

7 February 2025

Review of our approach to assessing contributions plans

Independent Pricing and Regulatory Tribunal

PO Box K35

Haymarket Post Shop

SYDNEY NSW 1240

Sent via email:

To whom it may concern

Urban Taskforce welcomes any initiative to introduce more rigour into the ways in which local infrastructure contributions are set in NSW. Efforts to introduce greater standardisation in the setting of infrastructure contributions to increase transparency would be greatly welcomed. IPARTs endeavours to deliver cost reductions and limiting the opportunity to add costs onto already prohibitive sets of fees taxes and charges are also supported.

Urban Taskforce advocates for a balanced and transparent approach that supports economic growth while ensuring the provision of necessary infrastructure and services are met and paid for by those who benefit from the provision of such services.

The economic and social benefits accruing from new housing are many and broad. Yet the existing approach in paying for the infrastructure required for new housing is to tax the purchasers of new homes. This presents a clear mismatch. A clear imbalance between the new home buyer and their capacity to pay for this infrastructure, and the broader community, who all benefit from the economic growth facilitated by the housing of the growing population of Sydney.

While there is a clear need for the infrastructure, the growing array of housing related fees, taxes and charges clearly inhibits the delivery of new housing supply.

Developer contributions are a significant factor contributing to the high cost of housing in NSW. They are accompanied by a host of other fees taxes and charges, including the State Government's Housing and Productivity Contribution, additional costs incurred through revisions of the National

Construction Code, as well as affordable housing contributions as well as GST, payroll tax, land tax and stamp duty.

At a time where household construction costs are so high and construction sector insolvencies are at record highs, developers have no choice but to pass on the cost of local infrastructure contributions and other charges to new home buyers in the form of higher prices.

The system underpinning infrastructure contributions needs to reflect the principle of beneficiary pays. Currently the approach to infrastructure contributions plans targets the end user of the product – namely the purchaser of the new housing. Yet society as a whole benefits from the provision of housing, not merely the economic benefits that accrue, but also broader gains in terms of social cohesion and intergenerational equity.

Further, the incidence of fees, taxes and charges of new housing should be as broad as possible, and infrastructure requirements around new housing is best and most equitably met through Federal, State and Local Government funding.

Urban Taskforce is concerned that the current approach to the setting of contributions is inexact, haphazard, and imposes a lion's share of the cost on new home buyers and impose contributions which thwart the provision of new housing.

Nonetheless, anything that can be done to reduce the taxation burden placed on housing supply, is greatly appreciated. Given the housing supply crisis, all factor that impede the delivery of new housing should be subject to thorough review. This is the case with contributions.

1. Contributions plans are generally inexact

Most Contribution Plan items, in reality, cost much less than the estimates Councils provide. There should be a requirement for Council to act in good faith and professionally.

Development contributions should be set at a reasonable level that does not unnecessarily inflate the costs of housing or other development projects. The goal is to strike a balance where developers can contribute to the community infrastructure without stifling development (the delivering of the public good called houses and apartments).

IPART should require Contribution Plans be lodged with an expectation of a level of professionalism and reasonableness from Councils together with

Council acting in good faith when providing Contribution Plans and Contribution Plan amendments.

If Councils make an error in forward funding, then Councils shouldn't be entitled to seek disproportionate Contribution Plan funding from remaining landowners/developers within a precinct or landowners from levies.

There should always be a clear and predictable system of contributions, ensuring developers understand the costs involved in a project upfront. This helps avoid surprise costs and delays during the development process. This is critical to the development of feasibility studies which, in turn, are used by banks and financiers to make decision on project funding.

Any shortfall caused by Council's actions should be funded from Council assets or through a process of grants from the State Government. Otherwise, it's an unfair impost on both remaining landowners and consequently, new home buyers, and will cause a delay in precincts being developed and delivered due to financial unfeasibility.

Recommendation 1: that any error in forward funding made by Council is met through Council's own resources, not remaining landholders

2. Unpredictability and inconsistencies in setting charges

A key problem with the current system is the unpredictability and inconsistency in the charges developers face.

Local councils have the discretion to set their own rates for developer contributions, leading to variations from one area to another. This should be closely monitored by IPART as to its distortionary impacts.

Once a regime of fees and charges is set, it should not change (except for adjustments determined by pre-published formal review against fixed and transparent criteria). New and unexpected charges undermine investment decision making and leads to sovereign risk.

Developers may encounter unexpectedly high costs in one locality while facing lower charges in another. This inconsistency can create significant uncertainty, making it difficult for developers to budget and plan effectively.

