



Independent Pricing and Regulatory Tribunal

# **NSW Planning System Review**

**IPART submission on the White Paper**

**Local Government — Submission**  
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## Summary

The Independent Pricing and Regulatory Tribunal (IPART) welcomes the opportunity to respond to the NSW Government's *A New Planning System for NSW, White Paper* (the White Paper). The White Paper contains comprehensive reforms to the NSW system intended to make it simpler, more certain and more transparent. IPART broadly supports the reforms outlined in the White Paper.

Our submission focusses on the 'provision of infrastructure' reforms, as these relate most closely with IPART's functions. We comment in particular on the new system of infrastructure contributions.

The White Paper acknowledges that the framework for contributions requires further development. Refining the policy, implementing the changes and managing the transition are substantial exercises that will continue beyond the initial legislative changes. The reforms will require sustained input from the Department of Planning and Infrastructure (DP&I), other NSW Government agencies, local government, the development industry and the broader community. We note that DP&I is currently undertaking an extensive consultation and engagement program about all aspects of the White Paper reforms.

We focus our comments on the White Paper on 4 main areas:

1. recommended changes to proposed administration arrangements for local contributions
2. need for clarity on how the contributions system will operate and the potential impacts on different stakeholders
3. the importance of the transitional arrangements
4. IPART's role in the new contributions system.

### IPART broadly supports the reforms to the 'provision of infrastructure'

IPART notes that the White Paper proposals address a number of the issues we raised in our previous submissions on the planning review Issues Paper and Green Paper. In particular, we support:

- ▼ the principles that inform the new contributions system
- ▼ the removal of hard caps on local contributions (existing section 94 contributions), in line with the cost reflectivity principle
- ▼ the introduction of a broad-based funding source to contribute to the cost of infrastructure that benefits a broad region, in line with the beneficiary pays principle
- ▼ strengthened reporting mechanisms for the administration of local infrastructure contributions

- ▼ the coordination of land use planning and infrastructure funding through Local Infrastructure Plans and Growth Infrastructure Plans
- ▼ the introduction of contestability assessments.

#### IPART recommends the NSW Government reconsider some of the proposed administrative arrangements for local infrastructure contributions

We recommend that the proposed 3-year limit on councils holding local contributions funds should be reconsidered. If a restriction is considered necessary, it may be more appropriate to allow councils to hold funds for a longer period, say 5 years.

IPART recommends no change to the present arrangements for the timing of payment of contributions by developers. Allowing for contributions to be paid nearer to the point of sale, as proposed, might create unanticipated problems, such as delays in infrastructure provision by local councils and/or difficulties in administering payments.

#### Some aspects of the reforms and the impacts on different stakeholders should be clarified

The NSW Government should carefully consider the potential impacts of the new contributions system on stakeholders. We note, for example, that developers in some areas (eg, metropolitan infill) are likely to pay more than they are required to do under the existing system while others (eg, in greenfield areas) are expected to pay less. Similarly, the impact on councils will not be uniform across the state.

However, many details of the new contributions system are yet to be specified. This makes it difficult to analyse the potential impacts, including the financial impact on the NSW Government. Minimising uncertainty for councils, developers and the community and will help stakeholders in making future revenue, expenditure and investment plans.

To clarify and strengthen the new framework, the NSW Government should:

- ▼ remove ambiguity by renaming 'regional infrastructure contributions' and contributions to the 'Regional Growth Fund' (*possible alternatives are 'subregional infrastructure contributions', to align with the base across which these are levied, and 'Planning Growth Fund contributions', to reflect the broad nature of this fund*)
- ▼ remove ambiguity about the funding of open space by adopting a 3-tiered classification (local, district and regional)
- ▼ retain indirect local contributions (ie, section 94A contributions) including the 1% of proposed development cost cap, and issue guidelines for councils seeking to levy an amount greater than the 1% cap

- ▼ maintain the flexibility for councils to set different contribution rates for different precincts within a Local Government Area (LGA)
- ▼ commit to issuing, and keeping up to date, detailed guidelines to assist councils prepare Local Infrastructure Plans/local infrastructure contributions
- ▼ explain details of the governance and administration of the Regional Growth Fund.

In analysing potential impacts, the NSW Government should also take account of infrastructure contributions levied outside of the planning system, such as water and sewerage contributions, where they apply.

