



Review of infrastructure contributions in NSW issues paper

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NSW Productivity Commissioner





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SGS Economics and Planning Pty Ltd
ACN 007 437 729
www.sgsep.com.au

Offices in Canberra, Hobart, Melbourne, and Sydney, on Ngunnawal, muwinina, Wurrundjeri, and Gadigal Country

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Four frames of development contributions

01 Four frames of development contributions

Development contributions exacted through the planning system can be grouped into four mutually exclusive categories, premised on the grounds of user pays, impact mitigation, value sharing or inclusionary requirements.

The distinction between these categories is briefly described below. Understanding the distinction between these four categories is fundamental to developing a robust system for development contributions. In SGS's view the NSW Productivity Commissioner Review of Infrastructure Contributions should utilise and reference these four frames.

Contributions premised on user pays grounds

User pay contributions are levied to recoup the cost of planned infrastructure to meet the needs of incremental development, which are distributed across existing development and successive new development projects according to projected share of usage. This rationale underpins the original Section 94 provisions in NSW (now Section 7.11 contributions). It relies on demonstration of usage nexus.

Contributions premised on impact mitigation grounds

This rationale refers to the obligation on development proponents to make good any unanticipated adverse effects of their projects, including reduced functionality or levels of service from surrounding infrastructure. Although they have a cost to the proponent contributions for impact mitigation works should not be construed as a public benefit. These measures are required to ensure there is no net loss of amenity or functionality for the community, rather than an improvement.

Contributions premised on value sharing grounds

This refers to the requirement for proponents of development to pay a de facto licence fee for the development rights awarded to them via rezonings and/or granting of development approvals. In the absence of such a licence fee, the value of these development rights would be capitalised in residual land value and therefore fully captured by the site owner, to the exclusion of the wider community. This form of development contribution is also sometimes referred to as 'planning gain' or 'betterment charge'. These extractions should be calibrated to the actual uplift in residual land value, which is the measure of the value of the development rights, rather than construction costs or the total value of the development.

Contributions premised on inclusionary requirement grounds

Inclusionary requirements are the design provision that successive projects must incorporate to ensure that development proceeds in an orderly fashion, sustainably and within community expectations. Examples of inclusionary provisions include: car parking requirements; mandatory compliance with building form, design and density requirements; special provision in conservation areas; or incorporation of affordable housing to meet environmental requirements for social mix. In some cases, for example car parking and affordable housing, inclusionary provisions can be discharged by making cash in lieu contributions for the requisite provisions to be satisfied in off-site locations.



Ten recommendations

02 Ten recommendations

The following suggested reform recommendations represent a comprehensive and internally consistent package directly referencing the 'four frames'.

In the discussion of issues and questions which follows – which directly follows the prompts contained in the Discussion Paper (Table S1 on pages 5-9) – we also provide recommendations for reforming elements of the contributions system as currently established, consistent with the four frames approach.

1. Contextualise the different types of development contributions within an understanding of the 'four frames' for development contributions. Each contribution mechanism should align with the disciplines of justification and cost apportionment of the relevant frame. Contributions within each frame are mutually exclusive and additive.

'User pays' contributions

2a. Revitalise user pays (s7.11) contributions system with additional state support, endorsed 'industry standard' on-line model and guidelines for proper calibration and management, for effective and integrated local land use and infrastructure ('essential' and otherwise) planning

The discussion paper notes that 'contributions plans are complex and costly to administer'. This might imply that the effort is not worth the return. This is not the case given the millions of dollars invested in urban development and the benefits from effective

and integrated infrastructure and planning. In SGS's experience with councils that have established rigorous contributions plans the discipline of the plan making process and the strategic thinking that has been required have elevated the quality of strategic, infrastructure and asset planning in the council, while supporting better and more liveable communities. The reality is that the process and practice of preparing properly calibrated and rigorous user pays based contributions plans has not been sufficiently resourced and supported as a critical element of urban management.

2b. Provide standard or 'off the shelf' but low cost (bottom quintile) option if Council does not want to prepare contribution plan - limit to approved or essential infrastructure list

Reducing complexity via the option of standard or 'smoothed out' charges risks foregoing the benefits of effective and integrated land use and infrastructure planning, as well as diluting price signals for development, leading to an inevitable degree of cross subsidisation by the community or other developers or poorer, infrastructure deficient development.

However, the option of adopting a standard charge as an alternative to preparing a contributions plan should be available, provided it is set 'low', at the lowest quintile of the range of typical contribution rates. A higher, standard charge based on an 'average' will not be appropriate and will be open to challenge in many contexts (and in SGS's view has not worked in Victoria).

3. Allow for payment at Occupation Certificate stage

Deferring payment of infrastructure contributions until prior to the issuing of an occupation certificate is an appropriate reform. This allows developers to generate income before having to pay development contributions. Requiring payment of contributions early and 'up-front', at the construction certificate stage, effectively creates a barrier to entry for smaller developers with lower capacity to tolerate risk and access development finance, so delaying the timing for payment would also represent a reform to enhance industry access and efficiency.

4. Establish contributions pooling for forward funding of infrastructure (e.g. NSW Local Government Local Infrastructure Financing Corporation)

Forward funding of infrastructure is difficult with isolated council specific contribution collections. Funds collected via contributions schemes should be pooled and drawn down by Councils as required, ensuring that infrastructure and development can be properly sequenced. A Local Government Local Infrastructure Financing Corporation could be established to centrally collect funds and provide financing as required to invest in development infrastructure, according to transparent plans and accountability measures. This could operate on a similar basis to the National Housing Finance Investment Corporation (NHFIC) which aggregates finance for community housing providers at a federal level.

