

# NSW Planning System Review

## IPART Submission on Issues Paper

Local Government — Submission  
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# 1 Summary

## Background

- ▼ One of the Government's key priorities is to improve the availability and affordability of serviced land for new housing development.
- ▼ The Government has commissioned an independent review of the *Environmental Planning and Assessment Act 1979*. The review panel has prepared an issues paper and has requested comments by mid February.
- ▼ IPART undertakes reviews of councils' contributions plans. We have completed reviews of plans in the Hills and Blacktown areas. These reviews confirmed that land is expensive to develop in these areas and the major costs in the plans relate to the purchase of land, particularly for open space and drainage infrastructure.

## Issues

- ▼ It is expensive to provide infrastructure for new housing developments on land in Western Sydney.
- ▼ The main issues are what infrastructure should be provided and who should pay.
- ▼ Commonwealth, state and local governments all have requirements that result in land being set aside for various purposes. However, the combined effect of all these is not considered.
- ▼ Infrastructure is provided by a number of organisations, including local councils, local developers, Landcom, Sydney Water, private water suppliers licensed under the Water Industry Competition Act, and Roads and Maritime Services. This can make it complex to coordinate the prioritisation of work and the timely provision of infrastructure.
- ▼ Funding arrangements for infrastructure are also complex. Some funding for local and state infrastructure is provided through contributions levied on developers, although rates are not uniform.
- ▼ Concerns that development contributions were too high and potentially slowing down the development of land led to the setting of some Sydney Water and Hunter Water development levies at zero in 2008 and the capping of council development contributions in 2010. Caps for council development contributions were set at \$30,000 for greenfield developments and \$20,000 for other developments. Further the State Government reduced the special infrastructure contribution (SIC) for growth centres.
- ▼ There are inconsistencies in who pays for infrastructure across Sydney and across the state. This is especially the case for stormwater infrastructure.

- ▼ There have been some important policy changes in recent years. For example hard caps of \$30,000 in greenfield areas and \$20,000 in other areas were introduced in 2010. The hard caps were introduced to improve the supply of housing by reducing the amount that developers would pay. However, they may also leave some councils with uncertainty about how they will fund their infrastructure for new development, which has the potential to slow down development.

### Possible Government response

- ▼ The Government could commission an investigation of the fundamental question of who should pay for infrastructure. This investigation would develop a set of principles to be applied to all development contributions. An important principle is “beneficiary pays”. The end result should be greater consistency in contributions between agencies and a fairer approach to determining who should pay for the infrastructure.
- ▼ IPART is available to undertake this investigation and would do so on the basis of wide consultation. We offer a skilled team of professionals including economists, engineers and planners who are accustomed to working with government, business and community stakeholders. Our reviews typically involve consultation which is undertaken in a transparent way. As well as having direct experience in local government issues and water regulation, IPART has expertise in examining infrastructure critical to new development such as transport and energy. We have been involved in setting development contributions across the major utilities providing infrastructure for new development, eg water, sewer and electricity.
- ▼ The financial contributions paid by developers are only one of many factors that affect the availability of serviced land for development. The Government could further develop an evidence base to get a better understanding of the most important factors or bottlenecks that affect land supply. This evidence should help inform the Government about the most effective actions to undertake from a whole of Government perspective.
- ▼ There are other changes that could be made within the context of this broader approach. For example:
  - more flexible caps on section 94 development contributions
  - IPART could review section 94 contributions plans only when requested to do so by the Minister
  - IPART could develop benchmark costs of infrastructure to provide guidance to councils and developers on the content of plans
  - the Guidelines for preparing plans could be consolidated and applied
  - In the longer-term, there could be greater oversight of plans by the Department of Planning and Infrastructure, as the Department is staffed by qualified planners with knowledge and expertise in the planning area.

## 2 Introduction

### 2.1 NSW Planning System Review

In July 2011, the Minister for Planning and Infrastructure announced a full review of the planning system in New South Wales (the planning review). The planning review focuses on rewriting the State's main planning law, the *Environmental Planning and Assessment Act 1979* (EP&A Act).

An Issues Paper entitled *The way ahead for planning in NSW?* was released for public comment on 6 December 2011. The Issues Paper outlines the topics raised during the Listening and Scoping consultation phase of the planning review, conducted between July 2011 and November 2011.

This submission provides IPART's comments on matters relevant to the planning review covering:

- ▼ the need for a broader review of funding for infrastructure that services new development, including state charges
- ▼ our observations in relation to section 94 development contributions policy, including findings from our recent review of 3 contributions plans
- ▼ our detailed response to specific questions in the Issues Paper.

### 2.2 IPART's relevant functions

IPART is the NSW independent price regulator. IPART also serves as an economic advisor to the Government and a policy think tank. In this role, we review the pricing of services such as retail electricity, water and transport, and investigate various aspects of industry productivity, competition, performance and planning.

IPART has several functions that are relevant to the planning review.

