

8.14. NSW Government Infrastructure Contributions Reforms

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ATTACHMENTS:

1. North Sydney Council Submission - Infrastructure Reforms and IPART review - February 2022 Rev 3 - Fi [8.14.1 - 17 pages]

PURPOSE:

To seek Council's endorsement of a submission to the NSW Government's proposed Infrastructure Contributions Reforms. The detailed submission identifies that the proposed reforms will result in significant financial impacts on North Sydney Council and affect its ability to deliver necessary infrastructure to support growth.

EXECUTIVE SUMMARY:

In October 2021, the State Government released details of a proposed suite of reforms relating to how Local Government could levy development for the payment of infrastructure contributions. The exhibition period concluded on 10 December 2021. Due to the timing of the NSW Local Government elections (4 December 2021) this matter was not able to be reported to Council prior to submission. This report seeks the endorsement of the detailed submission provided at Attachment No 1.

Consistent with the overarching strategic planning framework, Council is responsible for managing population, housing and employment growth as part of its planning role in the Greater Sydney Commission's Eastern Harbour City. Fundamental to this role, and consistent with community expectations, is the need to support growth with the necessary level of local infrastructure in order to maintain an appropriate level of amenity, health and overall well-being of residents and workers that live and work in North Sydney.

The reforms will have a significant impact on North Sydney Council. Contrary to assurances that *"no council will be worse off under the proposed reforms"*, it is estimated that North Sydney Council will, dependent on likely final reforms, potentially be between \$2.8-\$9.3 million per annum worse off. Council's planned program of infrastructure works in the medium and longer term may have to be reconsidered and reduced as a result.

The introduction of a new Regional Infrastructure Contribution (RIC), with no corresponding obligation to establish any nexus as the basis for levying, nor any commitment to how and where the funds raised will be spent, is strongly opposed. This is contrary to the strict principles upon which local councils have been required to levy funds for several decades and which provide for a high degree of local transparency.

North Sydney Council supports a joint review and reform of the contributions regime to address agreed inadequacies, however, opposes the introduction of mechanisms that prevent Council being able to reasonably and adequately provide for the level of growth and intensification being experienced in both the North Sydney CBD and broader local government area. Further, the quality and amenity of infrastructure must align with community expectations and be sustainable over the medium and longer term under intense use.

FINANCIAL IMPLICATIONS:

This submission identifies the potential financial impacts of the proposed reforms to Local Infrastructure Contributions reforms. Modelling indicates that North Sydney Council may be between \$2.8-\$9.3 million per annum worse off than current projected income.

RECOMMENDATION:

- 1.THAT** Council endorse the detailed submission contained at Attachment 1 and re-iterate its objection to the proposed legislative reforms to Local Infrastructure Contributions.
- 2.THAT** Council write to the Minister for Planning and Local Members requesting that progression of the reforms be paused and re-considered in light of the identified financial impacts to Local Government.
- 3.THAT** should the reforms progress, the NSW Government be asked to provide financial compensation, to the extent of identified shortfalls, to those Councils that are financially disadvantaged as a result of the proposed reforms.
- 4.THAT**, as the caretaker period has now concluded, Council proceed to write to all residents regarding the changes to infrastructure charges and the implications for ratepayers in accordance with the resolution of Council arising from the Notice of Motion No. 21/21 - Councillors Keen and Mutton.

LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

1. Our Living Environment

1.4 Public open space and recreation facilities and services meet community needs

2. Our Built Infrastructure

2.1 Infrastructure and assets meet community needs

2.2 Vibrant centres, public domain, villages and streetscapes

2.3 Sustainable transport is encouraged

3. Our Future Planning

3.1 Prosperous and vibrant economy

3.2 North Sydney CBD is one of NSW's pre-eminent commercial centres

3.4 North Sydney is distinctive with a sense of place and quality design

4. Our Social Vitality

4.1 North Sydney is connected, inclusive, healthy and safe

5. Our Civic Leadership

5.1 Council leads the strategic direction of North Sydney

5.2 Council is well governed and customer focused

5.4 Council's service delivery is well supported

BACKGROUND

Council endorsed a new Local Infrastructure Contributions Plan (LIC) in November 2020 which came into effect on 1 March 2021. The Plan was formulated pursuant to the provisions of the Environmental Planning and Assessment Act and is a combination section 7.11 (nexus based) and s7.12 (flat rate) Plan. The North Sydney LIC represents a total works program of \$410M of which approximately \$181M is projected to be funded by the Plan over its 16-year life span.

In March 2021, the NSW Government announced its endorsement of the Productivity Commission's (PC's) recommendations in its November 2020 final report of the Review of Infrastructure Contributions in New South Wales for the Government ('PC final report')

A draft Bill amending the Environmental Planning and Assessment Act, 1979, was subsequently slated to be introduced into Parliament as part of the budget papers process. The draft Bill gives the Minister for Planning various powers to enact changes to the way that current local infrastructure contribution plans are structured as well as new powers to levy regional development contributions (to be paid to State Government).

On 26 July 2021 Council considered an update report and endorsed a submission for the purposes of consideration by an Upper House Committee Parliamentary enquiry.

Following the Parliamentary Inquiry the NSW Government agreed to defer progression of the amending Bill until such time as further details on the reforms had been released. In October 2021 further reform details were released for public consultation. Modelling and analysis was undertaken including engagement with Northern Sydney Regional Organisation of Councils (NSROC).

Throughout November 2021, North Sydney Council actively participated in a media campaign (led by the City of Sydney) to heighten awareness of and make representations against the proposed reforms.