Developer charges may also be used to thwart development, leading to perverse outcomes where housing may not be delivered in areas where say

the State Government desires such development. The use of an array of charges and taxes by “NIMBY councils” is a key part of their weaponry in preventing housing in their LGA (or parts of their LGA)

Compounding the issue is, as mentioned above, that levies are often based on outdated or imprecise infrastructure plans, meaning that the contributions may not accurately reflect the actual infrastructure needs of the new developments. In some cases, developers end up paying more than is necessary to fund the required infrastructure, while in other instances, they may pay less, leading to underfunded projects.

Recommendation 2: that once a regime of fees and charges is set, it should not change (except for adjustments determined by pre-published formal review against fixed and transparent criteria.)

3. Lack of specificity and transparency

The system of local infrastructure contributions lacks transparency and accountability in many areas. Developers and the public often struggle to understand how contribution rates are set, what infrastructure is being funded, and whether the contributions are being spent appropriately. This lack of transparency has contributed to a loss of trust in the system, with some stakeholders questioning whether the funds are being used effectively to support the intended infrastructure projects.

To rebuild trust in the system, it is important to increase transparency and accountability around local infrastructure contributions. Developers should have access to clear information about how their contributions are being spent, and local councils should be held accountable for the proper allocation of these funds. Regular audits and reports on the use of developer contributions would help ensure that the funds are being used as intended and that the infrastructure needs of communities are being met.

IPART needs to get its hands dirty. Desktop analysis is letting both Councils and Developers down. Broad estimates do not allow sufficient specificity for individual Contribution Plan items.

Recommendation 3: IPART should change their process of cost assessment to include site specific information. This information should be sought from affected landowners/developers (especially where the Contribution Plan items feed into Voluntary Planning Agreement/Works in Kind for a developer).

4. Conservative population modelling

Contribution Plan population estimates are typically modelled conservatively from a progression perspective. Target densities are overcooked, which gives rise to over collection of contributions by Councils and excessively high contributions being sought.

The discussion paper mentions the proposal the UDP growth forecasts will become the agreed measure for population growth that will be used in contribution plans. This is supported provided the UDP process involves extensive consultation with industry and the projections for population growth and density of anticipated development is kept up to date.

Recommendation 4 : that the State Government's UDP growth forecast is the standard measure for population growth, provided there is a strong and regular program of consultation with industry.

5. Rapid growth in cost estimates

Urban Taskforce members have advised of the practice of some Councils to discretely increase the cost of infrastructure in the plans to recover additional funds to assist offset their funding gap. These increases can be more than 50% on particular items.

In addition to unexplained infrastructure cost increases, the increased value often greatly exceeds the capped infrastructure cost specified by IPART in their Final Report for previous amendments

Urban Taskforce has further information in this regard should IPART wish to investigate case studies further.

6. Councils tend to 'gold plate' required infrastructure

Councils attempt to estimate Contribution Plan items with a 'gold plated' approach with no expectation for reasonableness or good faith with their specifications for a Contribution Plan item. This often leads to an over-investment or wastage.

There should be an expectation that what is being delivered is actually required for the future or current population within a precinct.

There also should be an expectation that contributions paid reflect the efficient cost of providing infrastructure. Gold plating works against this fundamental principle.

Urban Taskforce maintains that developer contributions should be set at a reasonable level that does not unnecessarily inflate the costs of housing or other development projects. The goal must be to strike a balance where developers can contribute to the cost-effective housing enabling and other infrastructure without impeding development.

Recommendation 5. IPART should take a more pro-active role in reviewing amendments to contributions plans to prevent rapid and sometimes not justified growth in charges.

7. Overestimated traffic modelling

Traffic studies in commercial areas tend to overestimate traffic and employment figures for various reasons but Urban Taskforce members have found typically due to the highest use being modelled only and not the best or likely use being modelled.

Recommendation 6 – in commissioning Genus Advisor, IPART should seek a comprehensive analysis of the inaccuracies, gold plating practices, population and traffic modelling used by councils in justifying contribution plans. Genus must consult with industry to gain a full appreciation of these practices by Councils.

8. Use of benchmarks - industry consultation required

Urban Taskforce welcomes IPART's engagement of Genus Advisory to provide advice on updating our local infrastructure benchmarks for individual infrastructure items. Urban Taskforce looks forward to being contacted by Genus Advisory as part of their efforts to fully engage with industry and get accurate assessments of infrastructure delivery costs.