5. Abolish s.7.12 contributions

Section 7.12 levies are anomalous and do not readily fit into the four frames approach. They should be abolished in favour of an enhanced user pays system (including a standard, low charge option) and more formalised system of value capture (related to the change in land value, rather than to development costs), such as a Development Licence Fee system outlined below.

Impact mitigation contributions

6. Define scope of allowable impact mitigation conditions on Development Approvals

Impact mitigation requirements are sometimes included as conditions of development approval, or sometimes negotiated as part of Voluntary Planning Agreements. This category of contributions should be more formally acknowledged and referenced in guidelines which would identify allowable and appropriate circumstances and infrastructure where they could be included as conditions.

Value sharing contributions

7. Establish Development Licence Fee based on area specific, pre-scheduled rates, set at say 80% of estimated change in land value (pre and post development approvals or rezonings/FSR changes)

SGS suggest that value capture approaches be formalised in the form of a Development Licence Fee. The rationale for this is as follows. The granting of additional development rights, and access to them for the landowner, is entirely a matter of public decision resolved on town planning merits. Through the creation of town planning controls, development rights are reserved by the State. In this sense, they are analogous to other resources which are attached to real estate but are not owned by the land titleholder, for example, minerals which may lay below the surface or the water that falls onto the land from the sky. Like these other publicly reserved resources, the State is, in principle, entitled to charge a fee for access to development rights, but where it doesn't the value of the rights defaults to the landowner creating a windfall when favourable planning approvals are achieved. Where these rights are vested in the community their value is retained or available for investment in local community infrastructure or economic development (new parks, public art, culture, affordable housing and so on). Further discussion on this approach and the rationale can be found in SGS Occasional Paper, [Value capture through development licence fees](#).

SGS suggest that the proceeds of the Development Licence Fee be collected by Treasury, to separate the process from the approvals system, with a share redistributed back to Councils in line with and to support planned development, with some retained for state infrastructure which might otherwise be funded through Special Infrastructure Contributions.

The comprehensive application of value sharing as a pre-scheduled Development Licence fee would effectively eliminate the impact of land price inflation and related cost escalations for development contribution schemes. This is because the change in land value from any expectation or granting of development rights will be subject to the Development Licence Fee.

8. Abolish SICs and SEPP70 AHCS

A comprehensive value capture or Development Licence Fee approach will enable SICs and SEPP 70 Contributions to be abolished. These are value capture approaches by another name. Funds collected from the Development Licence Fee would be appropriately dedicated or used for state level infrastructure and affordable housing.



Inclusionary requirement contributions

9. Allow for need justified Affordable Housing Inclusionary Zones

The current SEPP 70 Affordable Housing Contributions Scheme system, as outlined in the NSW Government Guideline¹, limit contributions to affordable housing equivalent to a nominated percentage of floorspace (i.e. 5-10% 'dependent on viability') only in areas where up-zoning occurs. They are therefore only a partial mechanism for affordable housing (not likely to be established in many regional areas where rezonings will be limited).

Inclusionary zoning which would typically require a contribution from all development in an identified precinct or local government area represents a more comprehensive approach and should be used as the primary mechanism in NSW, (complemented by funding from a value capture approach such as a Development

Licence Fee). A relatively low IZ 'rate' of say 5%, gradually imposed to allow for land values to adjust, and broadly applied could generate significant funds for affordable housing (though still unlikely to be sufficient to meet the supply gap, suggesting a critical and continual role for funding and subsidies from state and federal government).

10. Replicate Victorian system for open space dedication via inclusionary provisions at land and strata subdivision

The NSW Government Architect's new standards for open space provision (and targets suggested by the NSW Premier's Priorities i.e. increase the proportion of homes in urban areas within 10 minutes' walk of quality green, open and public space by 10 per cent by 2023) establish access rather than 'per capita' provision rates for open space.