- ▼ Directly related to the planning review, we review selected local government section 94 development contributions plans on behalf of the Minister for Planning and Infrastructure.
- ▼ Indirectly related to the planning review, we:
  - have a role in setting local government rate revenue by determining (under delegation from the Minister for Local Government) the local government rate peg (ie, the maximum allowable increase in local government general income), council applications for special rate variations and council applications for increases in minimum rates above the statutory limit
  - set the maximum prices that Sydney Water, Hunter Water, Gosford City Council and Wyong Shire Council can charge for their water and wastewater services

- set the methodology used to calculate the contributions payable by developers to Sydney Water, Hunter Water, Gosford City Council and Wyong Shire Council for the provision of new water, wastewater, stormwater and recycled water infrastructure (though, in December 2008, the then Government decided to set some, but not all, of these charges to zero)
- make recommendations to the Minister for Finance and Services about the licensing of private sector water infrastructure providers under the *Water Industry Competition Act 2006* and monitor the compliance of licensees.

The Issues Paper contains questions about what the planning review team should consider as part of a new planning system for NSW. It outlines major and recurring themes expressed in the earlier phases of the review process, and poses broad questions (A10 and A11) about levies for local and state community infrastructure. Accordingly, in Section 3, this submission includes IPART's views on the broader policy framework for the funding of infrastructure that services new development.

The Issues Paper also includes a series of specific questions about IPART's ongoing functions in regard to section 94 development contributions and flags the possibility of IPART being asked to review more substantive policy issues in regard to section 94 development contributions. Section 4 of this submission provides some general reflections on section 94 development contributions policy while Section 5 provides our comments in response to the specific questions in the Issues Paper.

In addition, the Issues Paper asks about water issues and the planning system, for example, water capture and re-use for domestic purposes. Although we have not considered water issues in depth, we would be concerned if the planning review resulted in changes to existing initiatives for more efficient water development, or resulted in new initiatives that were not subject to a cost-benefit analysis before they were introduced. Further comments on water issues are provided in Section 5.

### 3 A broader review of funding for infrastructure that services new development

The Issues Paper raises some general questions about funding for infrastructure that services new development. This is reflected in two questions set out in the introduction to the Issues Paper:

- ▼ How should levies to pay for local and state community infrastructure be set? (question A10)
- ▼ What alternatives to – or additional funding sources for – such infrastructure should be considered? (question A11)

We consider that, to answer these questions, the Government could initiate a broader review of funding for infrastructure that services new development.

A broader review could, as a starting point, establish a clear set of funding principles. The critical questions for reform are:

- ▼ What infrastructure should be provided to service new development?
- ▼ Who should pay?

Amidst the shifting of infrastructure costs between various tiers of government and developers, particularly since 2008, the principles determining 'who pays' have become obscured. The large number of policy changes could reduce investment certainty.

Once a set of principles is established, it could be used to evaluate and reform existing funding arrangements. In addition, the principles could be used to evaluate alternative funding mechanisms not currently utilised in NSW, such as a broad-based levy on all taxpayers.

A holistic review of funding for infrastructure that services new development would likely extend beyond the timeframe and scope of the current planning review.

Such a review could be conducted by IPART in accordance with section 9 of the IPART Act. Under section 9 of the IPART Act, the Premier may approve the provision of services by IPART to any government agency or other body or person (public or private), where those services are in areas within IPART's field of expertise and relevant to its functions.

We offer a skilled team of professionals including economists, engineers and planners who are accustomed to working with government, business and community stakeholders. Our reviews typically involve consultation which is undertaken in a transparent way. As well as having direct experience in local government issues and water regulation, IPART has expertise in examining infrastructure critical to new development, such as transport and energy infrastructure.

### 3.1 'Who pays' for infrastructure

Over the past few decades, the method of funding infrastructure that services new development has changed considerably in NSW. These changes represent several shifts in 'who pays' for infrastructure.

Prior to the 1970s, in NSW, the state and local governments met most of the cost of public infrastructure that services new development. In the 1970s, Sydney Water introduced development contributions for water infrastructure, and from the early 1980s local councils began to collect development contributions for local infrastructure. In the mid-2000s, the State Government introduced the SIC for state infrastructure, but applied it only to certain development areas. The introduction of these contributions shifted costs from government in favour of a 'user pays' system.



The cost of infrastructure that services new development is currently shared between state government, local government, developers, the customers of water authorities and potentially ratepayers. The range of mechanisms currently in place include:

- ▼ Section 94 and section 94A contributions for local infrastructure:
  - These contributions are levied by consent authorities (local councils) under the *Environmental Planning and Assessment Act, 1979*.
  - Section 94 contributions require the preparation of a contributions plan that identifies the relationship between the expected types of development and the demand for additional public amenities and services created by that development.
  - Section 94A contributions are an alternative to section 94 contributions and are fixed at a certain percentage of the cost of the proposed development.
- ▼ Infrastructure contributions for water and sewerage infrastructure (often known as 'developer charges'):
  - While publicly-owned metropolitan or local water utilities can levy contributions, the water and sewerage developer contributions for Sydney Water and Hunter Water have been set to zero. However, all other developer charges, including for out of sequence development are still in place.
- ▼ Special infrastructure contributions:
  - Special infrastructure contributions (SIC) are made by developers to the State government towards the cost of regional and state infrastructure.
- ▼ Voluntary planning agreements:
  - These are agreements entered into by a planning authority (such as the Department of Planning and Infrastructure or a council) and a developer. Under the agreement a developer agrees to provide or fund (either directly or through works-in-kind) infrastructure that services new development.