The closing date for submissions was 10 December 2021. Given the challenges in reporting to Council as a result of the NSW Local Government elections, the NSW State Government requested that Council's lodge their technical submissions and then seek Council endorsement upon commencement of the new Council.

On 7 February 2021, a briefing was provided to Councillors on the reform impacts ahead of Council's formal consideration of this report.

CONSULTATION REQUIREMENTS

Community engagement is not being conducted by Council.

DETAIL

The Infrastructure Contributions Bill seeks to introduce legislation that will enable the NSW Government to implement the recommendations of the NSW Productivity Commission Review that was completed in 2020. The Bill contains various significant changes to enable the way that the current development contributions regime is applied and implemented. A summary of the key changes, as relevant to North Sydney include;

- Council's Contributions Plan (the section 7.11 component) will need to be reviewed by July 2024 to levy only for "development contingent" infrastructure which will need to fit into a definition of an "essential works list" (EWL). The effect of this is that there will be a reduced scope and quality of infrastructure able to be levied for and as a result less funding available to deliver supporting necessary infrastructure.
- Estimated costs of some infrastructure works will be subject to 'benchmark' costs. Initial analysis indicates these will be well below the required standard, particularly for metropolitan centres.
- The reforms also propose changes to how a council may charge s7.12 levies. Rather than the current methodology of a percentage of construction cost, a standard rate will apply. For residential development these would be \$6,000 per additional bedroom or in the case of a knock down and re-build scenario, a flat figure of \$15,000. For commercial development, the rate would be \$50 per square metre of additional floor space. Further details and examples of the impacts of these amendments are provided in the detailed submission at Attachment 1.
- The introduction of 'Regional Infrastructure Contributions' (RIC). The Bill specifically identifies that "no connection is required between the development of land to which

a regional infrastructure contribution relates and the object of expenditure of money required to be paid". This represents a new contribution type (of \$12,000 per dwelling and \$10,000 per apartment) which will be payable directly to the NSW Government. This new levy does not have any policy basis arising from the productivity commissions review of infrastructure reforms.

Dependent on the final details of the reforms, it is estimated that North Sydney Council could be between \$2.8-\$9.3million worse off under the proposed reforms. Under the announced transition arrangements, Council's current plan can continue to operate up until 1 July 2024. After this point, all NSW Councils must have a new plan in place consistent with the proposed requirements.

SUMMARY

Council is responsibly planning for and delivering the NSW Government's growth targets. Fundamental to managing and sustaining this growth, is Council's capacity to deliver corresponding local infrastructure. Medium to long term plans to deliver such infrastructure, may have to be reconsidered, reduced or abandoned under the proposed reforms. It is anticipated that the community's resistance to such growth will only be exacerbated if this occurs.

The capacity for the NSW Government to introduce a new category of regional contributions at the same time as curbing local government's capacity to levy local contributions, is of great concern. It is widely acknowledged that there is a limit to the extent that development sites can be reasonably levied and that the NSW Government has many more revenue streams at its disposal to fund infrastructure projects. The high degree of transparency and accountability that has characterised local government infrastructure funding collection and expenditure is not being replicated by the State with the proposed LICs. Notions of nexus to development are ignored and transparency is reduced.

In order to allow councils to effectively plan for and fund infrastructure necessitated by growth, a potential option suggested to the NSW Government may be to allow in-fill Councils to only be required to comply with an Essential Works List where overall residential contributions are above an identified threshold. The thresholds (or caps) to residential development could be established on a district level basis and then be subject to annual indexation.

This approach would provide a degree of certainty to developers in feasibility modelling as well as allowing councils to more effectively plan for and fund infrastructure delivery that is responsive to identified need. Periodic reporting of funds received, project expenditure and performance would provide an appropriate level of transparency and over-sight.

Since lodgement of the technical submission in December 2021 the submission contained at Attachment 1 has undergone some refinement for correctness and completeness.

It is recommended that Council endorse the more detailed submission provided at Attachment 1 and continue to make representations as per the recommendations of this report.



Local Infrastructure Reforms Submission by North Sydney Council

(including response to draft report from IPART
into Essential Works List, Nexus and benchmarking)

10 December 2021

NOTE: A submission was provided during the exhibition process for the proposed reforms.
Following the finalization of the Local Government elections held 4 December 2021, this
version of the submission is presented to Council on 21 February 2022 for its consideration
and formal endorsement.

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1.0 Introduction

This submission has been prepared in response to the most recently released (28 October 2021) reforms to NSW Local Infrastructure Contributions by the NSW Department of Planning, Industry and Environment (DPIE). This submission also responds to the release, by the Independent Pricing and Regulatory Tribunal (IPART) of the draft report – *Review of the essential works list, nexus, efficient design and benchmark costs for local infrastructure* (29 October 2021). Whilst running as separate processes, these matters are clearly inter-related.

This technical submission is provided ahead of the conclusion of the exhibition period being 14 December 2021. Following the NSW Local Government elections (held 4 December 2021), this submission will be presented to the new Council in early 2022 for its consideration, comment and formal endorsement.

Specialist external consultant input, on the projected financial modelling impacts of the proposed reforms, has also been sought via North Sydney Regional Organisation of Councils (NSROC). Where relevant, the methodology applied and assumptions made, are included in examples.