#### Transitional arrangements should be addressed as a priority

As there is already a complex contributions system in place, transitional arrangements will be very important in ensuring that the new system is sustainable, and does not lead to unintended delays in development or unnecessary administrative costs. Transitional arrangements should be informed by robust data and cost modelling.

We consider that there is merit in ‘grandfathering’ some plans in the new system. These might include plans where the majority of development expected in the area covered by the plan has already occurred and/or where the majority of infrastructure investment outlined in the plan has already occurred.

#### IPART’s role in the new system

The White Paper identifies 3 roles for IPART in relation to infrastructure contributions ie, to:

- ▼ benchmark the cost of local infrastructure on the essential infrastructure list
- ▼ have an expanded role in reviewing contribution plans proposed by the state and local councils
- ▼ have an expanded role in setting Regional Infrastructure Contributions and Regional Growth Fund contributions.

In relation to the proposed review and contributions setting roles we consider that:

- ▼ rather than IPART reviewing all Local Infrastructure Plans (LIPs), DP&I or the Minister for Planning and Infrastructure could refer LIPs to IPART for review in instances where:
  - there is a material discrepancy between the cost of infrastructure in a plan and the relevant benchmark cost, and/or
  - there is a need for independent advice on a substantive issue not agreed by relevant stakeholders (eg, council, the NSW Government or developers)

- ▼ IPART is well placed to review Growth Infrastructure Plans/regional infrastructure contributions and contributions to the Regional Growth Fund with respect to:
  - cost methodologies
  - apportionment of costs between subregions
  - apportionment of costs between development types within a subregion.

## 1 Structure of the new contributions system

The White Paper reforms address a number of issues raised in IPART's submissions on the planning review Issues Paper and Green Paper. In particular we support:

- ▼ the principles that inform the new contributions system
- ▼ the removal of hard caps on local contributions (existing section 94 contributions), in line with the cost reflectivity principle
- ▼ the introduction of a broad-based funding source to contribute to the cost of infrastructure that benefits a broad region, in line with the beneficiary pays principle
- ▼ strengthened reporting on the administration of local infrastructure contributions
- ▼ the coordination of land use planning and infrastructure funding through Local Infrastructure Plans and Growth Infrastructure Plans
- ▼ the introduction of contestability assessments.

However, we suggest that the NSW Government reconsider some of the proposed administrative arrangements for local infrastructure contributions (see section 1.1).

We also consider that there is a need to establish greater clarity about how the new system of infrastructure contributions will operate and the potential impact on different stakeholders (see section 1.2). This will help to minimise uncertainty for stakeholders such as councils, developers and the community, and will help stakeholders in making future revenue, expenditure and investment plans.

## **1.1 Recommended changes to proposed administrative arrangements**

The proposed administrative arrangements for local infrastructure contributions adopt some of the existing arrangements for section 94 and section 94A contributions. However, we recommend that the NSW Government should reconsider 2 of the new features, that is:

- ▼ the 3-year limit on holding funds
- ▼ the proposal to delay timing for payment of contributions.

### **1.1.1 3-year limit on holding funds**

The new arrangements include a proposal that councils may only hold funds from local infrastructure contributions for a maximum of 3 years unless otherwise approved by the Minister for Planning and Infrastructure.

It seems that this proposal responds to the perception that collectively, councils hold significant amounts of unspent funds received from local infrastructure contributions over many years.

We recommend that the proposed 3-year limit on councils holding local contributions funds should be reconsidered. In some instances councils will have legitimate reasons for accumulating funds. The delivery program for local infrastructure in a contributions plan is dependent on many other factors apart from when contributions are collected. For example, a council may be reliant on a state government agency to provide lead-in works before local infrastructure can be provided. Also, development needs to reach a critical mass before it is efficient to construct some facilities, particularly more expensive ones.

If a restriction is considered necessary, it may be more appropriate to allow councils to hold funds for a longer period, say 5 years. It is important to examine feedback from councils on whether the 3-year limit or a longer limit is reasonable.

If the NSW Government imposes a limit on holding funds, we support the proposed Ministerial discretion to extend the time for councils to spend funds. We also consider it important that the NSW Government provide clear guidelines on how councils must spend funds (eg, will councils be required to spend funds for infrastructure identified in the plan under which they were collected, or will pooling of funds across plans be permitted?).

It is not clear from the White Paper whether the 3-year limit would apply to funds that councils have already accumulated prior to the introduction of the new system. If the limit is to apply to these funds, it would be beneficial to discuss with councils the reasons why the funds have not been spent and to canvas possible options for transitioning to the new system.