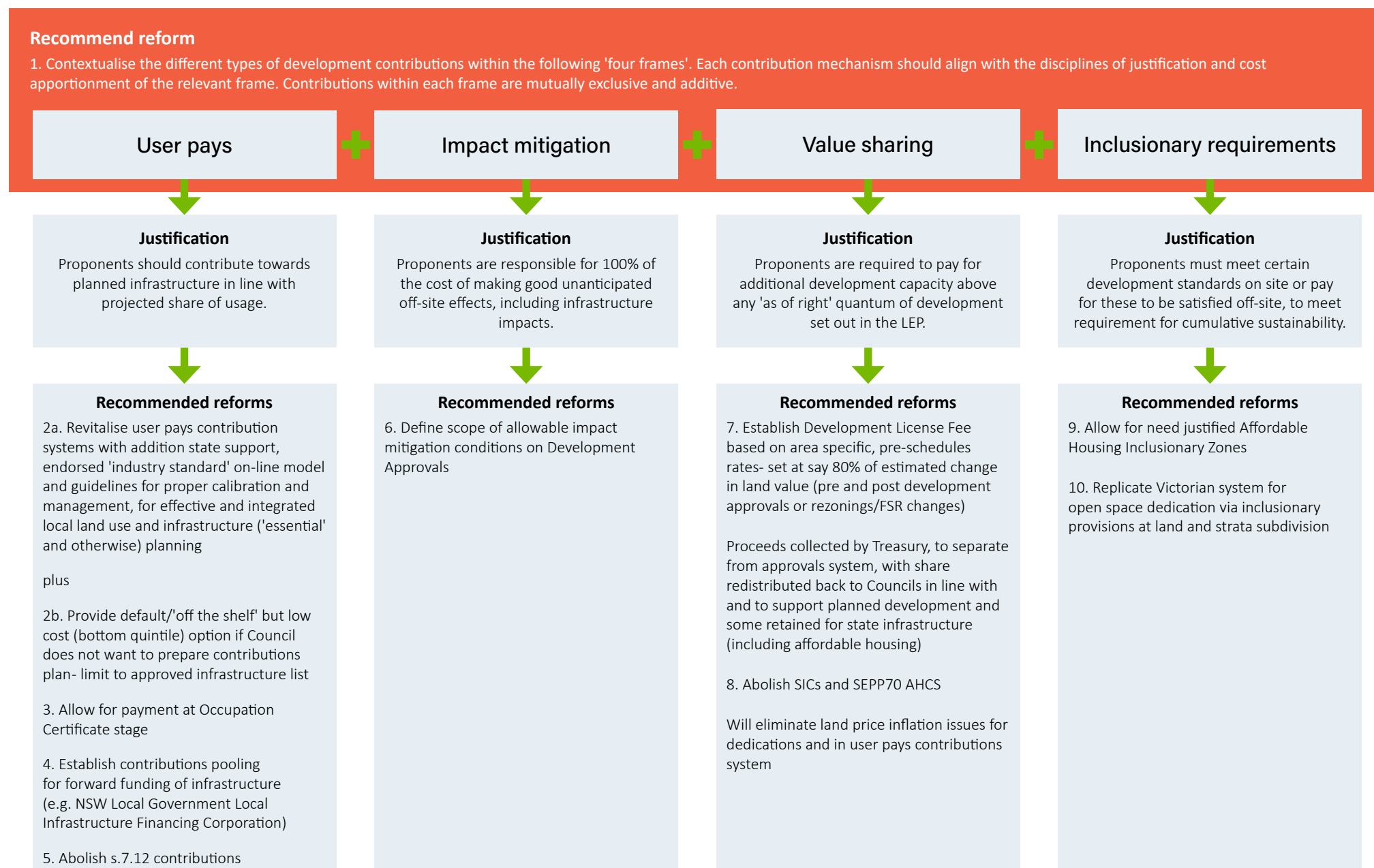
Inclusionary zoning requirements provide a means for ensuring land/funding for open space is secured. The Victorian Subdivision Act 1988 demonstrates the use of this mechanism for open space delivery, requiring a minimum 5% contribution for useable open space where sites are subdivided into three or more lots (including strata subdivisions). This is often provided as cash in lieu of land and may be used to embellish existing open space or purchase new sites. Councils may increase this inclusionary requirement based on an open space plan or strategy.

A note on VPAs relevant to this suggested reform package

The role for VPAs would be significantly diminished if this reform package or something similar were implemented, creating more certainty for the development industry. However, they would still have a role in circumstances not anticipated by the reforms, and where mutually beneficial development outcomes can be achieved. They may also be established where the contribution obligations can be met in a satisfactory alternative manner, to an equivalent value or to achieve the same or similar outcomes.

¹<https://www.planning.nsw.gov.au/-/media/Files/DPE/Guidelines/guideline-sepp70-developing-affordable-housing-contribution-scheme-2019-02-28.pdf>

FIGURE 1: SGS REFORM RECOMMENDATIONS BASED ON THE FOUR FRAMES OF DEVELOPMENT CONTRIBUTIONS



A large, leafy tree in a park with people walking and sitting on the grass.

Response to issues

03 Response to issues

The following section provides SGS's detailed response to issues identified by the NSW Productivity Commissioner.

ISSUE 1.1: STRIKING THE RIGHT BALANCE

There can be difficulty in reconciling the competing principles of efficiency, equity, certainty, and simplicity. Failure to strike the right balance can undermine confidence in the planning system.

- Is a 'one size fits all' approach appropriate or do parts of the State require a bespoke solution?
- What are the advantages and disadvantages of a site-specific calculation based on demand generated, compared with a broader average rate?
- Do other jurisdictions have a better approach to infrastructure funding we should explore?
- How can a reformed contributions system deliver on certainty for infrastructure contributions while providing flexibility to respond quickly to changing economic circumstances?

ISSUE 1.1: SGS RESPONSE

- The four frames conceptual framework can be applied consistently across the state, although its implementation, relevance and impact will differ between jurisdictions. For example in regions without significant development activity there may be few opportunities to implement value sharing mechanisms.
- Site specificity is fundamental to a user pays approach which aims to account for site- specific development cost

differentials between different areas, to establish a 'price signal'. A more standardised, average approach might provide greater simplicity and certainty, particularly for development in greenfield areas, which do not differ significantly in their infrastructure needs. However, infrastructure needs in urban infill or regional locations are largely context dependent, undermining the validity of standard- rate charges in these locations.

- NSW, Victoria and Queensland currently have the most sophisticated and entrenched development contributions systems. Opportunities to learn from other Australian contexts may be limited. Victoria's development contributions (user pays) system includes the option of a standard charge which has been based on typical or average rates but this has not been widely adopted particularly in rural or infill areas as it has not been able to sufficiently reflect bespoke and local circumstances.
- A system based on the four frames will add to certainty for the development industry. Though it should typically be avoided, public authorities should reserve the right to forego contributions depending on economic circumstances or to favour certain development outcomes (e.g. affordable housing). If development contributions are foregone, the value of the effective subsidy to be borne by the community (from the foregone contributions) should be disclosed clearly and transparently to the community. This enables the community to judge whether the cost of the foregone revenue and subsidy is merited given the outcome being sought.

ISSUE 2.1: ENABLE A BROADER REVENUE SOURCE FOR THE FUNDING OF INFRASTRUCTURE

- Are there any potential funding avenues that could be explored in addition to those in the current infrastructure funding mix?