Due to the complexity of the proposed reforms and limited timeframe provided to respond, this submission is not exhaustive. Council reserves the right to respond to any further reform announcements, or as yet unidentified impacts, as this reform process progresses. Council staff are available to respond to any queries or matters requiring clarification. It is noted that this technical submission will be presented to Council in February 2022, at which time further input may be made.

2.0 Executive Summary

Consistent with the overarching strategic planning framework, Council is responsible for managing population, housing and employment growth as part of its planning role in the Greater Sydney Commission's Eastern Harbour City. Fundamental to this role, and consistent with community expectations, is the need to support growth with the necessary level of local infrastructure in order to maintain an appropriate level of amenity, health and overall well-being of residents and workers that live and work in North Sydney.

Contrary to assurances that "no council will be worse off under the proposed reforms", it is estimated that North Sydney Council will, dependent on likely final reforms, potentially be between \$2.8-\$9.3 million per annum worse off. Opportunities for delivery of infrastructure via Voluntary Planning Agreements will also be further curtailed as a result of the proposed reforms. Council's planned program of infrastructure works in the medium and longer term may have to be reconsidered and reduced. In addition, the quality of materials and finishes may be required to be reduced, especially in CBD environments, to accommodate such cuts.

The introduction of a Regional Infrastructure Contribution (RIC), with no corresponding obligation to establish any nexus as the basis for levying, nor any commitment to how and where the funds raised will be spent, is strongly opposed. This is contrary to the strict principles upon which local councils have been required to levy funds for several decades and which provide for a high degree of transparency. The RIC is contrary to these principles of

planning and accounting transparency, and its not clear why these long-standing requirements and restrictions that Local Government has had imposed upon it, are not applicable to the NSW Government.

North Sydney Council supports a joint review and reform of the contributions regime to address agreed inadequacies, however, opposes the introduction of mechanisms that prevent Council being able to reasonably and adequately provide for the level of growth and intensification being experienced in the North Sydney CBD and broader local government area. Further, the quality and amenity must align with community expectations and be sustainable over the medium and longer term under intense use.

3.0 Policy Commentary on proposed reforms

3.1 Section 7.11 reforms

3.1.1 Essential Works List and Nexus and Benchmark Costs

The proposed reforms include a requirement that all s7.11 plans prepared after 1 July 2024 must use a (as yet to be developed) standardised template and may only include items contained on an essential works list. IPART is developing a standardised set of benchmark costs and advice on efficient design. Councils will need to use these benchmarked costs unless a specific efficient cost estimate has been prepared or actual costs based on efficient design are determined following construction.

North Sydney Council has a Local Infrastructure Contributions (LIC) Plan that is a combination of s7.11 (contribution towards provision or improvement of amenities or services) and s7.12 (fixed development consent levies) for different development types. This plan only came into effect on 1 March 2021 following preparation and consultation through 2019/20. The North Sydney LIC includes a total works program of \$410 million of which \$181 million is projected to be funded by the Plan over its anticipated 16 year life span. The works schedule contained within the plan was the subject of public consultation (including industry), is reflective of community expectation and is responsive to the identified needs and future functions of the North Sydney LGA based on various endorsed Council plans and strategies.

The North Sydney LIC plan includes ambitious, but much needed, projects including Community facilities totalling \$25.5 million and public domain facilities and initiatives totalling \$163 million.

In setting the Terms of Reference for IPART to prepare an essential works list and benchmark costs, the Minister specifically precluded the inclusion of community facilities from the essential works list. This is understood to be due to the Productivity Commission considering them to be 'general costs' rather than being development contingent. This position is strenuously opposed, as it underplays the essential (multi-functional) role that modern community facilities play in the overall health, well-being and amenity of modern and diverse communities. This is even more critical in areas of higher density development where such facilities play a broader role that is often not able to be met within apartment housing. These community well-being objectives, have only been reinforced by the current Covid-19

Pandemic with community and personal interaction playing a key role in sustaining mental and physical well-being.

The interpretation of what constitutes public domain facilities appears to be a very narrow and restrictive approach that is not reflective of context and function. For example, the treatment (and cost) of providing a high quality public domain, befitting the North Sydney Centre (part of the Eastern Harbour City), is significantly higher than the methodology provided for base level costings provided for in the IPART report. The expectations of the role and performance of the public domain is significantly higher in a world city like the Eastern Harbour City, than in a local centre.

North Sydney Council LGA has the lowest rate of provision of open space per person in the North District. Areas of existing open space are heavily contested amongst different user groups. Many areas of open space also service users from outside the LGA (e.g. visitors and tourists enjoying prime foreshore parks, school children using open space at lunch breaks/physical education lessons and office workers). As a result, the limited open space has to 'work harder' to meet needs and significant expenditure (well above the benchmarks costs) is required which is still efficient. For example, benchmarks provided for a 'picnic area' of only \$4,800 in the IPART report are simply not reflective of the standard and need for many areas of open space that are intensively used.

The effect of these reforms is a significant reduction in the rates and amount Council will be able to levy under s7.11. A real example is detailed below:

110-122 Walker St (yet to be determined by the Sydney North Planning Panel)

The proposed GFA is 68,276m²

The existing GFA is 11,301 m²

Nett GFA is 56,974m² - convert to No of workers = 1 worker per 21m² (office development over 4 storeys) = $56,974.3/21 = 2,713$ workers.