### 1.1.2 Timing for payments

The White Paper proposes that contributions can be paid nearer to the point of sale than currently occurs. The NSW Government should clarify how these arrangements would operate.

We also recommend that the proposal to change the present arrangements with respect to timing of payment should be reconsidered. There are currently clear triggers for when developers must pay contributions. For development involving subdivision, payment is typically required prior to the release of the Subdivision Certificate. For development involving building work, payment is typically required prior to the release of the first Construction Certificate.<sup>1</sup> Removing this clarity may create unanticipated problems, such as delays in infrastructure provision by councils and/or difficulties in administering the payment system.

Delaying the payment of contributions transfers significant financial risk to councils. Where councils face uncertainty about when they will receive funds, it will be more difficult to schedule the delivery of infrastructure to match the demand arising from the new development.

The collection and administration of contribution payments may also be more difficult for councils, particularly for development involving subdivision. Under existing arrangements, councils typically collect a single payment from the owner/developer of an un-subdivided lot. If the timing of payment is delayed, councils would have to collect payments from owners/developers or residents of multiple post-subdivision lots.

Further, it is possible that changes to the timing of payment may require greater use of loan funding, which entails interest and administration costs for councils. To offset these costs, the NSW Government could consider extending its loan interest subsidies through schemes such as the Local Infrastructure Renewal Scheme (LIRS) if it wishes to encourage councils to take up loans for infrastructure for growth. We note that the latest LIRS round already provides a 3% interest subsidy on loans taken out for infrastructure backlog works as well as for projects providing infrastructure to enable new housing.<sup>2</sup>

There is also likely to be an interaction of the delayed timing of payment approach with a council's ability to comply with the proposed 3-year limit on holding funds.

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<sup>1</sup> Clause 26 of the *Environmental Planning and Assessment Regulation 2000* requires that the council's policy concerning the timing of the payment must be included in a contributions plan.

<sup>2</sup> The Local Infrastructure Renewal Scheme provides an interest subsidy to local councils to help them fund infrastructure borrowing. In Round 1, the interest subsidy was only available for projects/programs identified as part of a council's infrastructure backlog. In Round 2, funding is also available for projects providing enabling infrastructure for new housing development, with priority given to these projects.

## 1.2 Need for clarity about operation of the contributions system

The White Paper does not explain many details of the new contributions framework, and we understand that the NSW Government is consulting further on various aspects of the reforms, including infrastructure contributions.

We suggest that greater clarity can be provided by renaming or defining some elements of the reform package. We consider the priority areas to be:

- ▼ renaming the proposed funding sources
- ▼ adopting a 3-tiered classification of open space (local, district and regional)
- ▼ retaining indirect local contributions
- ▼ permitting different contribution rates for different precincts within an LGA
- ▼ issuing clear guidelines for the preparation of Local Infrastructure Plans and the calculation of local infrastructure contributions
- ▼ explaining the governance and administration of the Regional Growth Fund
- ▼ considering the impacts of contributions outside the new system.

### 1.2.1 Renaming the proposed funding sources

The new system of infrastructure contributions comprises 3 levels of funding:

- ▼ **Local infrastructure contributions** for local roads, local open space, community facilities and drainage works.
- ▼ **Regional infrastructure contributions** for state and regional roads, transport land and works, education land or works and embellishment of regional open space. The contributions will vary by subregion.
- ▼ **Regional Growth Fund** is a new category of levy imposed on a regional basis (eg, Sydney-wide and in other high growth areas) to recover the cost of land for regional open space and all land for drainage. This levy shifts the cost of acquiring this land from local infrastructure contributions to a broader base. It is intended to reduce overall infrastructure contributions in greenfield areas.

The term 'regional' is not used consistently. 'Regional infrastructure contributions' will be levied on a subregional basis and the 'Regional Growth Fund' will fund land for both local and regional infrastructure. Alternative titles could be:

- ▼ 'subregional infrastructure contributions', rather than 'regional infrastructure contributions', to align with the base across which these are levied
- ▼ 'Planning Growth Fund contributions', rather than 'Regional Growth Fund', to reflect the broad nature of this fund (this option is consistent with section 7.17 of the *Planning Bill 2013* and Schedule 1 to the *Planning Administration Bill 2013*).