ISSUE 2.1: SGS RESPONSE

- Comprehensive application of the four frames approach will provide a suite of funding avenues which are not currently available on a regular basis (see FIGURE 1). Although VPAs are occasionally used to account for contributions based on frames 1-3 in particular, they are ad hoc and are utilised for only a relatively small share of development projects.

ISSUE 2.2: INTEGRATING LAND USE AND INFRASTRUCTURE PLANNING

The Greater Sydney Region Plan provides the overarching vision and infrastructure needs, which is translated into separate District Plans and Local Strategic Planning Statements. These are used by councils for land use and infrastructure planning.

- How can the infrastructure contributions system better support improved integration of land use planning and infrastructure delivery?

ISSUE 2.2: SGS RESPONSE

- User-pays charges and impact mitigation measures typically relate to infrastructure provision at a local level, and may therefore providing funding to realise objectives within local plans (see FIGURE 1). Value sharing and inclusionary requirements may be utilised to address outcomes at

different levels. Value sharing mechanisms (frame 3) provide a means of funding infrastructure or contributing to outcomes which might be identified in regional or district plans. For example, part of the value uplift on sites located within close proximity to new transport infrastructure could be captured via a value sharing mechanism and used as a source of funding for that infrastructure. Value sharing might also contribute to local streetscape or cycling path upgrades for example. Inclusionary zoning may also assist in achieving regional objectives, such as those for affordable housing or at a local level for open space provision.

ISSUE 3.1: PRINCIPLES FOR PLANNING AGREEMENTS ARE NON-BINDING

The Planning Agreements Practice Note is currently non-binding on councils, although the Ministerial Direction exhibited by the Department aims to change this. There are no equivalent guidelines for use when negotiating planning agreements with the State. Additionally, there is little agreement between stakeholders on what the principles should be for either local or State planning agreements and there is no consensus on the appropriateness of value capture through planning agreements.

- What is the role of planning agreements? Do they add value, or do they undermine confidence in the planning system?
- Is 'value capture' an appropriate use of planning agreements?
- Should planning agreements require a nexus with the development, as for other types of contributions?
- Should State planning agreement be subject to guidelines for their use?

ISSUE 3.1: SGS RESPONSE

- VPA's currently serve to fill gaps in the development contributions system in the absence of a comprehensive four frames approach. However, they can undermine confidence in the planning system in situations where they are not clearly separated from the development approval process. Following

the establishment of a system based on the comprehensive four frames SGS reform suggestions summarised earlier there would be a much diminished role for VPAs, thereby reducing uncertainty and increasing the efficiency of the development process. They would still be allowable in circumstances not covered by the 'four frames' system, while also enabling development proponents to meet their contribution obligations by equivalent in-kind or alternative means. This encourages innovation.

- Under the current system value capture is a wholly appropriate use of planning agreements. It is important that the infrastructure or public benefits to be funded are clearly identified, and the negotiation of agreements occurs separately from the development approval process. This can be accommodated through clear guidelines and accounting and administrative provisions at the state and local government level.
- In cases where value sharing arrangements are included VPAs do not necessarily require a nexus with the development. By definition, the value uplift is the community's, to be 'spent' on whatever community priorities are deemed worthy. Nevertheless, it is desirable that funding secured through planning agreements be linked to infrastructure needs or to the achievement of outcomes identified in a strategy endorsed by the local council (or the state government).
- The rationale for and detail of State planning agreements should be disclosed with full transparency. Once again, establishing a link between funding sourced through planning agreements and specific state infrastructure projects ensures accountability. It should be noted that for both local and state level VPAs transparency may be compromised where commercial considerations or information need to be exposed. This is yet another reason why it is preferable for value sharing rates to be 'pre-scheduled' based on the estimated change in land value associated with a consent or rezoning. These can be established as a guide for VPAs seeking value sharing (see Appendix E in Georges River Guidelines for Planning Agreements²) and would also be explicit in any system of development licence fees established in accordance with the SGS reform suggestions.

ISSUE 3.2: TRANSPARENCY AND ACCOUNTABILITY FOR PLANNING AGREEMENTS ARE LOW

Reporting and accounting requirements for planning agreements are low, although proposed changes to the Regulation may improve this. Differing practices between councils and the State in maintaining separate planning agreement registers and public notice systems is confusing and reduces transparency and accountability.

- What could be done to improve the transparency and accountability of planning agreements, without placing an undue burden on councils or the State?
- Should councils and State government be required to maintain online planning agreement registers in a centralised system? What barriers might there be to this?

ISSUE 3.2: SGS RESPONSE

- Councils should be required to provide reference to the four frames in reporting on planning agreements i.e. do contributions relate to impact mitigations, user charges or value capture.
- Planning agreements should be maintained in a centralised online register which is publicly accessible to ensure transparency and accountability is maintained.

ISSUE 3.3: PLANNING AGREEMENTS ARE RESOURCE INTENSIVE

Planning agreements are a resource intensive mechanism but have potential to deliver unique and innovative outcomes.

- Should the practice note make clear when planning agreements are (and are not) an appropriate mechanism?

ISSUE 3.3: SGS RESPONSE

- In the absence of system-wide reform in line with the SGS suggestions, the practice note for VPAs should be clear about the type of contribution being extracted, and which of the four frames it sits within. This will automatically demonstrate where planning agreements are not needed/appropriate and avoid contributions being imposed or required where they are not conceptually clear.

² <http://www.georgesriver.nsw.gov.au/StGeorge/media/Documents/Council/Governance/Codes%20and%20Policies/Pol-037-01-Planning-Agreements-Policy-August-2016.pdf>

ISSUE 3.4: CONTRIBUTIONS PLANS ARE COMPLEX AND COSTLY TO ADMINISTER

Contributions plans can be opaque, making it hard for developers to calculate a potential contribution liability and the community to know what infrastructure it can expect and when.