The current rate in the NSC LIC (as most recently indexed) per worker is **\$3,980.00**. The developer contributions currently payable are $2,713 \times \$3,980 = \mathbf{\$10,797,740}$

Were Council to pursue a **s7.11 plan** under the proposed reforms then they would be subject to the essential works list (EWL) as well as bench-mark costs. The bench-mark costs and reduced items allowed to be included on the EWL would result in a significantly reduced per worker rate than currently contained in the *North Sydney LIC* (2020). Whilst there is still some degree of uncertainty as to whether some components of public domain facilities may be able to be categorised as footpaths, initial estimates indicate this be in the order of 40% reduction in current works schedule items. If reduced to an equivalent rate of **\$2,400** per worker this would equate to a payment of **\$6,511,000**.

Were Council to pursue and apply a **s7.12 plan** under the proposed reforms, then the maximum rate of \$50 per square meter would apply which would equate to **\$3,413,800**. In summary therefore, for the development of 110-122 Walker St as proposed:

Current NSC LIC Plan	\$10.8 million
Proposed S7.11 Approach	\$6.5 million
Proposed S7.12 Approach	\$3.4 million

The above example clearly demonstrates that Council would be considerably worse off under the proposed reforms. It is noted that a significant number of large developments that fit the type and scale of analysis as outlined above will be considered by Council in the next 5-10 years.

3.1.2 Relationship to rates reforms

On 5 October 2021, IPART released its final report and recommendation to the rate peg. The Minister for Planning (on 24 November 2021) advised that “no council would be worse off” under these reforms. Senior staff at the DPIE confirmed (in the information session held 25 November 2021) and subsequently in email advice (7 December 2021), that their interpretation of this statement was that this position was not contingent on rates reforms.

Contrary to this statement, is commentary in the recent draft IPART report on the essential works list and benchmarking (refer page 25) that states:

“From 1 July 2022, the rate peg will be adjusted for population growth and this will provide additional support to council’s to fund community facilities. While this should take some pressure off council’s with growing communities, for some the additional revenue from the adjusted rate peg may not be sufficient to fund community facilities.”

This statement infers that Council may in fact be worse off as a result of the exclusion of community facilities from the essential works list and ought use rates revenue to make up the shortfall. It also demonstrates a transfer of funding impact from developers to ratepayers.

Further, the rates reforms recently considered by IPART do not include commercial land-owners (only residential). This was expressed as a shortcoming of the rates reform in the final report from IPART. Specifically, at page 16:

“As a starting point we identified councils that derive more than 50% of their rates income from non-residential sources as potentially requiring a different approach.”

City of Sydney derives approximately 75% of its rates revenue from business ratepayers. Our preliminary analysis found varying its total general income as its population grows may overstate the revenue required to service this growth. We consulted with City of Sydney and undertook further analysis as part of our review and at this stage consider the same approach should apply for all councils. The effects of rate pegging make it difficult to isolate the cost of servicing additional residential population. We recommend maintaining the standard approach for all councils and investigating the impact of our methodology over time to assess if this approach is reasonable.”

North Sydney Council derives approximately 40% of its rates income from non-residential sources (i.e. business rates) and this proportion will increase with the growth of the North Sydney CBD. North Sydney Council therefore also requires a different approach.

Whilst the focus of this submission is not on the rates reforms which are a separate process, the financial impacts on North Sydney as a result of the proposed contributions reforms are real and the expectation that any shortfall can be “made up” through rate revenue is unacceptable, particularly in the context of the IPART commentary regarding non-commercial rates.

The application of a blanket standardised Essential Works List and bench-mark costings is opposed. The administrative ‘hoops’ to be navigated in order to vary these appear to be prohibitive. It is Council’s position that a s7.11 plan be allowed to provide a works schedule reflective of identified local need and circumstance, and supported by relevant local needs studies, demographics and analysis. The requirement to publicly exhibit LIC plans, as North Sydney Council did prior to the recent adoption of its current plan, is transparent and accountable.

3.1.3 Land value contribution (LVC’s)

The proposed reforms to introduce a land value contribution mechanism incorporated into a s7.11 plan are a new initiative. The purpose of this reform is to provide an alternative approach to collecting contributions for new public land that supports future development. It has been specifically designed for greenfield release areas where changes to planning controls enable more intensive development and result in higher land values.

During the consultation process, senior DPIE staff clarified that whilst much of the work has focussed on greenfield release areas, infill councils were welcome to explore and test its potential applicability in established areas.

Given the established and future development context of North Sydney (as defined in Council’s existing *Local Environmental Plan (LEP)*, endorsed *Local Strategic Planning Statement (LSPS)* and *Local Housing Strategy (LHS)*) it is considered unlikely that this mechanism would be suitable for North Sydney. It may have some applicability or warrant further exploration on a precinct wide basis (such as the St Leonards/Crows Nest Planned Precinct) however, this precinct has already been progressed and finalised by DPIE.

The mechanism is supported in principle, however, to be successful, it is contingent on a finite number of landowners and preparation of relevant infrastructure planning at an early stage in the planning process. Experience in the Sydney Metropolitan context has tended to see land transactions and speculation (for example as soon as an early planning study is announced) and consequently the preparation of a LVC, may come too late in the process after which substantial land value uplifts have already been achieved by owners.

North Sydney Council has negotiated Voluntary Planning Agreements (VPA) to help support growth and the delivery of public benefits associated with Planning Proposals. Planning Proposals have often involved significant uplifts in land values at the re-zoning stage with sites often being on-sold following the re-zoning process. Recent DPIE practice notes (February 2021) state that Planning Agreements should not be used to capture land value uplift resulting from re-zonings. It is stated that the reason for this is that it can lead to the perception that planning decisions can be bought and sold. From a policy perspective the introduction of a

LVC (capped at 20%) would appear to be at odds with recent (VPA related) directives in this regard. Council would welcome the introduction of a similar mechanism, that can be consistently applied, to help provide or contribute towards identified local infrastructure items. Failure to “share” the uplift in land value while restricting LICs effectively privatises profit and transfers cost to the general public.