### 1.2.2 A 3-tiered classification of open space (local, district and regional)

The references to ‘regional open space’ in the White Paper are confusing. The White Paper proposes that regional open space be removed from local infrastructure contributions and instead be funded from regional infrastructure contributions and the Regional Growth Fund. However, the White Paper and Exposure Bills do not offer a definition of ‘regional open space’. As a result, there could be confusion about what is currently known as regional open space (eg, Western Sydney Parklands or Centennial Park) and the open space that will be removed from local infrastructure contributions.

The NSW Government should adopt a 3-tiered classification of open space reflecting the geographic catchments served by each category. This would distinguish between:

- ▼ open space that is provided by a council and funded through local contributions
- ▼ open space that is provided by a council and funded through regional infrastructure contributions and the Regional Growth Fund
- ▼ open space that is provided by the state government and funded through regional infrastructure contributions and the Regional Growth Fund.

One option would be to adopt the approach of the 2010 *Recreation and Open Space Planning Guidelines for Local Government* which distinguish between local, district and regional open space as follows:

- ▼ ‘Local’ – serves one neighbourhood and is located close to or within residential areas.
- ▼ ‘District’ – serves a number of neighbourhoods and may have a catchment extending beyond the LGA that hosts it.
- ▼ ‘Regional’ – serves whole cities or metropolitan subregions, or multiple towns and settlements in non-metropolitan regions. Because of the extent of the catchment, regional open space often requires state agency management.<sup>3</sup>

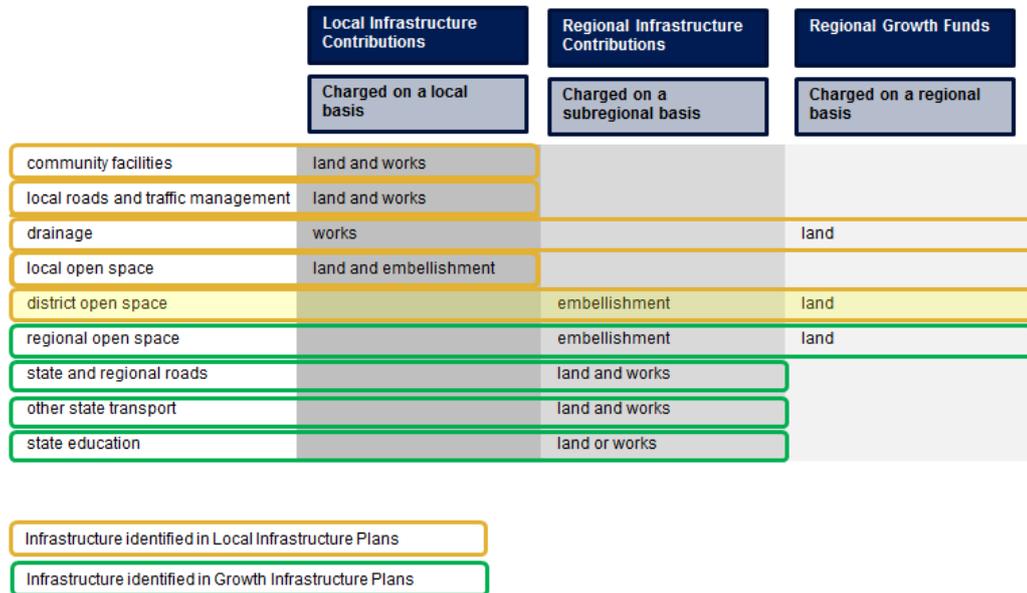
The distinction between district and regional open space is important in this context because the infrastructure required would be identified in different levels of infrastructure plans. District open space would be identified by local councils in their Local Infrastructure Plans whereas regional open space would be identified in Growth Infrastructure Plans.

We have reworked Figure 38 from the White Paper to include these 3 categories of open space and our understanding of where they would ‘fit’ in the new infrastructure contributions system (see Figure 1.1).

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<sup>3</sup> Department of Planning, *Recreation and Open Space Planning Guidelines for Local Government*, 2010, p 17.

**Figure 1.1 New infrastructure contributions system**



Source: IPART, adapted from the White Paper.

### 1.2.3 Indirect local contributions

We consider that there is merit in retaining the existing arrangements for indirect local contributions (ie, section 94A contributions). The option of levying indirect local contributions is provided in section 7.6 of the *Planning Bill 2013*, but they are not discussed in the White Paper.

