020, **the City is aware of at least \$26.5 million in development contributions where payment has been deferred from the construction certificate stage to the occupation certificate stage. This is \$26.5 million in public monies that the City should currently be spending to deliver the infrastructure needed to support incoming new populations for developments currently under construction.** However, the City will not see this money until the point when these new developments are to be occupied and infrastructure won’t be delivered until years later.

The City is also aware of around \$45 million in development contributions that developers may be eligible to defer payment on under the Direction for developments where construction certificates have not yet been issued. Furthermore, as this Direction has been applied retrospectively, it is a significant challenge to quantify or forecast the full breadth of contributions amounts that may be deferred as a result of several years of development consents.

This policy is having a direct impact on local contributions receipts in the City. This impact will be exacerbated now that this policy also applies to our new Central Sydney Development

Contributions Plan 2020¹³. In the long term this policy will seriously impact on the City's ability to fund and deliver infrastructure.

Figure 10. Financial impact on City since July 2020 of deferral of contributions payments



This is **\$26.5 million** in public monies that the City should currently be spending to deliver local infrastructure

Significant risk of delinquency

With the deferral of payment from construction certificate to occupation certificate stage, there remains a high risk of delinquency by developers and private certifiers. While the NSW Government intends to introduce measures to address this risk, it remains that private certifiers may be put under pressure to issue occupation certificates, and that there are rogue development companies that may fold upon building occupation. It is critical to note that development companies are often Special Purpose Vehicles (\$2 subsidiary companies), designed to isolate parent company assets, operations or risks. These Special Purpose Vehicles can be easily wound up should liabilities outweigh assets, which may make the recovery of unpaid contributions extremely difficult.

The issues of private certifiers failing to properly attend to their obligations in relation to certifying developments were identified by the City many years ago and have now been well documented in relation to building defects. It is not appropriate to extend the risks in those areas to contributions payments, with the effect of creating both an additional cost to councils to follow up on compliance and a significant risk (ultimately borne by the community) that contributions will not be paid and that consequently essential infrastructure will not be able to be delivered. The burden of enforcement in this area will fall on councils and the risk of revenue loss is significant.

¹³ Contributions under s61 of the City of Sydney Act 1988 were not captured by this Direction. Therefore contributions levied through the Central Sydney Development Contributions Plan 2013 remain payable at construction certificate stage.

Modelling has never been released

Despite requests, the Department has failed to share any modelling undertaken to justify this policy. The City has previously requested that they share their cost benefit analysis which shows how much development is likely to be incentivised as a result of this Direction versus the impacts on infrastructure delivery for councils and lost economic benefits of those infrastructure projects.

Interestingly, it is the City's experience that a commitment to infrastructure delivery is one of the key drivers in moving development forward. This is evident in the redevelopment of Green Square following the City's commitment to take on numerous infrastructure works, including drainage works and the commitment of council owned land to facilitate the delivery of necessary educational facilities. Councils will not be able to provide such commitments if their infrastructure funding is delayed or at risk.

The Government should abandon its plans to implement this as there is no justification in maintaining this emergency measure on a permanent basis.

Financial assistance and full indemnification for councils

The Minister's recent flagging by press release of a willingness to investigate providing financial assistance for councils who can demonstrate financial hardship as a result of this change is an entirely inadequate response to the very real issues caused by this proposal.

Should the Minister proceed with making this unjustifiable policy permanent, any financial assistance must include a full indemnification by the NSW Government of all local contributions which are not paid due to the insolvency or other default of developers prior to payment to ensure that councils are not left out of pocket and unable to deliver infrastructure when (not if) these situations arise.

If it is the Government's position that there is little or no risk of developer default as a result of this policy position, then there should be no concern by the Government in providing a full indemnification to councils.

Land Value Contributions

An alternate approach to funding land acquisition

The Infrastructure Bill and draft Regulation propose to enable councils to incorporate a mechanism to capture a proportion of increased land value as a result of a planning decision into their s7.11 contribution plans.

The proposed land value contribution is an optional alternative approach to collecting monetary contributions for new public land through s.7.11 contributions.