Many plans are not updated in a timely manner, leading to issues with cost escalation, outdated assumptions, and difficulty meeting community infrastructure needs. Some councils have significant contributions balances, indicating there may be barriers to timely expenditure.

- How could the complexity of s7.11 contributions planning be reduced?
- What are the trade-offs for, and potential consequences of, reducing complexity?
- How can certainty be increased for the development industry and for the community?

ISSUE 3.4: SGS RESPONSE

- For significant development fronts or major renewal precincts, it is appropriate that detailed work go into identifying the infrastructure required given the project development, and the contributions to fund this. Calculation of these contributions should be transparent, and funds collected linked to infrastructure to ensure accountability. In contexts where infrastructure needs do not differ significantly between projects, such as greenfield areas, standard contribution rates could be applied. Amalgamating catchment areas for different pieces of infrastructure could also reduce the complexity of calculating s7.11 contributions. However, where an ‘off the shelf’ or standard charge is provided as an alternative to preparing a contributions plan, SGS would recommend that it be set ‘low’, at the smallest quintile. A standard charge based on an ‘average’ will be open to challenge in many contexts. In SGS’s view this has not worked in Victoria.
- To say that ‘contributions plans are complex and costly to administer’ suggests that the effort may not be worth the return. This is not the case given the millions of dollars invested in urban development and the benefits from effective and integrated infrastructure and planning. In SGS’s experience with councils that have established rigorous

contributions plans the discipline of the plan making process and the strategic thinking that has been required have elevated the quality of strategic, infrastructure and asset planning in the council, not to mention generated revenue for better and more liveable communities. The reality is that the process and practice of preparing properly calibrated and rigorous user pays based contributions plans has not been sufficiently resourced and has in general remained a relatively residual activity. Reducing complexity via the option of standard or ‘smoothed out’ charges will forego these benefits as well as dilute price signals for individual developments, leading to a degree of cross subsidisation by the community or other developers.

- Ensuring transparency in the calculation of contribution rates and accountability by linking contributions to infrastructure projects will provide a greater degree of certainty. Development of a contributions system which broadly applies a four frames approach across an entire jurisdiction, rather than on an ad-hoc basis, will also provide greater certainty for all stakeholders.

ISSUE 3.5: TIMING OF PAYMENT OF CONTRIBUTIONS AND DELIVERY OF INFRASTRUCTURE DOES NOT ALIGN

Developers want to delay the payment of contributions to the occupation certificate stage to support project financing arrangements. This would delay receipt of funds to councils and, in the absence of borrowing funds, may delay infrastructure delivery.

- What are the risks or benefits of deferring payment of infrastructure contributions until prior to the issuing of the occupation certificate, compared the issuing of a construction certificate? Are there options for deferring payment for subdivision?
- Would alternatives to financial securities, such as recording the contributions requirement on property title, make deferred payment more viable?
- Would support to access borrowing assist councils with delivering infrastructure? What could be done to facilitate this? Are there barriers to councils to accessing the Low Cost Loans Initiative?
- What else could be done to ensure infrastructure is delivered in a timely manner and contributions balances are spent?

ISSUE 3.5: SGS RESPONSE

- Deferring payment of infrastructure contributions until prior to the issuing of an occupation certificate is an appropriate reform. This allows developers to generate income before having to pay development contributions. Requiring payment of contributions early and ‘up-front’, at the construction certificate stage, effectively creates a barrier to entry for smaller developers with lower capacity to tolerate risk and access development finance, so delaying the timing for payment would also represent a reform to enhance industry access and efficiency.
- Forward funding of infrastructure is difficult with isolated council specific contribution collections. Funds collected via contributions schemes should be pooled and drawn down as required, ensuring that infrastructure and development can be properly sequenced. One approach would be to establish a Local Government Local Infrastructure Financing Corporation to centrally collect funds and provide financing as required, according to transparent plans and accountability measures, to invest in development infrastructure. This could operate on a similar basis to the National Housing Finance Investment Corporation (NHFIC), which aggregates finance for community housing providers at a federal level.

ISSUE 3.6: INFRASTRUCTURE COSTS AND CONTRIBUTIONS RATES ARE RISING

Infrastructure costs are rising—particularly for land acquisition—as are contribution rates. Caps and thresholds introduced to encourage sector activity have, however undermined important market signals for development efficiency and are now likely to be reflected in higher land values.

The application of the essential works list can put councils’ finances under pressure given their current inability to expand their rate base in line with population growth.

- Currently IPART reviews contributions plans based on ‘reasonable costs’, while some assert the review should be based on ‘efficient costs’. What are the risks or benefits of reframing the review in this way?
- Should the essential works list be maintained? If it were to be expanded to include more items, what might be done to ensure that infrastructure contributions do not increase unreasonably?

- What role is there for an independent review of infrastructure plans at an earlier point in the process to consider options for infrastructure design and selection?

ISSUE 3.6: SGS RESPONSE

- User pays charges should be based on economic efficiency rather than on some concept of ‘reasonableness’ or ‘feasibility’. If development is discouraged based on transparent price signalling then this is a risk, though probably appropriate. Clarity as to ‘prices’ (i.e. pre-scheduled notification of contributions) is important so that developers have appropriate information when making bids for and purchasing land for development. It should be noted that the comprehensive application of value sharing as a pre-scheduled Development Licence fee would effectively eliminate the impact of land price inflation and related cost escalations for development contribution schemes. This is because the change in land value from any expectation or granting of development rights will be captured. There will be no benefit in a land owner ‘bidding’ up the value of land to be contributed as part of an infrastructure plan as the land value increment will be subject to the Development Licence Fee (or an appropriate value capture alternative).
- A fully calibrated, user pays based contributions plan should be contained to necessary development infrastructure i.e. that required to allow development to occur and which contributes to a functioning neighbourhood and community where the nexus is with development occurring within that neighbourhood or community. This infrastructure may go somewhat beyond that currently on the essential works list. A narrower definition of allowable works would apply for infrastructure to be funded by a standard ‘low’ off the shelf charge. This might more closely resemble the list of essential works, constrained to the minimum level of shared infrastructure required for development to proceed.
- Infrastructure beyond the scope of works included in a user pays based contribution plan should be funded through alternative mechanisms (see Figure 1).