Section 94A of the *Environmental Planning and Assessment Act 1979* was introduced in 2005, to allow appropriate development contributions to be levied in areas, such as:

- ▼ rural and regional areas, where there are slow rates of development or development is sporadic
- ▼ established urban areas, where development is mainly ‘infill’ development and is also sporadic.<sup>4</sup>

<sup>4</sup> Department of Planning, *Section 94A development contributions plans*, Practice Note, December 2006.

The guidelines for councils explain that:

in such areas, it is difficult to determine the expected types of future development, the rate at which development will occur or where it will occur. This makes it difficult to prepare a contributions plan that authorises the imposition of section 94 contributions on development because of the nexus required to be established under section 94 between development and the increased demand for public amenities and public services.<sup>5</sup>

Contributions made by developers under section 94A have attracted less criticism than contributions under section 94. We expect this is because section 94A contributions are capped at 1% of the proposed cost of development (see Table 1.1), which means they are usually much lower than section 94 contributions. However, councils may apply to levy an amount greater than 1% of the proposed cost of development.<sup>6</sup>

**Table 1.1 Maximum section 94A levy**

<b>Proposed cost of the development</b>	<b>Maximum levy (%)</b>
Up to \$100,000	Nil
\$100,001 to \$200,000	0.5
More than \$200,000	1.0

**Source:** *Environmental Planning and Assessment (EP&A) Regulation 2000*, clause 25K; and Minister for Planning, *Section 94E Direction*, 10 November 2006.

We note that developers who currently pay section 94A contributions may, in the new system, also be liable for regional infrastructure contributions and contributions to the Regional Growth Fund for the first time. The NSW Government should consult with developers on the overall impact of these charges on development feasibility.

To minimise the overall cost burden, we consider that the existing arrangements for the caps on indirect contributions should be retained. The NSW Government should publish guidelines on the process councils must follow and the criteria for levying indirect contributions greater than the cap amount.

<sup>5</sup> Department of Planning, *Section 94A development contributions plans*, Practice Note, December 2006.

<sup>6</sup> Currently land in parts of Liverpool, Wollongong, Gosford, Parramatta, Newcastle, Burwood and Chatswood LGAs are liable for section 94A contributions in excess of 1% of the proposed cost of development.

#### **1.2.4 Different contribution rates for different precincts**

The White Paper proposes that all infrastructure contributions will be set out in Local Plans, so contribution rates can be easily ‘calculated in one place’.

As there is to be only 1 Local Plan for each LGA, it is not clear whether a council will have the flexibility to levy different local contribution rates for different precincts within the LGA.

We consider it is reasonable that different precincts within an LGA pay different contributions as this supports the principle of cost reflectivity. Thus, each Local Plan could include a number of rates schedules for various precincts within the LGA.

#### **1.2.5 Guidelines for Local Infrastructure Plans and local infrastructure contributions**

The *Planning Bill 2013* provides for the preparation of infrastructure plans and levying of contributions. The NSW Government will include details on the calculation, payment mechanisms, collection, management and disbursement of contribution funds in the regulations for the new planning legislation.

We also consider that DP&I should issue guidelines to assist councils prepare Local Infrastructure Plans/local infrastructure contributions. These guidelines should include details about how councils can access funds from regional infrastructure contributions and the Regional Growth Fund that are collected for drainage works and regional (district) open space. IPART is able to assist DP&I in preparing these guidelines.

#### **1.2.6 Governance and administration of the Regional Growth Fund**

The White Paper describes, at a high level, the governance arrangements for regional infrastructure contributions. However, it is unclear to us whether regional infrastructure contributions also include contributions to the Regional Growth Fund.<sup>7</sup> The NSW Government could remove ambiguity by more clearly explaining the proposed governance of regional infrastructure contributions and contributions towards the Regional Growth Fund. Alternative names for the funding sources may also assist in removing ambiguity (see section 1.2.1 of this submission).

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<sup>7</sup> Section 7.17 of the *Planning Bill 2013* suggests that regional infrastructure contributions include contributions for land for drainage or land for regional open space.

The impact on councils will depend on the arrangements for pooling of funds and prioritisation of works. Councils will still be responsible for acquiring land for open space and drainage yet they will no longer be able to directly collect development contributions for this land. They will presumably compete with other councils for funding from the Regional Growth Fund to pay for this land.