Traditionally, a proportion of s7.11 developer contributions paid by a developer goes towards the acquisition of land for a public purpose. This can be an inefficient system of acquiring land because it can take a long time for councils to accrue sufficient contributions towards acquiring new public land. Land values can increase rapidly and often increase on early signs of land being considered for future development, which increases land acquisition costs to provide public infrastructure.

Under the proposal, a contributions plan that introduces a requirement for a land value contribution will be a site-specific contributions plan and must be developed concurrently with a planning proposal for the same land. Councils wishing to apply a land value contribution must say so as part of their request for a gateway determination. A draft contributions plan will also be required to be submitted as part of the planning proposal package (see Figure 11).

Where a council has chosen to adopt a land value contribution, a land value contribution comes into effect when land is rezoned by a concurrent planning proposal. However, the contribution is only payable (via dedication or equivalent value) upon either sale of land or development, whichever occurs first after rezoning. This is to ensure that the immediate beneficiary of the rezoning (the landowner or developer) makes a contribution but only when action is taken to sell or develop the land.

On the full satisfaction of the contribution, the land value contribution requirement is discharged from the land and no further land value contribution payment is required.

Land value contributions relate to the proportion of land required for public purposes and are expressed as a percentage. The maximum rate is 20% to ensure an efficient approach to infrastructure design. The land value contribution is calculated based on the value of the land at the time that the contribution is triggered. This is the value of land for rating purposes as defined by the NSW Valuer General. These values do not include the value of structures on site but includes land improvements like drainage, excavating, retaining walls etc. It is not market value of the land.

The land value contribution mechanism is specifically designed for greenfield release areas where changes to the planning controls enable more intensive development and result in higher land values. However, the Regulation amendments do not restrict its use to greenfield areas.

The City supports the principle of a land value contribution

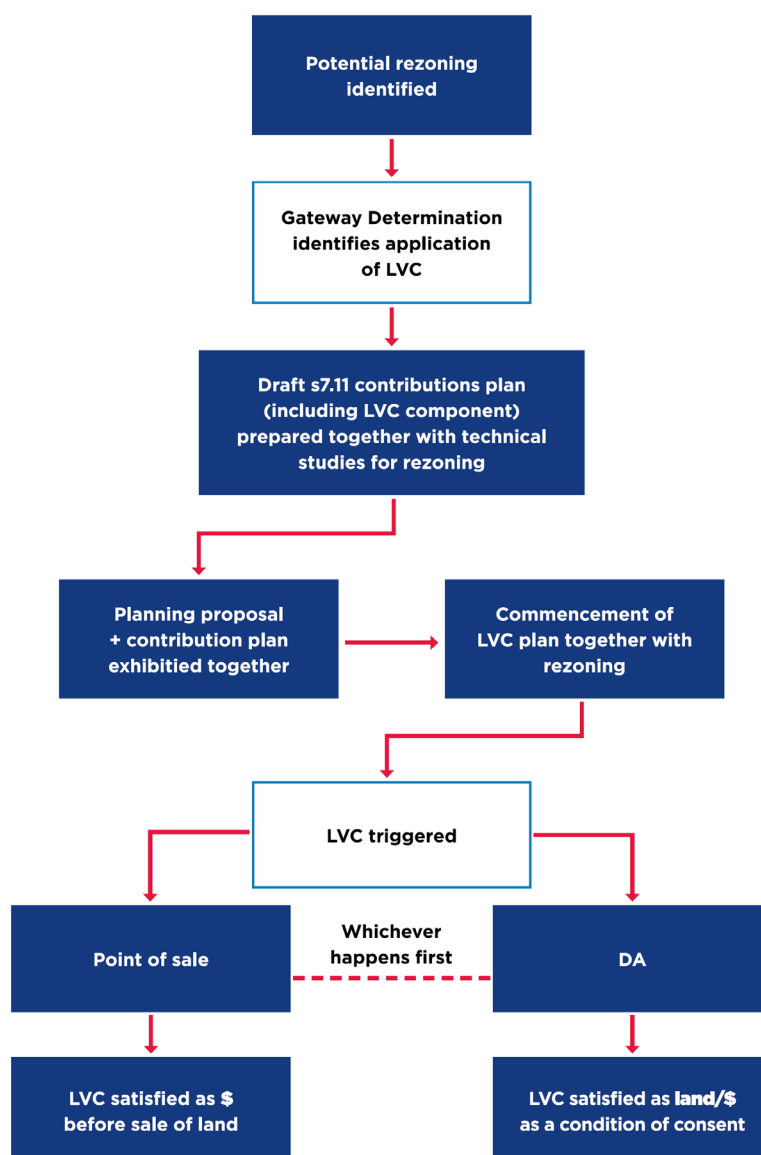
The City supports the principle of a land value contribution, with the obligation created at rezoning stage when development uplift is realised.