3.2 Section 7.12 reforms

Local levy conditions give councils options to more easily fund the infrastructure required to support development, without having to establish full nexus and apportionment required for local infrastructure conditions under s7.11.

The EP&A Act provides that regulations can specify how the proposed cost is to be estimated or determined and can set the maximum percentage charge. Clause 25K of the EP&A Regulation currently sets the maximum section 7.12 levy at 1% of the proposed development cost, and councils can apply to increase the rate to up to 3% based on the criteria set out in a Practice Note.

The Act amendments in the Bill will allow local levy conditions to be set more broadly than a percentage of development cost. Under the proposed new system, the regulations will specify a per dwelling basis for residential development and a per square metre basis for non-residential development. The NSW Productivity Commissioner recommended raising the rate to the equivalent of 3% of development cost for residential development, expressed as a rate per additional dwelling. For other development (commercial, retail etc) the Commissioner recommended a rate per additional square metre of gross floor area, intended to be the equivalent of 1% of development cost.

The proposed changes set a new maximum levy under s.7.12 as follows;

- \$15,000 per dwelling (including knock down and re-builds)
- \$6,000 per additional bedroom (for alterations and additions)
- \$6000 per bedroom for serviced apartments, boarding houses, hotels and aged care facilities.
- \$50 per sqm for new commercial development, and
- \$35 per sqm for new retail development.

The figure of \$15,000 per new dwelling has been arrived at by applying a 3% levy to the average new dwelling construction cost (i.e 3% x \$500,000) in metropolitan Sydney. This is not reflective of the typical cost of a new dwelling in North Sydney which is above \$850,000.

Council has recently adopted a combination s7.11 and s7.12 LIC Plan (commenced 1 March 2021). This includes a 1% levy (based on cost of development) for residential development (including knock down and re-builds and alterations and additions). For example, a development constituting \$400,000 worth of alterations and additions to a dwelling house would, involving two additional bedrooms, attract a levy of **\$4,000**. The same development under the proposed changes would attract a levy of **\$12,000**. Another comparative example under Council’s current plan, is a knock down and re-build of a new dwelling costing \$850,000 would attract a levy of **\$8,500**. The same development under the proposed changes would

attract a levy of **\$15,000**. It is contended that the proposed approach is expected to better balance the benefit of a simple s7.12 contributions plan against the more administratively demanding preparation of s7.11 contributions plans in areas with high infrastructure need. Councils will be able to assess the relative financial benefit when deciding whether to prepare a s7.11 or s7.12 contributions plan with regards to the differential s7.12 rates set out in the regulations.

Whilst Council has only recently implemented its LIC Plan, analysis of levies applied so far, including average constructions costs of Development Applications, approvals rates for development types attracting a levy, have revealed that the potential increased available revenue (under s7.12) for residential development are not sufficient to close the gap between projected shortfalls under North Sydney Council's current LIC Plan and those proposed.

The proposed s7.12 levy system (applying to development type rather than cost of works) also presents some challenges in terms of interpretation. For example when does a room marked on a set of plans as a 'study' or 'media room' get categorised as a bedroom (and thus attract a \$6,000 levy). Past experience demonstrates that applicants will title rooms to minimize impact of changes regardless of their ultimate use. The levy must therefore be applied per additional room (rather than bedroom).

Whilst in-principle, the application of a simpler levy system has some appeal in terms of ease of application, the increasing of some of these levies and shifting towards householder applications is not be desirable. The example provided previously of a large CBD development being levied between 40-70% less contributions (depending on the approach taken) and a householder carrying out domestic work and paying much higher contributions compared with Council's recently endorsed LIC Plan, is both unreasonable and inequitable. It is difficult to accept the shift in the proportion of funding responsibility towards domestic development and away from larger scale developers.

Due to there not being a need to establish a nexus for demand, it is currently understood that there is no intention to extend the Essential Works List to apply to s7.12 plans.

3.3 IPART review of essential works list, nexus and benchmarking

In October 2021, IPART released its draft report into the review of the essential works list, nexus, efficient design and benchmark costs for local infrastructure. Whilst being exhibited as a separate process, the impacts of these findings are directly related to the Local Infrastructure Reforms impacts and as such are addressed in this submission.

3.3.1 Terms of reference

The terms of reference provided to the IPART are limiting, and by specifically excluding community facilities and any expansion beyond the current items on an essential works list, the outcome has been effectively prescribed reducing the ability for IPART to provide a more robust and holistic analysis. In the context of a holistic review of a contributions regime, this appears to be a missed opportunity.

3.3.2 Methodology

The reform direction to apply an essential works list to all future contributions plans appears to be a response to historic circumstances where (particularly in greenfield release areas) costs per residential lot were sometimes significant (upwards of \$50-60,000 per lot).

Since 2012, the application of a maximum contribution threshold per lot/dwelling has applied. Only plans seeking to impose a rate higher than were required to comply with an essential works list required the approval of IPART. North Sydney Council's current LIC Plan does not exceed the \$20,000 threshold per additional dwelling in infill areas. The application of a standardised Essential Works List and benchmarking of costs fails to take into account the significantly variable nature of different local government areas.