Updated benchmarks will help councils prepare cost estimates for infrastructure items and will inform IPART's assessment of reasonable costs. It is critical that the advisory firm consult with industry on these benchmarks, gaining feedback on costs associated with stormwater, transport and the provision of open space embellishment. We are considering whether these aggregate benchmark cost ranges could be used to assess reasonable costs of infrastructure categories rather than assessing the costs of each individual

infrastructure item and we welcome feedback on whether this would be useful.

Recommendation 5: that Genus advisory consult with industry representatives when updating benchmarks for infrastructure items prior to providing advice to IPART.

9. Remove local government rate peg to allow councils' general revenue to increase with population

Urban Taskforce has some sympathy for all Council's that are labouring financially under the ill-considered rate peg restrictions. It is a political artifice that ultimately starves growing LGA's of the financial means to accommodate growth and more housing. As a result, devices such as local infrastructure contributions are used to bridge the financial gap – with the purchasers of new homes picking up the bill.

The broader community share the upsides of this growth, yet are often protected from the cost of growth by the peg. It should be a matter of local democracy if ratepayers disagree with decisions of Councillors on rate setting.

Councils should be encouraged to take on density and provide housing for the growing population of Sydney. The rating system should reward population growth and increased density. This will incentivise councils to accept additional growth and density and allow local government the ability to respond to increasing expectations for its role as a community service provider.

This will also hopefully free up resources for IPART to more closely scrutinise specific plans that exceed existing caps.

Recommendation 6 : that IPART make recommendations to the NSW Government to abolish rate pegging and reduce the pressure on Councils to make up shortfalls through contribution plans.

10. Payment of infrastructure contributions at occupation certificate stage

Along with the myriad of fees taxes and charges, the incidence of charges has significant impact on the development community. The practice of levying infrastructure payments at the time of issuing construction certificates often comes when cash flow is tight.

A long-standing policy recommendation of Urban Taskforce (along with other bodies such as the NSW Productivity and Equality Commission) is the contributions should be made at the time of issuing of occupation certificates, when cash flow is improved and can more easily be paid for by the developer.

While the State Government implemented a deferred payment during COVID, and more progressive Councils have implemented this shift to occupation certification stage (such as Liverpool and Cumberland City Councils) , cash hungry and myopic councils still want to get their revenue upfront.

Recommendation 7 : No contributions plan should be reviewed by IPART until contributions and other payments associated with planning agreements are proposed to be made payable until Occupation Certificate stage.

11. IPART should be resourced to more critically assess draft Contribution Plans

Urban Taskforce members have expressed little faith in the robustness and accuracy in local councils and their approach to infrastructure contributions.

There needs to be an “honest broker” more closely involved in the preparation of contributions plans. As a monopoly and fiscally challenged, the decisions of Local Government in relation to the setting of contribution plans should be closely monitor by IPART.

Recommendation 8 : that the role of IPART is extended, and appropriately resourced, to review the setting of local infrastructure charges, with a view to:

- Ensuring s7.11 and s 7.12 fees are used for infrastructure that has a direct nexus with the impact of the development, and not be used to support unrelated infrastructure in the LGA**
 - Ensuring no duplication of charging for the same infrastructure or service across the different levies**
 - Delivering consistency of local infrastructure charges across the regions.**
- Conducting regular audits of local Councils contribution plans**

Conclusion

Urban Taskforce maintains that the way in which contribution plans are determined in NSW is inexact, based on false and/or slippery assumptions,

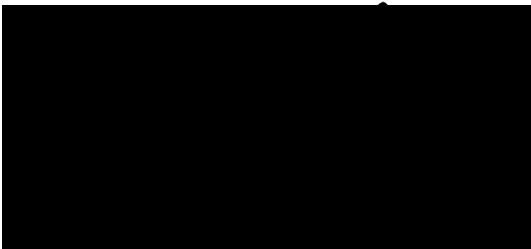
and exhibit an overwhelming characteristic to gold plate all infrastructure requirements.

As the adage goes, rubbish in, rubbish out. This approach has helped stifle new housing and contributed to the housing supply crisis affecting the State. The engagement of an independent advisory firm to look at benchmarking is positive and any report to IPART must be informed by the input of industry.

It is imperative that IPART is resourced to take a more critical approach to the methodology deployed by Councils in preparing infrastructure contributions plans.

Should you wish to discuss any aspect of this submission further, please call our Head of Policy, Planning and Research, Stephen Fenn on [REDACTED]

Yours sincerely

A large black rectangular redaction box covering the signature area.

Tom Forrest
Chief Executive Officer