The City already does this through the Green Square community infrastructure floor space system, the deferred Green Square Town Centre LEP process and various site-specific planning proposals tied to Voluntary Planning Agreements.

This approach represents an appropriate mechanism to ensure that the gain which flows to landowners upon upzoning is offset by some contribution to the costs of future population growth and should be developed in consultation with other councils outside this proposed package of changes.

Notwithstanding the City's fundamental concerns about the package of proposed changes as a whole, it is critical that the proposed land value contribution system does not prevent these existing methods for capturing a proportion of land value now and into the future.

Figure 11. Land Value Contribution procedure and process



Land use planning process changes

New Ministerial directions

The exhibited changes include two new Ministerial Directions addressing:

- Local Infrastructure Contributions – Planning Proposals, and
- Dual and shared use of open space and public facilities.

The Planning Act permits the Planning Minister to direct councils to prepare planning proposals consistent with Ministerial Directions.

Ministerial Directions relate to principles consistent with the Planning Act and may require the inclusion in planning proposals of provisions to achieve or give effect to particular principles, aims, objectives or policies like the Greater Sydney Region Plan.

Ministerial Directions usually require planning proposals to be strictly consistent or substantially consistent with the terms of the Direction, or the Direction provides for the circumstances in which an inconsistency can be justified.

A new direction to align growth with infrastructure

The objectives of the new Local Infrastructure Contributions – Planning Proposals direction are to:

- encourage the preparation and exhibition of draft contribution plans at the same time as planning proposals where a new or amended contributions plan is required to accommodate the increased demand for public amenities and public services
- facilitate the provision of appropriate public amenities and services for new development, and
- provide certainty as to the likely development costs, including local infrastructure contributions, that will arise from decisions to facilitate development through changes to planning controls.

The new direction requires that when a planning proposal authority (either Council or the Minister) is considering a new planning proposal, they must determine whether:

- existing local contributions plans adequately address the need or increased demand for public amenities or public services that will result from the proposal, and
- if existing local contributions plans will not adequately address that need or increase in demand, whether local infrastructure contributions are necessary to meet the cost of providing the public amenities or public services concerned, including where the council has already incurred that cost.

While the City already undertakes this assessment when considering planning proposals, the implication of the new direction is that it requires councils to document an assessment of each planning proposal against the new direction and submit that assessment to the Department when requesting Gateway Determination. This is an unreasonable additional administrative burden for inner city councils dealing with urban infill areas.

For inner city councils, our local strategic planning statements provide a solid basis for understanding where development and growth is likely to occur. To require a full contributions

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review for each planning proposal is unnecessary. The direction will contribute to increased timeframes for processing planning proposals as councils and proponents get used to operating under the direction and procedures are developed.

The proposal is likely to lead to disagreements between councils/proponents/the NSW Government about the need for new or updated contribution plans and when and how these situations are resolved.

The direction risks holding up planning proposals until issues around infrastructure are agreed between parties, including NSW Government infrastructure/service providers.

A new direction to encourage the dual use of public facilities

The objectives of the new dual and shared use of open space and public facilities direction are to:

- encourage the efficient use of public open space, drainage and public facilities land to support new residential development and renewal areas, by incorporating opportunities for the shared use of such land for a variety of public amenities and public services, and
- to ensure that new housing, including in a mixed-use zone and new commercial development have appropriate access to public amenities and services.

The direction doesn't seek to reduce the totality or types of public amenities and public services to be provided in connection with residential development and instead encourages the consideration, as part of a planning proposal, of opportunities for the sharing of public open space, drainage purposes and public facilities land for a variety of public purposes.