For example, North Sydney Council area has the lowest rate of provision of open space per person in the North District. Areas of existing open space are heavily contested amongst different user groups. Many areas of open space also service users from outside the LGA (e.g visitors and tourists enjoying prime foreshore parks, school children using open space at lunch breaks/physical education lessons and office workers). As a result, the limited open space has to 'work harder' to meet needs and significant expenditure (well above the suggested benchmarks costs) is required which is still efficient by extending useful life and reducing repair and replacement. For example benchmarks provided for a 'picnic area' of only \$4,800 in the IPART report are simply not reflective of the standard and need for many areas of open space that are intensively used in North Sydney.

The interpretation of what constitutes public domain facilities appears to be a very narrow and restrictive approach that is not reflective of context and function. For example, the treatment (and cost) to provide a high quality public domain, befitting the North Sydney City centre (part of the Eastern Harbour City), is significantly higher than typical base level costings. The expectations of the role and performance of the public domain is significantly higher in a world city like the Eastern Harbour City, than in a local centre. The methodology included in the draft IPART report outlines some consideration for more "*highly constrained areas*" that have high quality footpaths and road pavement, high-to-heavy traffic density and heavily congested services. Construction in these environments would also involve significant reinstatement costs and disruption to traffic. A site constraint allowance of around 30-40% is suggested. Cost estimates of individual components have not been provided in the accompanying benchmarking report (prepared by Cardno) but in examples provided, allowance has only been made for a 1.5m wide footpath.

North Sydney Council has spent and installed as part its public domain upgrades (high quality granite paving) which costs on average \$750m². These costs are considerably higher but are well justified and reasonable in the circumstances. If an accepted rate for a standard concrete footpath of \$170 per square meter were applied, then on a project size of for example 1000m² the difference become significant (\$750,000 for granite) against \$170,000 for standard concrete. In order to deliver liveable, connected and accessible communities, it is essential that the interface between the private and public domain be planned and funded as an

integral part of the development process. The application of a highly regulated Essential Works List as proposed reduces Council's ability to do this successfully.

3.3.3 High administrative burden

The draft IPART report does recognise that infrastructure needs differ between councils and that in some instances benchmarks costs for items are not likely to provide a reasonable cost estimate. The provision of flexibility to allow councils to identify cases where benchmarks are not accurate is supported. Similarly, the periodic review and updating of costs are supported, however, it is suggested this needs to be done annually due to the recent volatility in pricing of specialised materials and items.

The administrative burden, however, appears to be a return to the case-by-case approach that the simplification objective that the overall reforms are intending to address.

3.3.4 Recoupment of interest costs

The proposed recommendations to allow councils to recoup interest costs incurred where they are forward funding infrastructure identified in the contributions plan are welcomed. It is noted however, that the decision to allow deferral of payment of local infrastructure contributions for major developments, until the occupation certificate stage, presents further challenges for councils to budget for and deliver infrastructure at the time it is needed. The implication that this could occur through borrowing does not consider the inconsistency of contribution revenues and the fact that they cannot be relied on to service a fixed schedule of debt servicing costs.

Summary

In order to allow councils to effectively plan for and fund infrastructure necessitated by growth, reflective of local need, a potential option for consideration may be to allow in-fill councils to only be required to comply with an Essential Works List where overall residential contributions are above an identified threshold. The thresholds (or caps) to residential development could be established on a district level basis and then be subject to annual indexation.

This approach would provide a degree of certainty to developers in feasibility modelling as well as allow councils to more effectively plan for and fund infrastructure delivery that is responsive to established need. Periodic reporting of funds received, project expenditure and performance would provide an appropriate level of transparency and oversight.

3.4 Regional Infrastructure Contribution

3.4.1 General

The NSW Government introduced the *Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021* into Parliament on 22 June 2021 to give effect to recommendations of the NSW Productivity Commissioner's *Review of Infrastructure Contributions*, (released in December 2020). A key reform introduced by the Bill is a new framework for regional infrastructure contributions to help meet the cost of infrastructure

provided by the NSW Government, such as major roads, schools and regional parklands. Under the new framework, a State Environmental Planning Policy will be able to be made to require regional infrastructure contributions to be paid.

Across the regions, the same rates of \$30 per square metre of new floor area for commercial development and \$15 per square metre of gross floor area for industrial development will apply, as recommended by the Productivity Commissioner. The rates for residential development within Greater Sydney will also be generally consistent with the Commissioner's recommendations, being \$12,000 for a dwelling house and \$10,000 for residential flat buildings and other forms of higher density housing. It is unclear whether the RIC will also apply to knock down and re-build residential development or only to additional dwellings being created on a site.

RIC's will be paid into a special statutory fund, established by the Bill (the RIC Fund). The regional infrastructure that can be funded includes state and regional roads and other transport infrastructure, hospitals, schools, parks and emergency services. The level of commitment of collected funds being actually spent on their intended purpose remains unclear. For comparative reference, on average less than 30% of collected by the waste levy in between 2012-2017 was returned to local government or the waste industry through policy or programs*. The remainder was either unallocated or absorbed into general State revenue. There is no assurance that a similar outcome would not occur for funds received under the proposed RIC.