Recently, the State Government has responded to a slowdown in the rate of residential development in metropolitan Sydney by removing, reducing or capping some of the contributions payable by developers.

- ▼ In 2008, the State Government announced changes to water infrastructure contributions levied by Sydney Water and Hunter Water. As part of the reforms, the contributions paid by developers for water supply, wastewater and stormwater development were set to zero. However, contributions for recycled water and out of sequence developments continue to apply for Sydney Water and Hunter Water. By contrast within the greater metropolitan area the development charges for water, wastewater, stormwater and recycled water levied by Gosford City Council and Wyong Shire Council are not subject to the zero cap. Outside the greater metropolitan area, other councils are able to impose development contributions for these services.

- ▼ In 2008, the State Government announced it would discount the SIC by increasing the State Government's share of funding from 25% to 50% until 30 June 2011. It also removed rail infrastructure and bus subsidies from the levy. The SIC discount was recently extended until 30 June 2012.
- ▼ In 2010, the State Government introduced 'hard caps', limiting the amount of section 94 development contributions councils could collect. Unless the Minister exempts a development,<sup>1</sup> councils can levy development contributions to a maximum of:
  - \$30,000 per dwelling or residential lot in greenfield areas
  - \$20,000 per dwelling or residential lot in all other areas.

The large number of policy changes may have reduced investment certainty. Further, the rationale for the current allocation of costs between these parties is not clearly articulated. The system is fragmented, resulting in inequities in the allocation of the costs of development depending on the location and the ultimate owner of the infrastructure. [Box 3.1](#) provides an example of the complexity of infrastructure funding using the example of drinking water infrastructure.

We therefore consider that the Government could review policy in relation to all contributions for funding infrastructure required by new development:

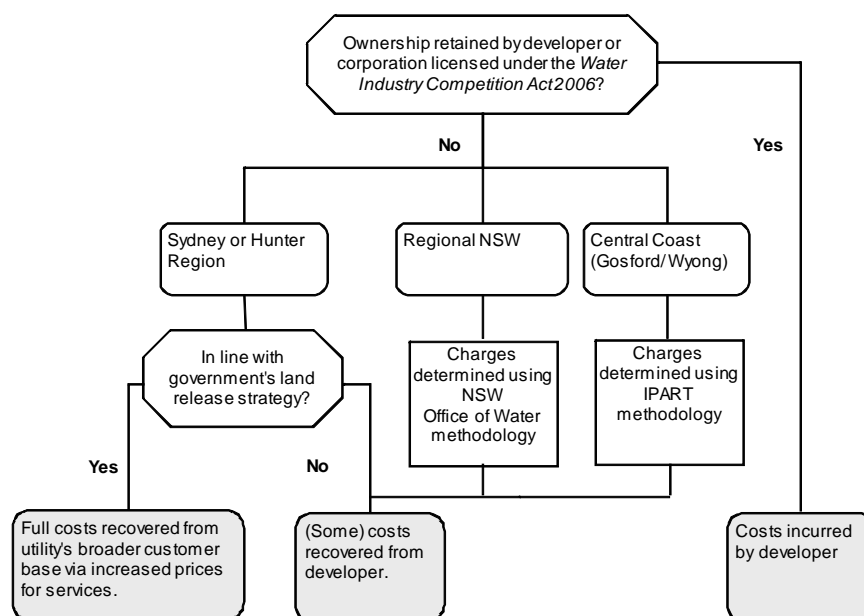
- ▼ section 94 contributions (and whether to retain the hard caps)
- ▼ development contributions for water infrastructure
- ▼ the SIC (which has recently been subject to a specific review).

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<sup>1</sup> The Minister has exempted all developments where the amount of development that has already occurred exceeds 25% of the potential number of lots.

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### Box 3.1 Water infrastructure charges



Note: In 2007 IPART was requested to undertake a review of the NSW Office of Water's Developer Charges Guidelines for Water Supply, Sewerage and Stormwater. The Minister for Primary Industries has recently written to IPART confirming her support of recommendations made at that time to improve the administration and cost-reflectivity of these charges. (Minister Hodgkinson, Letter to IPART, dated 20 December 2011).

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## 3.2 Principles for infrastructure funding

Regardless of the scope of a review, a sound set of principles is required to answer the questions of what infrastructure should be provided and who should pay.

The planning review provides an opportunity for the State Government to clarify the principles underlying infrastructure funding, including the funding of state and local infrastructure.