For both regional infrastructure contributions and contributions towards the Regional Growth Fund, an important governance issue is the transfer of funds to councils. It is particularly important that councils have certainty about the source of funding for land and infrastructure that they have responsibility for acquiring and managing. This includes both the amount that councils can expect to receive and when they can expect to receive funds.

The NSW Government should provide further detail on how expenditure of money in the Regional Growth Fund will be prioritised, ie, the criteria and mechanisms for determining the projects to be funded and the allocation of funds to councils.

### **1.2.7 Contributions outside of the new system**

We consider that an optimum contributions framework would cover all types of infrastructure funding to reflect the true cost of developing in an area and to make the system simple and transparent for all.

We also note that the White Paper does not address contributions levied towards water and sewerage infrastructure.<sup>8</sup> Nor does it address contributions levied by certain councils for drainage infrastructure.<sup>9</sup>

While these contributions are not administered under the *Environmental Planning and Assessment Act 1979*, and therefore are not covered by the planning review, it is important to consider the burden of all charges on stakeholders.

There is a further issue for stormwater funding that is specific to part of the Sydney region. Sydney Water is responsible for the majority of drainage land and works in the Rouse Hill Development Area. Because the funding arrangements for the land and works in this area are different from those in the rest of the Sydney region, the interactions with the new contributions system are complex.

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<sup>8</sup> Water and sewerage developer charges for Sydney Water and Hunter Water have been set to zero since 2008. However, all other developer charges, including for out-of-sequence development in Sydney and the Hunter Region and for areas outside Sydney and the Hunter Region, are still in place.

<sup>9</sup> Under section 64 of the *Local Government Act 1993*.

## 2 Transitional arrangements and resourcing

The White Paper acknowledges that the arrangements for transitioning to the new infrastructure contributions system are yet to be resolved. These arrangements should be planned and communicated to stakeholders as soon as practicable. We note that DP&I is currently undertaking an extensive consultation exercise.

Refining the contributions policy, implementing the changes and managing the transition will be substantial exercises that will continue beyond the initial legislative changes. The reforms will require sustained input from DP&I, other NSW Government agencies, local government, the development industry and the broader community.

### 2.1 Transitional arrangements

Transitional arrangements are of critical importance and should be sufficiently flexible to avoid unnecessary regulatory burdens or inequitable outcomes.

Particular consideration should be given to the need to avoid incentives for developers or councils to delay infrastructure investment or building activities. This could occur if either party considers that they will get a 'better deal' under the new system. Any measures that force councils to spend money for which they might not receive funding should also be avoided.

It is not clear whether it is intended that all existing contributions plans are to be moved into the new arrangements, or whether some will be allowed to continue under the current provisions. In order to provide as much certainty as possible for all stakeholders, not just councils, and to reduce the likelihood of perverse or unintended consequences, these matters should be determined as soon as practicable.

We think there is merit in 'grandfathering' some plans in the new system. These might include plans where the majority of development expected in the area covered by the plan has already occurred and/or where the majority of infrastructure investment outlined in the plan has already occurred.

We note that on 15 June 2013, the NSW Government announced that gap funding of local development contributions impacted by existing caps will continue until the new planning system commences.<sup>10</sup> Funds will be made available through the Local Infrastructure Growth Scheme. As is the case with current gap funding, to be eligible a council must have the relevant contributions plan reviewed by IPART. We suggest that DP&I publish more details about how councils can apply for funds from the Local Infrastructure Growth Scheme and

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<sup>10</sup> Treasurer and Minister for Planning and Infrastructure, 'NSW Budget to Boost Housing Supply', Media Release, 15 June 2013.

update the 2010 Practice Note that contains the criteria for IPART's review of contributions plans.

## 2.2 Resourcing and knowledge of existing plans

We are conscious of the broad scope of the White Paper reforms, the potential complexity of the proposed framework for infrastructure contributions and the need to transition to the new system.

We emphasise the need for DP&I to carefully plan and adequately resource these aspects of the reforms because they will be crucial to the successful implementation of the new system.

DP&I should use robust data and cost modelling to consider the options for transitional arrangements and the final ongoing policy. This will require DP&I to develop a deeper knowledge base about existing plans (see Box 2.1). The list is not exhaustive.