* *New South Wales. Parliament. Legislative Council. Portfolio Committee No. 6 – Planning and Environment. – Report 7 March 2018 and situational analysis report prepared for the NSW Environmental Protection Authority – April 2019* The collection of such contributions by the NSW Treasury, is fundamentally contrary to the long-standing mandate of clear nexus between the source of contributions and their expenditure that Local Government has observed for decades. This clear nexus has been a fundamental component of local government contributions planning with development charges collected and applied in the local area in which the development takes place for decades. The proposed regional contributions framework introduces a level of opaqueness in a contributions system that is currently characterised by high levels of transparency as practiced by Local Government. The revenue base of Local Government is very limited as has been widely expressed previously. The NSW Government, on the other hand, has a diverse range of policy levers at its discretion to raise revenue for essential infrastructure and also receives significant revenue every time a parcel of land or dwelling is transferred, in the form of stamp duty.

Since the release of the latest exhibition material, the NSW Minister for Planning has confirmed that the revenue received will be spent in each region that is collected (as defined by the draft SEPP). For North Sydney, this includes all of Metropolitan Sydney (including the Blue Mountains). There is therefore no assurance or confidence that contributions paid as a result of development in the North Sydney LGA will be spent in or remotely near the North Sydney LGA.

3.4.2 Impact on Voluntary Planning Agreements

The introduction of a Regional Infrastructure Contribution (RIC) will further impact on Local Council's ability to negotiate and enter into Voluntary Planning Agreements. North Sydney's established practice has been to lead comprehensive planning studies that identify opportunities for growth and opportunities for the delivery of public benefits to support that growth. These studies are underpinned by community consultation and endorsement by Council.

Subsequent owner-initiated planning proposals, often seeking considerable development uplift) are typically accompanied by offers to enter into planning agreements. Negotiated public benefits can include land dedication, embellishment of public domain, delivery of community facilities, affordable housing and contributions towards local infrastructure. These agreements undergo public consultation and there is a clear understanding of what deliverables (including timing) which helps ensure a high level of transparency and community confidence.

The introduction of a RIC will significantly curtail Council's ability to negotiate these agreements. This was evidenced when the NSW State Government Introduced a 'Special Infrastructure Contribution' (SIC) of \$15,100 per dwelling, as part of the St Leonards Crows Nest 2036 Plan. Following are four examples of Planning Agreements that have been negotiated and entered into, located within the St Leonards Crows Nest 2036 Planned Precinct.

These applicants have subsequently been able to receive exemptions to the (existing) SIC on the basis that negotiations had commenced prior to the SIC being exhibited and that the VPA was delivering identified public benefits within the precinct. It is understood there is no such similar provision (for an exemption) to be able to occur in the new RIC.

Site	Date VPA executed	Public benefits
617-621 Pacific Highway	25/06/18	Dedication to Council, two entire fitted out floors within the podium of a future development on the site for the purposes of an arts centre with an approximate value of \$16.5m.
575-583 Pacific Highway, St Leonards	26/07/19	A monetary contribution of \$4,095,803 for the purpose of contributing to new open space within the Precinct,
23-35 Atchison St, St Leonards	17/09/20	A monetary contribution of \$2.8m for the purposes of contributing to new open space within the precinct, a 5m wide land dedication to Oxley St as well as embellishment works and provision of a 6m wide publicly accessible through-site link
50-56 Atchison St, St Leonards	27/01/22	A monetary contribution of \$800,000 for the purposes of contributing towards the public open space within the as well as provision of a through-site link.

The above table indicates the magnitude of public benefits that would potentially have been foregone (or substantively reduced) as a result of the introduction of a RIC (which will replace the existing SIC).

In numerous more recent discussions with proponents within the St Leonards Crows Nest area affected by the SIC, a willingness and preference has been expressed to enter into a VPA as the delivery of a local benefit typically delivers a better planning outcome that is responsive to identified local need. In granting the above exemptions the DPIE has indicated that further exemptions, where negotiations commenced at a later date, will not likely be entertained.

Due to the imposition of a new RIC (\$10,000 per unit) across the LGA, in addition to Council's current Local Infrastructure contributions, proponents have claimed feasibility constraints as the limiting factor to consider entering into a VPA.

Whilst the principle of RIC is objected to for the reasons outlined earlier, if it progresses it is requested that a provision be included that allows for a developer to seek an exemption to the RIC where it can be identified that local infrastructure and/or public benefit, will be delivered to an equal or greater value.

4.0 Financial impacts of reforms on NSC

4.1 Modelling methodology and assumptions

In response to the release of further reform details NSROC engaged specialist consultants to assist in preparing updated modelling of the likely financial impacts of different reform scenarios. A separate submission has been prepared on behalf of NSROC councils.

With respect to the latest proposed amendments to the s7.12 contributions regime, to provide input to the modelling tool, Council reviewed past approval data to ascertain a reasonable estimate of the likely number of applications and quantum of development that may attract a greater s7.12 contribution than is applied under Council's current plan. Exhaustive statistics were not available and Council, having only recently implemented its current plan, did not have extensive historical data for the new development categories/types.

These estimates were input into the model and different variable and growth assumptions analysed. The model also took into account the introduction of isolated contribution reform impact scenarios by individual reform changes (e.g. s7.11 or s7.12) and then bundled them (e.g. s7.11 and s7.12 combinations) so that the impact of different reform impacts could be assessed. The revenue impacts of different development scenarios (based on assumptions) could allow Council to better consider the option of adopting the proposed new maximum s7.12 levies rather than a s7.11 contributions plan.

It is noted that estimated income from Council's current plan is predicated on certain growth assumptions (that helped inform the plan preparation) and these estimates vary from year to year.

4.2 Financial impacts

The proposed reforms include measures such as the application of regular indexation PPI (producer price index) to costs in s7.11 plans as well as a restriction of items to be included on the Essential Works List. These introduce a degree of variability to the estimated revenue impacts.