The overarching principle could be one of beneficiary pays. We note that for some of the infrastructure eg, where a broader environmental benefit is generated, the whole of Sydney would benefit, not just the new residents in the release area. For this infrastructure it may be reasonable that someone other than the developers (and ultimately, purchasers of housing in new development areas) pay some of the costs.

Other principles may include:

- ▼ effective price signalling
- ▼ appropriate risk sharing
- ▼ equity
- ▼ simplicity, transparency and consistency.

In some instances there may be competing objectives. It is important to acknowledge that a balance is required.

## 4 IPART's observations regarding section 94 development contributions policy

IPART is required to review certain section 94 contributions plans. In October 2011, we published reviews of 3 contributions plans for new development areas in north-west Sydney. These reviews confirmed that land is expensive to develop in these areas and the major costs in the plans relate to the purchase of land, particularly for open space and drainage infrastructure.

In addition to our recommendations for minor changes to the specific contributions plans reviewed, we identified issues that relate more widely to the review of contributions plans (see Appendix A) and to the broader policy framework for section 94 contributions (see remainder of this section).

In particular, we consider that there is a need for the Government to review the policy of hard caps on section 94 contributions. This would be best done within the context of a broader review of funding for infrastructure that services new development, as described above.

### 4.1 Section 94 development contributions policy and IPART's roles

In 2010, the State Government introduced caps on the amount of section 94 development contributions councils can collect. Unless the Minister exempts a development,<sup>2</sup> councils can levy development contributions to a maximum of:

- ▼ \$30,000 per dwelling or residential lot in greenfield areas
- ▼ \$20,000 per dwelling or residential lot in all other areas.

Along with the introduction of the contribution caps, the State Government gave IPART a new function to review contributions plans. This function is specified in the terms of reference issued by the NSW Premier under section 9 of the *Independent Pricing and Regulatory Tribunal Act 1992*. In accordance with the terms of reference, IPART is required to review:

- ▼ new contributions plans that propose a contribution level above the relevant cap
- ▼ existing contributions plans above the relevant cap for which a council seeks funding from the Priority Infrastructure Fund, or funding through a special rate variation under the *Local Government Act 1993*
- ▼ contributions plans as otherwise determined by the Minister for Planning and Infrastructure.

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<sup>2</sup> The Minister has exempted all developments where the amount of development that had already occurred exceeded 25% of the potential number of lots.

Our reviews are guided by the assessment criteria contained within the 2011 Practice Note issued by the Department of Planning (now the Department of Planning and Infrastructure).<sup>3</sup>

IPART's role is to ensure that the process for setting contributions rates is transparent and the costs are reasonable. 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.

The Minister for Planning and Infrastructure may consider IPART's assessment in determining a council's application for funding from the Priority Infrastructure Fund (see Section 4.3).

A council may also apply for a special rate variation to meet the funding shortfall that results from the imposition of caps on section 94 contributions (see Section 4.3). IPART assesses councils' applications for special rate variations in accordance with the guidelines published by the Division of Local Government, Department of Premier and Cabinet. We will also take into account the assessment we have made on the contributions plan when making our determination on the special variation application.

## **4.2 Findings and recommendations from IPART's reviews of contributions plans**

In October 2011, IPART published reviews of 3 contributions plans for new development areas in north-west Sydney.

These reviews show that the reasonable cost of providing infrastructure for new development in north-west Sydney is significant and can be well above the relevant caps. We reviewed the infrastructure against an Essential Works List.<sup>4</sup> We recommended adjustment of some cost estimates, consideration of the level of provision of certain infrastructure or open space, and we identified some items of infrastructure in the plans that were not on the Essential Works List. These changes would only reduce the total cost of each plan by relatively modest percentage amounts, ranging from 4% to 7%. We note that the impact of some of our recommendations was not quantifiable when the reports were published. If these recommendations were acted on, they could lead to further savings.

In addition to our recommendations for minor changes to the specific contributions plans we reviewed, we also identified issues that relate more widely to the review of contributions plans (Appendix A). These recommendations assume that the current

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<sup>3</sup> Department of Planning, *Local Development Contributions Practice Note for assessment of contributions plans by IPART*, November 2010.

<sup>4</sup> An Essential Works List is defined in the *Local Development Contributions Practice Note for the assessment of Local Contributions Plans by IPART* (Department of Planning, November 2010). Priority infrastructure funding can only be sought for land and facilities on this list.

policy framework, including the contributions caps, remains largely in place. However, we consider that there are reasons to consider broader changes to the framework for development contributions. These changes may entail a change in IPART's current functions relating to the planning system (see our response to question D98 in section 5).

### 4.3 Essential infrastructure for new development risks being unfunded

Councils affected by the Section 94 development contributions caps are able to:

- ▼ apply for funding from the Priority Infrastructure Fund (PIF)
- ▼ seek a 'special variation' to their rates revenue.

The PIF is a transitional measure intended to ensure that councils are able to recover the difference between the contributions rate contained in a contributions plan (that is assessed as being reasonable by IPART) and the relevant cap.