ISSUE 3.7: THE MAXIMUM \$7.12 RATE IS LOW BUT BALANCED WITH LOW NEED FOR NEXUS

Section 7.12 local infrastructure levies are low and do not reflect the cost of infrastructure.

- Given that the rationale for these low rates reflects the lower nexus to infrastructure requirements, what issues might arise if the maximum percentages were to be increased?
- What would be a reasonable rate for \$7.12 development consent levies?

ISSUE 3.7: SGS RESPONSE

- Section 7.12 levies are anomalous and do not readily fit into the four frames approach. They should be abolished in favour of a more formalised system of value capture (related to the change in land value, rather than to development costs), such as a Development Licence Fee system as outlined above.

ISSUE 3.8: LIMITED EFFECTIVENESS OF SPECIAL INFRASTRUCTURE CONTRIBUTIONS

Special infrastructure contributions were introduced to strengthen delivery of state infrastructure. They can be an efficient and equitable mechanism for modest infrastructure cost recovery, while helping to ensure that development is serviced in a timely way. Over time, incremental changes and *ad hoc* decisions have, however, led to inconsistencies in their application, which may have limited their effectiveness.

- Is it appropriate that special infrastructure contributions are used to permit out-of-sequence rezoning?
- Should special infrastructure contributions be applied more broadly to fund infrastructure?
- Should they be aligned to District Plans or other land use planning strategies?
- Should the administration of special infrastructure contributions be coordinated by a central Government agency i.e. NSW Treasury?

ISSUE 3.8: SGS RESPONSE

- Currently, special infrastructure contributions act effectively as a value-sharing mechanism though they are sometimes characterised as having user pays elements. SICs could be abolished and replaced by a comprehensive system of value sharing across all jurisdictions. SGS suggest that this be established as a Development Licence Fee with proceeds to be shared by local and state government. Value capture systems should always be separated from the process of establishing development rights or determining development consent (the latter should be decided on planning merit).
- SGS suggest that the Development Licence Fee would be based on area specific, pre-scheduled rates- set at say 80% of the estimated change in land value (pre and post development approvals or rezonings/FSR changes), to include an incentive (of 20%) to the lands seller. Proceeds Could be collected by NSW Treasury, completely separated from the approvals system, with a share redistributed back to Councils in line with and to support planned development and some retained for state infrastructure currently funded by the SICs.

ISSUE 3.9: DIFFICULTY FUNDING BIODIVERSITY THROUGH SPECIAL INFRASTRUCTURE CONTRIBUTIONS

Biodiversity offsetting is a key part of the plan for developing Greater Sydney and requires a secure source of funding. The application of special infrastructure contributions to support this has been inconsistent.

- Should implementation of special infrastructure contributions for biodiversity offsets be subject to a higher level of independent oversight?
- Are special infrastructure contributions the appropriate mechanism to collect funds for biodiversity offsetting, or should biodiversity offsets be managed under a separate framework?

ISSUE 3.9: SGS RESPONSE

- The preservation of biodiversity is not related to land economics principles which provide the basis for systems of value sharing, such as special infrastructure contributions. Furthermore, biodiversity offsets do not relate to infrastructure provision, and should therefore be dealt with under a separate framework, where ecological considerations are paramount.



ISSUE 3.10: AFFORDABLE HOUSING

Affordable housing contributions are made on top of other infrastructure contributions. The percentages are determined individually, and each scheme must demonstrate the rate does not impact development viability.

- Is provision of affordable housing through the contributions system an effective part of the solution to the housing affordability issue? Is the recommended target of 5-10 per cent of new residential floorspace appropriate?
- Do affordable housing contributions impact the ability of the planning system to increase housing supply in general?

ISSUE 3.10: SGS RESPONSE

- The provision of affordable housing through the SEPP 70 contributions system is not sufficient to address current and future unmet need for affordable housing. While it is appropriate that value sharing mechanisms should be enabled to assist in the provision of affordable housing, the current system only applies to areas where up-zoning occurs, and therefore can only act as a partial mechanism. Inclusionary zoning which would typically require a contribution from all development in an identified precinct

or local government area (frame 4), is not currently enabled by SEPP 70, but represents a more comprehensive approach and should be used as the primary mechanism in NSW, supplemented by a value capture approach as implied by SEPP 70. A relatively low IZ 'rate' of say 5%, gradually imposed to allow for land values to adjust, and broadly applied would generate significant funds for affordable housing (still not sufficient to meet the supply gap which should appropriately be addressed by funding and subsidies from state and federal government).

- The currently recommended affordable housing target of 5-10% tested for 'viability' is arbitrary. SGS would argue that the contribution rate should be calculated based on the change in RLV, worked backward to a % rate of floorspace if necessary.
- If for example the Residual Land Value on any particular site was \$1500/sqm for residential floorspace and the new FSR allowed (by a DA or rezoning) for an increase of 1000 sqm on a particular site then the value uplift would be \$1.5m. We might say that 80% of that could be captured without affecting viability (standard profit margin still achievable, plus leaving 20% uplift for the land seller) so

\$1.2m. The Affordable Housing contribution rate expressed as a percentage could then be based on how much \$1.2m represents of the Gross Realisable Value, or it could just be expressed as a rate per square metre (in this case \$1200). By definition this is 'feasible' and actually much clearer to a developer. The RLV rate expressed on a per sqm basis is likely to vary by precinct or location.