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### **Box 2.1 Building a deeper knowledge base about existing contributions plans and council funding arrangements**

The NSW Government should develop a knowledge base about existing plans, including:

- ▼ What are the types and numbers of plans that currently exist for all councils?
  - ▼ Is the housing or other types of development proposed under the plans still expected to occur and over what time period is it expected to occur?
  - ▼ What types and costs of infrastructure are included in the plans? Do the plans include infrastructure that would not meet a proposed essential infrastructure list?
  - ▼ What infrastructure has been funded to date from these plans and what infrastructure remains to be funded under the plans?
  - ▼ What developer contributions have been collected under these plans to date and what contributions may be expected in future?
  - ▼ How have councils actually funded the delivery of the infrastructure included in the plans (eg, by borrowing, by pooling of funds between a number of plans, works-in-kind and/or through existing voluntary planning agreements with developers)?
  - ▼ What council resources would be required to recast existing plans in light of the new essential infrastructure list and cost benchmarks?
  - ▼ What council resources would be required to separately identify infrastructure that is to be funded from the proposed local contributions and regional contributions?
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### 3 IPART's role in the new infrastructure new contributions system

The White Paper identifies 3 roles for IPART in relation to infrastructure contributions. IPART is to:

- ▼ benchmark the cost of local infrastructure on the essential infrastructure list
- ▼ have an expanded role in reviewing contribution plans proposed by the state and local councils
- ▼ have an expanded role in setting Regional Infrastructure Contributions and Regional Growth Fund contributions.

These roles build on IPART's experience since 2010 in reviewing councils' section 94 contributions plans (see Box 3.1) and more generally in the regulation of infrastructure. IPART will continue to assess contributions plans which are above the existing caps on contributions during the transition period, unless otherwise directed by the NSW Government.

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#### Box 3.1 IPART's existing section 94 contributions plans review function

Following changes to the policy framework applying to section 94 development contributions implemented in 2010, IPART has had the role of reviewing certain section 94 development contributions plans.

IPART reviews:

- ▼ new contributions plans which propose a contribution level above the relevant cap (ie, \$20,000 for established areas and \$30,000 for greenfield areas)
- ▼ existing contributions plans with contributions above the relevant cap for which a council seeks funding from the NSW Government or through a special variation under the *Local Government Act 1993*
- ▼ contributions plans that may be below the cap, but have been referred to us by the Minister for Planning and Infrastructure.

We assess plans in accordance with the criteria set out in the *Local Development Contributions Practice Note for the assessment of contributions plans by IPART*.

We do not have any powers to determine contribution rates or to direct councils to amend their contributions plans. We only review plans and make findings and recommendations in respect of these plans to the Minister for Planning and Infrastructure and councils.

**Note:** Exemptions from the contributions caps apply in areas where, as of August 2010, the amount of development that had already occurred exceeded 25% of the potential number of lots.

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### 3.1 Benchmarking local infrastructure costs

To undertake a review of benchmarks for local infrastructure costs as the White Paper proposes, IPART requires approval from the Premier under section 9 of the *Independent Pricing and Regulatory Tribunal Act 1992*.

The benchmarking of local infrastructure costs will not be a simple task. Considerations include:

- ▼ the extent to which councils will be required to meet infrastructure standards set by outside agencies
- ▼ whether benchmark costs can be reasonably established for all infrastructure items or whether it is more useful to identify costing methods that are likely to lead to the efficient delivery and cost of the infrastructure (eg, by competitive tendering)
- ▼ the extent to which costs may vary across different regions or development settings.

It will also be important that the cost benchmarks are kept up-to-date over time. There should be provision for periodic revision of benchmarks, say every 3 years. IPART could conduct such reviews. In the period between reviews, cost benchmarks should be indexed at regular intervals using an index of economy-wide or industry-specific price inflation. We could recommend a suitable index as part of the cost benchmarking review.

We note that at this stage benchmarks will only apply to the cost of infrastructure works (ie, capital costs) and not the cost of land. The cost of land is a significant component of existing local infrastructure contributions, especially in greenfield areas. There is also a large degree of variability in land values, depending on the location of the land. IPART expects to provide guidance on appropriate ways to estimate the cost of land as part of the benchmarking project.

In general we consider that contributions should reflect the market value of land councils must acquire. We note that in plans previously reviewed by IPART, a contentious issue has been the valuation of land owned by councils but not acquired in preparation for, or to facilitate the carrying out of, development in the area (eg, land acquired as a result of non-payment of rates). The NSW Government should address this issue in guidelines for preparing Local Infrastructure Plans/local infrastructure contributions.