The PIF has limited funding; it was set up in 2010 with \$50m to be available over 2 years (2010/11 to 2011/12). However, the gap between the amount of revenue councils can collect under the contributions caps and the costs in the 3 contribution plans that we examined exceeds this amount.

A special rate variation allows councils to increase general income above the rate peg, under the provisions of the *Local Government Act 1993*. Local councils that are seeking special variations to general income are required to submit applications to IPART for review and assessment. IPART assesses councils' applications for special rate variations in accordance with the guidelines published by the Division of Local Government, Department of Premier and Cabinet.

If councils seek to cover the full funding 'gap' from future ratepayers in the development area, the magnitude of the rate variation is likely to be very high. This may deter home buyers from purchasing in the area, or subject new residents to high ongoing costs. It is worth noting that many buyers in the areas subject to the rate variation are likely to be first home buyers or second phase buyers.

The magnitude of the rate variation would be lower if levied on all ratepayers in the Local Government Area. However, this scenario may cause existing resident resentment because they perceive that the cost of past development contributions is embedded in the amount they have already paid to purchase their house. This, in turn, may create an 'anti-development' backlash, which could limit councils' willingness to approve new development.

Another option is to share costs more broadly across Sydney or the state. This mechanism has been used in the past in other Australian jurisdictions.

The Government will need to consider either a policy amendment or ongoing funding to ensure councils can provide essential infrastructure for new development in a timely manner.

#### 4.4 Objectives of the contributions caps

The objective of introducing a contributions cap was to increase housing supply by lowering development charges for infrastructure to stimulate housing construction.<sup>5</sup>

However, as discussed above, the mechanisms available to councils to fund the gap between the cost of infrastructure and the capped contributions could be insufficient in some instances. This in turn may discourage councils from facilitating development.

The introduction of caps may also be ineffective in achieving the desired objective due to the large number of exemptions to the caps or other influences on land supply and housing affordability. Additionally, the objective of caps may contradict other Government objectives such as providing price signals for locating new development. These issues are discussed below.

##### 4.4.1 Exemptions to the contributions cap

Contributions caps do not apply to all areas or types of development.

- ▼ The caps do not apply to contributions plans in areas where (on 31 August 2010) development applications had been lodged for more than 25% of the expected development yield.
- ▼ The caps do not apply to Voluntary Planning Agreements or situations where developers undertake works-in-kind in lieu of providing cash contributions. This creates a situation where the arrangements between councils and developers are not transparent and may create incentives for councils to pressure developers for these types of contributions to avoid the caps.

Further an anomaly arises when the maximum rate in a contributions plan falls below the relevant contributions cap. In this case, the land and facilities that maybe funded through development contributions are not restricted to essential works. As a result, some developers may end up paying for non-essential infrastructure in some areas.

It is also worthwhile noting that recent reforms of the section 94 development contributions framework have not dealt with contributions levied on non-residential development. These may be important considerations for the achievement of other Government objectives, such as the development of industrial lands and commercial centres.

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<sup>5</sup> Department of Planning, *Local Development Contributions*, Planning Circular PS 10-014, 4 June 2010, p 1.



#### 4.4.2 Other influences on land supply and housing affordability

There are a range of other factors that influence the timely provision and cost of infrastructure and the development of growth areas to the point of housing construction and sale. These factors may include the timing of planning approvals, or the extent to which regulatory requirements sterilise large parcels of land, or the extent to which potential development areas are currently owned by multiple owners or fragmented into multiple lots. There are also market-based issues that can impact on the speed of development including developer's access to finance and appetite for risk, the 'stickiness' of land owners' price expectations and home buyer preferences.

The Government could convene and maintain an expert group for the purpose of monitoring housing trends and identifying suitable strategies to support housing affordability. The recent establishment of a Cabinet Committee to oversee these issues provides a basis for pursuing this work from a whole-of-government perspective.

A Land and Housing Supply Coordination Taskforce was established in June 2010 and was investigating some of these issues. Some of the work done by the Taskforce may be relevant and should be considered by the planning review team.<sup>6</sup>

#### 4.4.3 Price signals for locating new development

One of the long-standing principles of development contributions often cited is that of market efficiency. In the absence of the contribution caps, the levies required in some areas will be greater than others. This provides a market signal for investment to occur where the cost of providing facilities is lower. A capped contributions regime removes this price signal.

Given that it is likely that there are large differences in topography and access to existing infrastructure networks, a single cap for greenfield development is not consistent with the principle of cost-reflective pricing. This could lead to land with high development costs being developed when land with lower development costs could be available.

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<sup>6</sup> The work of the Taskforce was suspended in July 2011 to provide the State Government the opportunity to review its role.

## 4.5 The cap amounts

The cap amounts of \$20,000 and \$30,000 were set in 2010, but the rationale for the level of the caps was not transparent.