- If restricted to a share of the uplift in value created by rezonings, affordable housing contributions should have a negligible effect on housing supply. However, this is predicated on the assumption that value sharing and inclusionary zoning provisions are pre-signalled so that they can be factored into the residual land value (RLV) equation.

ISSUE 4.1: SHARING LAND VALUE UPLIFT

If investment in public infrastructure increases land values, then the benefits are largely captured by private property owners. 'Value capture' mechanisms can return a share of the value created by public investment to the taxpayer.

There are several ways a 'value capture' mechanism could be applied, including land tax, council rates, betterment levy, or an infrastructure contribution.

- Where land values are lifted as a result of public investment, should taxpayers share in the benefits by broadening value capture mechanisms? What would be the best way to do this?

ISSUE 4.1: SGS RESPONSE

- Current methods of value capture (which are ad hoc, mostly via SICs and VPAs and where Affordable Housing Contribution schemes apply) should be broadened and consolidated into a single, comprehensively applied system of value capture through the implementation of Development Licence Fees (see SGS Occasional Paper, [Value capture through development licence fees](#)).

ISSUE 4.2: LAND VALUES THAT CONSIDER A FUTURE INFRASTRUCTURE CHARGE

When land is rezoned, there is often an increase in land values as a result of the change in development potential.

- Should an “infrastructure development charge” be attached to the land title?

ISSUE 4.2: SGS RESPONSE

- An ‘infrastructure development charge’ linked to land title may be another way of describing SGS’s suggested Development Licence Fee. However, ‘charge’ is not the appropriate wording, given that as conceived a Development Licence Fee is a means of purchasing development rights for a site (and is related to value capture), with no usage nexus. It is not a tax or charge. This should also not necessarily be limited to rezoning, but apply in the case of any changes to land title, such as the granting of additional FSR. A framework for this system can be seen in SGS Occasional Paper, [Value capture through development licence fees](#).

ISSUE 4.3: LAND ACQUISITION FOR PUBLIC INFRASTRUCTURE PURPOSES

Requiring the direct dedication of the land that is needed for infrastructure purposes is an option that aims to address the problem of rapidly increasing land values.

- If supported, how could direct dedication be implemented? How could this be done for development areas with fragmented land ownership?
- Could earlier land acquisition be funded by pooling of contributions, or borrowings?
- Are there other options that would address this challenge such as higher indexation of the land component?

ISSUE 4.3: SGS RESPONSE

- In SGS’s view, where direct dedication of land for infrastructure occurs, public authorities should only be obligated to compensate landowners to the amount of the land’s current Residual Land Value. Where a Development Licence Fee system is effectively implemented, the changes to RLV which would result from uplift on the site will be minimised. This would serve to reduce the need for ‘equalisation’, where landowners seek compensation on the basis of their land’s potential RLV.

ISSUE 4.4: KEEPING UP WITH PROPERTY ESCALATION

Land values (particularly within the Sydney metropolitan area) can increase rapidly and often increase on early signs of land being considered for future development; well ahead of the rezoning process.

- What approaches would most effectively account for property acquisition costs?

ISSUE 4.4: SGS RESPONSE

- Under a system which incorporates inclusionary zoning and pre-signalled Development Licence Fees (as value capture contributions), these obligations would be factored into feasibility assessments, reducing the escalation of RLV. This provides an effective means of limiting increases to land acquisition costs.

ISSUE 4.5: CORRIDOR PROTECTION

Early identification of corridors has the potential to result in better land use and investment decisions. Without funds available to facilitate their early acquisition, it is likely that being ‘identified’ would encourage speculation and drive up land values, making the corridor more expensive to provide later.

- What options would assist to strike a balance in strategic corridor planning and infrastructure delivery?

ISSUE 4.5: SGS RESPONSE

- As discussed above where a Development Licence Fee system is effectively implemented, the changes to RLV which would result from uplift on sites included in corridor identification will be minimised. This would serve to reduce the need for ‘equalisation’, where landowners seek compensation on the basis of their land’s potential RLV and therefore reduce speculation and land value escalation.

ISSUE 4.6: OPEN SPACE

While the seven-acre open space standard is not based on evidence, it nevertheless continues to be relied upon. Open space provision is moving towards a performance-based approach.

- How can performance criteria assist to contain the costs of open space?
- Should the government mandate open space requirements, or should councils be allowed to decide how much open space will be included, based on demand?
- Are infrastructure contributions an appropriate way to fund open public space?

ISSUE 4.6: SGS RESPONSE

- Where performance criteria for open space are based on access and quality rather than quantity per capita, it is more likely that less open space will be required overall. This reduces the likelihood that large parcels of land will need to be dedicated for new areas of open space.

- The NSW Government Architect’s new standards for open space provision (and targets suggested by the NSW Premier’s Priorities i.e. increase the proportion of homes in urban areas within 10 minutes’ walk of quality green, open and public space by 10 per cent by 2023) relate to access of new development to open space and are appropriate as ‘mandated’ outcomes. These should be combined with guidelines for what is implied by the quality of open space. Delivery of these open space outcomes may require new mechanisms to provide clear pathways for implementation. This may consist of broadened mechanisms for development contributions and/or more interventionist systems of land assembly/dedication.
- Inclusionary zoning requirements also provide a potential means for ensuring land/funding for open space is secured. The Victorian Subdivision Act 1988 demonstrates the use

of this mechanism for open space delivery, requiring a minimum 5 per cent contribution for useable open space where sites are subdivided into three or more lots (including strata subdivisions). This is typically provided as cash in lieu of land, and may be used to embellish existing open space or purchase new sites. Councils may increase this inclusionary requirement based on an open space plan or strategy.