The new direction requires that when a planning proposal authority is considering a new planning proposal, they must demonstrate the efficient use of land used for public open space, drainage purposes or public facilities. This includes considering measures to share use of publicly owned land and facilities to enable more than one public amenity or public service (whether local or State) to be provided on that land or in that facility.

The City already does this when planning public open space and facilities. The implication of the new direction for the City is that it will need to document an assessment of each planning proposal that involves public open space and facilities against the new direction and submit that assessment to the Department when requesting Gateway Determination. This is an additional administrative burden for councils.

Other matters

Local contributions must apply to State Significant Development

Notwithstanding the City's fundamental concerns about the package of proposed changes as a whole, the City requests the application of local infrastructure contributions to State Significant Development be mandatory (unless a different approach is supported by the relevant council in a particular instance) rather than the current situation where the State decides whether to attach conditions requiring them on a case-by-case basis.

Large developments are often undertaken as State Significant Development. In the City this can include works by universities, hotels and buildings over Metro stations. In the City's experience, it is regularly the case that during the assessment of these applications, the Department fails to impose local infrastructure contributions or agrees to applicant requests for offsets against local contributions for public domain works in circumstances where the offsets are not supported by the council. The failure to attach a condition requiring payment of local contributions, or a decision to offset, can result in a significant loss of contributions income for councils as well as generate a funding gap and affordability risk for the local infrastructure contributions plan works program. Historically the Department's application of contribution consent conditions and offsets has been inconsistent and arbitrary, and not supported by any consistent principles or criteria.

The application of contributions to State Significant Development should be mandatory unless the relevant council supports an alternative approach (such as an agreed offset) in a particular circumstance. Where the council and a relevant consent authority are in disagreement as to whether local infrastructure contributions should apply to a development, there should be a formal dispute resolution mechanism through, for example, the Independent Planning Commission.

Simplifying and standardising exemptions

The Regulations are proposed to be amended to exclude the following development from paying local infrastructure contributions:

- public housing;
- affordable housing carried out by or on behalf of a social housing provider, and;
- Crown development for the purposes of schools, health service facilities, emergency services facilities, public administration buildings

This proposal fails to ensure that private development on Crown land will not be exempted from the need to pay local contributions.

Practice note review

The Department is reviewing existing local infrastructure contributions practice notes with an aim to make them a user focused, multi-faceted online experience. The review seeks to achieve the following:

- reform policy advice and settings to support a principles based system;
- implement standard approaches and processes to make the system more efficient and consistent;

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- update guidance materials to make the system simple, certain, and transparent, and;
- engage with the community and stakeholders in all phases of the policy development process.

There are nine draft practice note modules on exhibition. The City **has not** reviewed the nine draft practice note modules. **The Department has not provided sufficient time to review the practice notes when combined with the over 500 pages of additional exhibition material councils have had to review.** The City can provide comments on the practice notes, but additional time is required in order to provide a thorough and meaningful review. It is noted that the practice notes can be amended and updated anytime by the NSW Government without the need for consultation or exhibition.

Minor amendments

The Regulations are proposed to be amended to clarify that councils' contributions registers are to include complying development certificates. The City notes that councils do not always get all the correct information submitted by private certifiers to enable the registers to be accurately completed for complying development certificates. Therefore, the NSW Government needs to address this issue with private certifiers for the sake of accuracy of registers.

Reporting requirements for affordable housing contributions

The Regulations are proposed to be amended to require councils:

- to keep and make public an affordable housing contributions register;
- require councils to report expenditure of affordable housing contributions by project in their annual reports, and;
- require councils to publish the affordable housing contributions information required in annual reports on the NSW planning portal as well as on their own websites.

Affordable housing contributions are collected in the City via a number of different means. For example, directly paid to a community housing provider, directly paid to the Department or other agency and then passed to a community housing provider, directly paid to council or delivered as work in kind. There is no clarity in regard to the scope of register and reporting requirements and if councils will be responsible for capturing data on each of these scenarios. Where the City is not involved in a transaction affordable housing contributions accurate data may not always be readily available.