We consider that there are benefits in establishing benchmark costs of providing infrastructure that services new development. These benchmark costs could be used to set contributions caps that better reflect the true cost to councils. They could also be used in the assessment of 'reasonable' costs as part of IPART's current function of reviewing contributions plans.

## 5 Detailed response to issues raised

The Issues Paper contains questions about section 94 development contributions policy. This section provides our responses to these specific questions posed by the review team.

Some questions assume that major elements of the current section 94 development contributions regime – such as caps – will continue and that IPART will have an ongoing role in the review of contributions plans. In our opinion, there is a need to consider the benefits of ‘hard’ contribution caps and this may entail a change in IPART’s ongoing review function.

Several questions ask whether IPART should be given a general reference to examine broader elements of section 94 development contributions policy. We would be willing to take on board a review of these more substantive questions. We would approach such a review by consulting with state government agencies, councils, developers and other interested stakeholders.

### D95. Should IPART be given a general reference to examine and make recommendations about how any shortfall in development contributions plans for necessary community infrastructure should be funded?

Yes, IPART supports the Government giving us a general reference to examine and make recommendations about how any shortfall in development contributions plans for necessary community infrastructure should be funded.

However, this question assumes contributions caps remain. We consider that the benefits of capping contributions for providing community infrastructure have not been established. A broader review of the options for funding infrastructure that services new development would provide the opportunity to assess the efficacy of imposing such caps.

### D96. Should IPART be given a reference to make recommendations about what should be the extent, standard and nature of community infrastructure works that should be included in contributions plans?

Yes, IPART supports the Government giving us a general reference to make recommendations about the extent and standards of community infrastructure that should be included in contributions plans.

The Department of Planning’s 2010 Practice Note specifies an Essential Works List. This list applies when the maximum contributions rate in a plan exceeds the applicable cap, and the council is seeking funding from the PIF or a special rate variation. There is no restriction on the type of facilities within a contributions plan if the contributions rate is below the applicable cap.

The Essential Works List appears to have been established with little discussion or debate. If IPART is given a general reference to make recommendations about the extent and standards of community infrastructure that should be included in contributions plans, our advice would be based on submissions from stakeholders and the general community. We consider this would be best done within the context of a broader review of infrastructure funding.

**D97. In light of the particular circumstances that might apply to the area covered in a contributions plan, should IPART be given a standing reference to enable councils to apply for variation to the cap on community infrastructure contributions?**

Yes, IPART could review plans exceeding the caps, and developers could be required to pay any higher rate approved.

Under the current policy, the contributions caps are 'hard' caps. The question presumes that the current framework which provides a cap on contributions from developers is maintained, but suggests that the cap be 'soft', ie, not apply uniformly to all development areas. From a policy perspective, a return to soft caps may be desirable, since developer charges would be more closely related to the cost of providing infrastructure.

Hard caps on development contributions bring into question the relevance of contributions plans, and therefore the need for their review. Caps mean that councils cannot charge developers for the value of infrastructure above the cap that may be validly included in plans. It also means that developers have no incentive to participate in the review of plans since their contributions are capped, and thus their expertise and knowledge of local conditions are not reflected in the review of the contributions plans.

If flexible or soft caps were applied, developers would have an incentive to participate in reviews and identify possible cost savings.

**D98. Is it reasonable to require IPART to undertake a detailed analysis of each contributions plan developed by councils?**

We believe that there is little ongoing benefit in IPART reviewing all plans. If hard caps remain, IPART should only review plans when the Minister asks us to. IPART has no objection to continuing our function of reviewing contributions plans, although we consider that it should be by exception and not routinely undertaken.

Our reviews showed that the reasonable cost of providing infrastructure for new development areas in north-west Sydney is significant, and well above the applicable cap. Even after rigorous analysis of the plans against the criteria, we were able to recommend changes to the plans that resulted in only relatively modest reductions in the total costs (4% to 7%). The impact of some of our recommendations was not quantifiable when the reports were published. If these recommendations were acted on, they could lead to further savings.

In the short term, our assessments of the plans submitted to us for review will provide information to councils that could highlight potential cost savings and establish cost benchmarks. However, in the longer term, IPART considers that there will be fewer gains from this and our resources could be better used elsewhere. IPART is particularly concerned that the review process required councils to invest additional time and effort on top of that invested in preparing the plan in the first place.

In the event that there are flexible caps, then it would be reasonable for IPART to undertake a detailed review of each council's contributions plan where a levy exceeds the cap.

**D99. Would it be preferable to give IPART a general reference to develop an appropriate plan preparation methodology and approach to construction costing for community infrastructure contributions plans?**

No. The most recent guidelines for the preparation of plans were published in 2005. IPART notes that in 2009 the Department of Planning prepared draft guidelines but the Government did not adopt them. The Department undertook considerable consultation in developing these guidelines. These guidelines could be reviewed so that they are consistent with current policy.

**D100. Should IPART be given a reference to make recommendations as to when community infrastructure contributions should be available? Should this include recommendations as to whether a delayed payment system should apply and, if so, at what development stages payment should be made?**

No, but if IPART is to undertake a general review, we could look at this issue as well.