ISSUE 4.7: METROPOLITAN WATER CHARGES

Currently, costs of new and upgraded connections for Sydney Water and Hunter Water are borne by the broader customer base rather than new development.

- How important is it to examine this approach?
- What is the best way to provide for the funding of potable and recycled water provision?

ISSUE 4.7: SGS RESPONSE

- Where costs of new and upgraded connections vary by location, a price signal should be present. This would require a user pays system, which would reduce the cost burden placed on the broader customer base and isolate it to benefitting development.
- Where broader community objectives are served through retrofit of existing systems for potable and recycled water provision, funding from the broader customer base would be appropriate. The analogy here with subsidies for domestic solar energy systems, to achieve environmental objectives, is relevant. However, where new approaches to provision are anticipated by more exacting community expectations for sustainable water management and are being delivered in major development fronts, such as greenfield growth centres or urban renewal precincts, the costs of water infrastructure should be treated as an internal cost of development wherever possible. Technological improvements and new industry norms will drive down costs (the increased energy and water standards required by BASIX have now been normalised for new development).



ISSUE 4.8: IMPROVING TRANSPARENCY AND ACCOUNTABILITY

There are limited infrastructure contributions reporting requirements.

- What would an improved reporting framework look like? Should each council report to a central electronic repository?
- What elements should be included? How much has been collected by contributions plan and other mechanisms? How much council has spent, and on what infrastructure items?
- Should an improved reporting framework consider the scale of infrastructure contributions collected?

ISSUE 4.8: SGS RESPONSE

- A central electronic platform provided by the state government should be employed to ensure full transparency and accountability in reporting on development contributions. In line with best practice principles, this should report the contributions mechanism employed, amount collected and infrastructure items funded. It is a reasonable expectation that systems of user pays based development contributions be supported by appropriate and industry standard approaches and electronic platforms. Widely varying council by council approaches to contributions management and accounting is not appropriate.

ISSUE 4.9: SHORTAGE OF EXPERTISE AND INSUFFICIENT SCALE

The ability of the local government sector to efficiently deliver contributions plans are impaired by shortages of skilled professionals and lack of scale for smaller councils.

- What can be done to address this issue?
- Should the contributions system be simplified to reduce the resourcing requirement? If so, how would that system be designed?

ISSUE 4.9: SGS RESPONSE

- A well-established development contributions system (based on a four frames approach) potentially provides a highly valuable source of infrastructure funding to local governments. Therefore, development contributions should be elevated to a core component of financial and asset management within councils, supported by appropriate industry standard software and state government guidelines and resource support.

ISSUE 4.10: CURRENT ISSUES WITH EXEMPTIONS

Exemptions from contributions are complex as they are set out across a range of planning documents and are inconsistent across contribution mechanisms.

- Given that all developments require infrastructure, should there be any exemptions to infrastructure contributions?
- Is it reasonable to share the cost of 'exemptions' across all of the new development rather than requiring a taxpayer subsidy?
- Are there any comparative neutrality issues in the providing exemptions for one type of development, or owner type, over another?

ISSUE 4.10: SGS RESPONSE

- Exemptions should be minimised, and applied on a fully transparent basis if granted. Councils may reserve the right the grant exemptions from development contributions to facilitate certain development outcomes (such as affordable housing), provided they are fully transparent and accountable regarding this decision and the value of forgone revenue.
- Where an exemption is granted, the cost which would have been apportioned to the exempted development should not be attributed to another site or development class. The government agency granting the exemption should 'wear' the cost, to be funded from a wider revenue base.

ISSUE 4.11: WORKS-IN-KIND AGREEMENTS AND SPECIAL INFRASTRUCTURE CONTRIBUTIONS

Works-in-kind agreements can realise savings and efficiencies, but they can result in infrastructure being provided out of the planned sequence and prioritise delivery of some infrastructure (such as roads) at the expense of other infrastructure (such as open space and biodiversity offsetting).

- Should developers be able to provide works-in-kind, or land, in lieu of infrastructure contributions?
- Developers may accrue works-in-kind credits that exceed their monetary contribution. Should works-in-kind credits be tradeable? What would be pros and cons of credits trading scheme?
- What are implications of credits being traded to, and from, other contributions areas?

ISSUE 4.11: SGS RESPONSE

- Works in kind agreements or cash in lieu payments may be appropriate where land cannot be provided. However, where this has an effect of shifting timelines for infrastructure provision, the resulting cost to public authorities should be accounted for in the calculation of in lieu contributions (the difference in the Net Present Value of the changed timeline for infrastructure provision is an appropriate means of calculating this potential cost).
- A pooled system for collection of development contributions administered by the NSW Treasury would allow developers to access refunds where works-in-kind credits exceed their obligations.

MELBOURNE

Level 14, 222 Exhibition Street
Melbourne VIC 3000
+61 3 8616 0331
sgsvic@sgsep.com.au

CANBERRA

Level 2, 28-36 Ainslie Avenue
Canberra ACT 2601
+61 2 6257 4525
sgsact@sgsep.com.au

HOBART

PO Box 123
Franklin TAS 7113
+61 421 372 940
sgstas@sgsep.com.au

SYDNEY

209/50 Holt Street
Surry Hills NSW 2010
+61 2 8307 0121
sgsnsw@sgsep.com.au