As for the cost of infrastructure works, we consider that infrastructure contributions should reflect the *efficient* use of land. This will largely be determined by the location of infrastructure. Initiatives such as the dual use of open space and drainage land can minimise costs and should be encouraged in the early stages of infrastructure planning.

## 3.2 Ongoing review of infrastructure plans and infrastructure contributions

While the benchmarking of local infrastructure costs is likely to be a one-off task, reviewing contribution plans and setting contributions are likely to be ongoing roles for IPART.

This section of provides our comments on the proposed ongoing roles for IPART.

### 3.2.1 Local Infrastructure Plans/local infrastructure contributions

IPART considers that our review role would deliver the greatest benefits if conducted on an exception basis, ie, not a routine review of all plans. We consider that with appropriate guidelines for preparing Local Infrastructure Plans/local infrastructure contributions, most councils should be able to prepare compliant plans. A simple check of compliance by DP&I should be sufficient.

DP&I or the Minister for Planning and Infrastructure could refer plans to IPART for review in instances where:

- ▼ there is a material discrepancy between the cost of infrastructure in a plan and the relevant benchmark cost,<sup>11</sup> and/or
- ▼ there is a need for independent advice on a substantive issue not agreed by relevant stakeholders (eg, the council, the NSW Government or developers).

Consistent with this approach, IPART may be asked to review an entire plan or particular aspects of a plan. We could also provide advice on contributions policy issues that may result in amendments or additions to guidelines.

IPART's review should have regard to the principles for the new system of infrastructure contributions set out in the White Paper.<sup>12</sup>

The timing of IPART's review may vary for each plan. In some instances we may provide advice on an adopted plan, and in other instances we may provide advice on a draft plan. We are mindful that our review process should not add unnecessary delay to the making of plans or unnecessarily restrict councils' ability to levy contributions where development applications have been submitted.

Our preference is, however, to review plans that have been publicly exhibited so that we can consider any relevant material submitted by stakeholders.

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<sup>11</sup> The White Paper (p 165) states that 'if a council believes its actual costs are beyond the benchmark, it can apply to charge a contribution beyond the benchmark'. IPART could provide advice on whether the benchmark can be exceeded by the council.

<sup>12</sup> White Paper, p 164.

### 3.2.2 Growth Infrastructure Plans and regional infrastructure contributions

In the new infrastructure contributions system, regional infrastructure contributions will replace the existing Special Infrastructure Contributions (SICs).

Developers in particular have previously indicated that the existing SICs lack transparency regarding the infrastructure included in the levy, the cost of the infrastructure and the share of costs allocated to developers. We consider that the introduction of Growth Infrastructure Plans will to some extent address this issue and we support this initiative. The White Paper explains:

Growth Infrastructure Plans will cost infrastructure and determine the appropriate level of apportionment towards new development. They provide a robust evidence base that identifies subregional growth infrastructure priorities and the cost of this infrastructure, which are crucial to inform setting a regional contribution tailored to subregional infrastructure needs. These mechanisms will enable the setting of a contribution rate. These major changes will provide for a clear alignment between priorities for development growth, infrastructure need and a contribution towards infrastructure funding.<sup>13</sup>

We consider that IPART is well placed to review Growth Infrastructure Plans/regional infrastructure contributions with respect to:

- ▼ cost methodologies
- ▼ apportionment of costs between subregions
- ▼ apportionment of costs between development types within a subregion.

We support the involvement of Subregional Planning Boards in the preparation of Growth Infrastructure Plans. IPART's role should complement, not duplicate, the role of Subregional Planning Boards.

### 3.2.3 Regional Growth Fund

As noted earlier, the proposed governance and administrative arrangements for the Regional Growth Fund contributions (ie, for drainage land and regional open space land) are not explained in detail in the White Paper. It is therefore difficult to comment on IPART's role in relation to this fund.

We consider that our role in setting Regional Growth Fund contributions could be similar to our role in setting in regional infrastructure contributions.

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<sup>13</sup> White Paper, p 166.

#### **3.2.4 Terms of reference for IPART's ongoing role in planning framework**

The ongoing review and contributions setting roles that the White Paper envisages for IPART build on IPART's experience since 2010 in reviewing councils' section 94 contributions plans (see Box 3.1).

To undertake these roles we would need the NSW Government to provide new terms of reference. Although these roles would not start until 2014, the process of revising the terms of reference will take some time and it is important that they are in place from the commencement of the new legislation.