This issue reflects an inevitable tension between competing interests, with either the developer or council meeting the costs of funding infrastructure as the timing of provision and payment is adjusted. Under the EP&A Act, councils do have discretion to provide for deferred or periodic payment of development contributions. To some extent, councils can factor in the impact of infrastructure costs which increase over time by using a NPV (net present value) model for determining contribution rates over the life of a plan.

Whether the Act should provide more flexible arrangements for the timing of payment of development contributions, and the methodology adopted in plans to determine contribution rates over time, are issues which could be considered as part of a broader review of infrastructure provision.

D101. Should there be a requirement for councils to publish a concise, simply written, separate document on community infrastructure funds collected and their proportionate contribution to individual elements in the council's contributions plan?

Yes, IPART supports a requirement for councils to publish a concise, simply written document on community infrastructure funds collected and their proportionate contribution to individual elements in the contributions plans. Consistent with good regulatory principles, measures that improve the transparency of councils in their administration of contributions plans are to be encouraged.

We note that, under current statutory requirements, councils are already required to disclose information about the collection and expenditure of development contribution. This information is located in Note 17 of councils' annual financial statements.

D102. Should IPART be given a reference to consider whether or not guidelines and/or mandatory requirements should be set for councils about community infrastructure prioritisation and levels of community infrastructure funds permitted to be available?

IPART considers that it would be more appropriate for the Department of Planning and Infrastructure to develop relevant guidelines. IPART could assist the Department in this work by providing examples and feedback based on its experience with reviewing contributions plans.

D103. Should new planning legislation make provision for voluntary planning agreements to permit departure from numerical limits that would otherwise apply to a development?

Yes, IPART supports the flexibility in the planning system represented by Voluntary planning agreements (VPAs), provided that such flexibility is consistent with the principles for levying infrastructure contributions, and is exercised transparently.

VPAs were introduced into the EP&A Act to provide more flexible funding opportunities to meet the costs of providing community infrastructure. VPAs have the potential to use a process of negotiation to achieve development outcomes tailored to the circumstances and preferences of the developer, local community and council.

D104. Should any appeal be allowed against the reasonableness of a development contribution, if it has been approved by the IPART?

Availability of review of the decision to fix a contribution rate (whoever determines it) should be consistent with the principles of administrative law. As such, judicial review of any decision is available. We do not consider there is a need for merits review.

D105. Should developer contributions apply to modifications of approved development?

IPART does not have a view on this question.

D106. Should regional joint facilities funded by developer contributions shared between councils be encouraged?

In principle, IPART considers that the sharing of facilities between councils should be encouraged. However we recognise that this may not always be practicable.

D52. What water issues should be required to be considered for urban development projects?

Generally these issues do not have to be dealt with through the planning system.

The Issues Paper notes that in the course of consultation it was suggested that new planning system should promote urban water capture and its use or reuse for domestic purposes.

IPART notes that Government has already implemented a number of major initiatives to facilitate more efficient development and that these initiatives were subject to cost benefit analysis, or least cost-planning analysis. These include, for example, the building and sustainability index (BASIX) and various initiatives undertaken as part of the Metropolitan Water Plan.

IPART would be concerned if the planning review resulted in changes to these initiatives or a requirement to undertake additional initiatives where those reforms were not subject to cost-benefit analysis.







## Appendices



## **A Recommendations from IPART's reviews of contributions plans**

### **A.1 Provision of information by councils to IPART**

In our reviews we found that the initial submission we received included insufficient information and supporting documentation to satisfy the requirements of our terms of reference. For future reviews we expect that councils will provide all the necessary information for the review with the initial submission. This will be more efficient for both councils and IPART.

### **A.2 Regular review of plans**

There is currently no legislative requirement for contribution plans to be reviewed over the life of the plan. Councils' intentions to review plans varied across the plans we reviewed.

While we expect a council to strive for plans based on the most accurate current information, we find that it is unrealistic to expect that the estimated costs and revenues for long development periods will remain the same during the life of the plan.

We consider it appropriate that councils review contributions plans on at least a 5-yearly basis, unless a significant change in circumstances prompts an earlier review. This reduces unnecessary fluctuations in the contributions and the potential for large losses and gains in councils' administration of the plans.

#### **Recommendation**

- 1 Councils should review their contributions plans at least every 5 years, unless a significant change in circumstances prompts an earlier review.

### **A.3 Inclusion of administration costs**

Each of the original plans we reviewed included administration costs. However, since administration costs are not specified on the Essential Works List, councils cannot collect contributions to cover these costs.

We consider that various administrative activities by councils are important to ensure that contributions plans are well managed, current and responsive to any changes which might arise over the course of development. On this basis, we consider some administration costs that a council incurs should be included in the Essential Works List.