Various scenarios were modelled. Under one scenario - where Community facilities, indoor recreation facilities and public domain facilities were excluded from the essential works list and maximum available s7.12 rates applied to other development, it is estimated that North Sydney Council may be up to \$9.3 million dollars per annum worse off under the proposed reforms than the current projected income from the plan.

The reduction in ability to effectively levy under s7.11 would then suggest the application of a LGA wide s7.12 plan (with the maximum available rates applied) may be more effective. Under this scenario Council would be \$2.8 million per annum worse off than the current projected income from the plan. Several other scenarios of combination s7.11 and s7.12 plans were also examined with degrees of shortfall falling within this range.

Under the projected growth estimates, the only circumstances where Council was 'better off' under the reforms, were where only part of the reforms (application of the Producer price index) were applied (\$0.6 million better off). Similarly, were only the s7.12 reforms applied (i.e. current s7.11 provisions retained and increased rates under s7.12 applied then it is estimated Council may be up to \$1.1 million better off). Neither of these scenarios are likely to occur as they don't align with the stated reforms but were modelled and tested for completeness.

Additional, to the modelled shortfall of (between \$2.8-9.3million) in local contributions, is the significant impact of a reduced capacity to negotiate Voluntary Planning Agreements. This is as a direct result of the 'crowding out' effect of the proposed Regional Infrastructure Contribution and may total several million dollars.

4.3 Operational impacts

The uncertainty around the ability to include certain items in a future Essential Works List combined with the impact of the application of benchmark costs, make it more difficult for Council to plan for and deliver local infrastructure projects that are wholly or partially reliant on funding from Council's LIC. It is understood that Council's existing plan can continue to operate up until 1 July 2024 with some capacity to apply for an extension of this time. Criteria around eligibility of an extension of the continued application of the plan are unclear. Given the recent implementation of the North Sydney LIC, and the high levels of growth currently being experienced in the North Sydney Centre, it is hoped that the prospects of a successful extension application are good. The degree of uncertainty, however, for Council's future revenue streams makes it difficult to schedule and deliver projects.

4.4 Community expectations

North Sydney Council has responsibly planned for and accommodated population, housing and employment growth through its planning policies and instruments as required by the NSW Government and the Greater Sydney Commission's North District Plan. The disruption to local amenity and living standards represented by population or worker growth in an already densely populated environment like North Sydney, should not be underestimated. An essential and critical enabler of growth is the community's confidence that supporting infrastructure will be provided by Council to ensure that amenity and standards of living are maintained and not eroded systematically over time. When the financial capacity to continue to fund such infrastructure is undermined, it is likely that some of these works will either have to be significantly delayed, delivered to lower standards or abandoned altogether.

A significant reduction in projected infrastructure funding will limit Council's capacity to deliver essential community infrastructure and significantly impair Council's capacity to facilitate the growth required by the NSW Government. The recreation and public domain projects essential to facilitate increasing urban density will simply not be able to be funded by Council should the current infrastructure reforms be adopted. Concurrently, the very real resistance that is experienced in North Sydney to population and housing growth within established communities, will be further exacerbated and community confidence undermined as Council's capacity to deliver infrastructure that sustains and "softens" growth impacts, is diminished.

The proposed reforms have the potential to reduce the attractiveness of North Sydney as a development prospect. For example, the significant investment in the public domain, as currently contained in the works schedule of the North Sydney LIC, provides a degree of confidence for investors/developers to progress developments in and around the North Sydney Centre. The catalytic effect of the delivery of Metro (Crows Nest and Victoria Cross Stations) and significant development interest, needs to be supported with the provision of high quality and diverse public domain spaces in concert with new development.

5.0 SUMMARY

Council endorsed a new LIC Plan in November 2020 which came into effect on 1 March 2021. The Plan was formulated pursuant to the provisions of the *Environmental Planning and Assessment Act 1979* and is a combination section 7.11 (nexus based) and s7.12 (flat rate) Plan. The North Sydney LIC represents a total works program of \$410 million of which approximately \$181 million is projected to be funded by the Plan over its 16-year life span.

Council is responsibly planning for and delivering the NSW Government's growth targets. Fundamental to managing and sustaining this growth, is Council's capacity to deliver corresponding local infrastructure. Medium to long term plans to deliver such infrastructure, may have to be reconsidered, reduced or abandoned under the proposed reforms. The community's resistance to such growth will only be exacerbated if this occurs.

The capacity for the NSW Government to introduce a new category of regional contributions at the same time as curbing local government's capacity to levy local contributions, is of great

concern. It is widely acknowledged that there is a limit to the extent that development sites can be reasonably levied and that the NSW Government has many more revenue streams at its disposal to fund infrastructure projects. The high degree of transparency that has characterised local government infrastructure funding collection and expenditure is not being replicated by the State with the proposed LICs, nexus to development paying the charges is reduced and, concomitantly, transparency is reduced.

In order to allow councils to effectively plan for and fund infrastructure necessitated by growth, reflective of local need, a potential option for consideration may be to allow in-fill Councils to only be required to comply with an Essential Works List where overall residential contributions are above an identified threshold. The thresholds (or caps) to residential development could be established on a district level basis and then be subject to annual indexation.

This approach would provide a degree of certainty to developers in feasibility modelling as well as allow councils to more effectively plan for and fund infrastructure delivery that is responsive to established need. Periodic reporting of funds received, project expenditure and performance would provide an appropriate level of transparency and over-sight.