## Recommendations

- 2 The Minister for Planning and Infrastructure should consider amending the Practice Note to allow development contributions to be levied to recoup administration costs incidental to items on the Essential Works List.
- 3 Administration costs should be defined to include:
  - the costs that councils incur in preparing the contributions plan, including preparation of studies to identify the needs of the proposed development
  - the costs that councils incur in reviewing and updating contributions plans and managing contributions receipts and expenditures.

## A.4 Use of a net present value model

The 2005 Development Contributions Practice Note allows the use of a net present value (NPV) model to calculate development contributions. An NPV model can assist councils in minimising the gap between costs and funding over time, although they are not widely used. The Hills Shire Council is one of only a few councils in NSW that uses an NPV model to calculate contributions.

Important assumptions in the application of an NPV model include:

- ▼ the use of real or nominal values
- ▼ the choice of discount rate.

We consider that when councils choose to use an NPV model to calculate development contributions, the modelling should be done using real figures and a discount rate which reflects the council's risk-related rate of return.

We consider that councils might need further guidance in selecting an appropriate discount rate. Therefore we propose to initiate further consultation with interested parties, such as the Department of Planning and Infrastructure, NSW Treasury, selected councils and bodies representing developers. This would enable us to determine a consistent rate that could be adopted by all councils if they choose to use an NPV model. We are undertaking this consultation in early 2012.

## Recommendation

- 4 When councils choose to use an NPV model to calculate development contributions, the modelling should be done using real figures and a discount rate which reflects the council's risk related rate of return.
- 5 Further consultation should be undertaken on a discount rate that could be applied consistently. Consultation should involve IPART, Treasury, Department of Planning and Infrastructure, councils and developers.

## A.5 Escalation of contributions

Once a contributions plan has been made, costs will change as a result of inflation. Therefore the contributions rates need to be adjusted at regular intervals to ensure that the revenue received by councils moves in line with the changes in the costs of their expenditure: that is, so that the real value of contributions does not erode.

Councils should comply with the *Environmental Planning and Assessment Regulation 2000* that requires contributions rates to be indexed by the Consumer Price Index (All Groups Index) for Sydney, as published by the Australian Bureau of Statistics.

### Recommendation

- 6 Contribution rates should be indexed by the Consumer Price Index (All Groups Index) for Sydney, as published by the Australian Bureau of Statistics. The contributions plan should specify whether the index is to be applied quarterly or annually.

## A.6 Determining rates for different types of development

Contribution plans may contain different rates for different types of dwellings (eg, apartment versus detached dwellings). Contributions caps may create an incentive for councils to 'load up' the contributions rate for smaller dwellings. For example, under the current policy, it appears permissible for councils to reduce the maximum contributions rate without a commensurate reduction of all contributions rates. One council also suggested that it could include the costs of items not on the Essential Works List in instances where the contributions rate for a particular type of dwelling was below the cap.

### Recommendation

- 7 The Minister for Planning and Infrastructure should consider clarifying the policy with regard to contributions rates for different types of development (eg, single dwellings versus multi-unit dwellings).

## A.7 Inclusion of non-essential works in the plan

Through our reviews of both The Hills Shire Council's and Blacktown City Council's plans, we have found the councils intend to leave in the plan the items that are not on the Essential Works List. We consider that this is reasonable as the plan should reflect all of the infrastructure needed to service the development. However, the plan needs to clearly identify the Essential Works and their costs.

Councils may apply to IPART for a special rate variation to meet the cost of local infrastructure that is not on the Essential Works List. IPART assesses councils' applications for special rate variations in accordance with the guidelines published by the Division of Local Government, Department of Premier and Cabinet.

#### Recommendation

- 8 The Minister for Planning and Infrastructure should consider clarifying the policy so that the total cost of items on the Essential Works List is able to be clearly distinguished in a contributions plan. Further, the policy should require that contributions plans must include a contributions rate which recovers only the cost of items on the Essential Works List.

### A.8 Major cost items

Land acquisition is a major component of costs in each of the contributions plans we reviewed. The majority of land that must be acquired is for open space and recreation, including riparian corridors.

There are a number of different laws, regulations and policies of the Commonwealth, State and local governments that may 'set aside' land for various purposes. This may occur without an overall coordination of policies or without consideration of decisions by other agencies.

We note that work commissioned by the NSW Land and Housing Supply Coordination Taskforce in 2010 showed that requirements for the provision of riparian corridors and other uses that sterilise land for development have an impact on the total cost of development. We consider that development contributions could potentially be lower if the amount of non-developable land in the release area were reduced. This would require a review of the regulatory and environmental requirements for greenfield release areas.

We also found that in Blacktown City Council's CP20, the cost of stormwater facilities was particular high. This is partly due to the particular infrastructure requirements of the development area. The stormwater facilities contributions are also high compared to the other 2 plans we reviewed because the infrastructure in these other areas will be provided by Sydney Water (as they are within the Rouse Hill Development Area), rather than council.

#### Recommendation

- 9 A whole-of-government review of the requirements for open space and other land uses that sterilise land for development should be undertaken.
- 10 The system of recouping the cost of stormwater management works should be given further consideration in light of potential inequities between different areas.