PORTFOLIO COMMITTEE NO. 7 – PLANNING AND ENVIRONMENT
INQUIRY INTO ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (INFRASTRUCTURE CONTRIBUTIONS) BILL 2021

Supplementary questions: Mr Peter Achterstraat AO, NSW Productivity Commissioner

Answers are to be returned to the Committee secretariat by midday Thursday 22 July 2021.

1.The Regional Infrastructure Fund. The boundaries of the 'regions' across which these provisions in the Bill will operate have not been specified. For certainty and transparency, should they not be detailed in the legislation itself?

The Review recommended that a new broad, flat rate State contribution be applied to parts of metropolitan New South Wales experiencing high growth, in the following New South Wales planning regions:

- Greater Sydney
- Central Coast
- Hunter
- Illawarra and Shoalhaven.

Principles for applying the regional contribution has been outlined so that it funds development-contingent and development-associated costs accruing to the State, funds should be spent within the region they are raised, charges should be applied on a per dwelling basis for residential development and on a per square metre of floorspace for commercial and industrial development.

The introduction of the RIC, combined with amendments to the Environmental Planning and Assessment Regulation 2000 to improve transparency in, accounting for, and reporting on, State and local contributions revenues will ensure a more transparent and certain regional contribution mechanism than the existing system.

2.Is it correct that the legislation would permit funds raised from one part of a particular Region to be spent in another part of that same region, even if that is in a different LGA?

Yes. The policy intent behind the design of the regional infrastructure contributions (RIC) scheme is that it should allow funds collected within a region (irrespective of local government areas) to be hypothecated to growth enabling infrastructure within that region.

State infrastructure is generally delivered on a larger scale than local infrastructure and therefore carries wider network implications. Growth in one local government area can contribute to service bottlenecks in another local government area. These wider network impacts need to be addressed if the social license for growth in each of the State's regions is to be maintained.

In addition, the new contributions digital tool (Recommendation 6.1) will foster transparency over the collection and spending of contributions and reporting on contributions spending on the infrastructure delivery pipeline. Developers and NSW citizens will be able to understand where funds are being collected from and identify the infrastructure funded by the RIC.

3.Given the importance they have in the scheme, should not the draft regulations and the draft Ministerial Directions have been provided at the same time as the legislation, so Parliament and the community can better evaluate the totality of the government's reform plan? Without the details they would provide, how can Parliament properly assess the practicality or adequacy of the reforms?

This is a question for the Minister for Planning to respond to.

4.There appears to be a reasonable consensus that there is not enough resources invested in social and physical infrastructure, to properly support the development that has been occurring across Sydney. Is it your assessment that the legislation if passed and implemented will raise more money for infrastructure spending overall, or will it just share the cost of the existing level of infrastructure spending, moving the burden from developers to landowners and others?

If your assessment is that it will increase the total pool of funds for infrastructure, can you quantify what that increase will be and over what timeframe?

Modelling undertaken by The Centre for International Economics (CIE) shows that the proposed changes would result in a net increase in aggregate rates revenues and infrastructure contributions for local councils of 6.9 per cent over a 20-year period (to 2042-23).

Over this 20 year period, the rate revenue is estimated to be around $925 million per year higher. The increases are initially small but become larger over time due to the accumulation of the growth.

The modelling further indicates that this increase would be partly offset by lower revenue from contributions (including in-kind contributions) of $117 million per year over the 20-year period. These estimates, however, do not consider the impact of how some of the recommendations will assist local councils with containing council costs. Currently land acquisition costs account for the single largest component of local contributions plans, with land accounting for more than half of total section 7.11 costs. Escalating land values over time (particularly following a rezoning) can see a significant surge in final acquisition costs, leading to funding shortfalls for councils. The package of reforms will address this cost by the direct land contribution by ensuring that councils will not have to continue to fund this gap.

In addition, CIE projects that the new regional contribution will raise around $632.9 million in 2024, increasing to around $1.24 billion (in nominal terms) after 20 years. This is an average net increase in NSW Government revenues of around $792.8 million per annum. This broad, flat rate regional contribution will replace the limited and highly variable mechanism that has resulted in different special infrastructure contributions (up to $55,000 per dwelling) applying to different areas across Greater Sydney.

In return for these changes, there will be the timely expenditure on and delivery of growth infrastructure to better accommodate development. The CIE modelling of the reform package estimates net benefits to the economy of up to $12 billion over 20 years; $9 billion of which relates to additional expenditure on growth infrastructure (see Table O.2 in the Final Report – **Attachment A**). This will see increased housing supply and more aligned and timely delivery of supporting infrastructure that will drive higher output, consumption, and employment.

5.Why should a) affordable housing and b) biodiversity schemes be funded from the new RICs, when these are issues right across NSW, not particular to the infrastructure needs of a region experiencing extra development and population growth? Isn't it better to fund these general needs from general government revenue? Shouldn't the RICs focus on geographic infrastructure requirements matching the needs and expectations of the new residents: that is, road access, public transport, regional open space, water and sewerage?

The Review found that affordable housing contributions fall outside of a principles-based infrastructure contributions system. It recognises that affordable housing costs are incurred regardless of whether development proceeds (i.e. general costs) and should be covered by the general taxpayer.

As the existing section 7.32 mechanism is still relatively new and yet to be evaluated, the Review recommended improved reporting of affordable housing contributions (Recommendation 4.14) to inform a future review of their efficiency and effectiveness.

Recognising that the biodiversity impacts are *localised* (reflecting the environmental costs developments create), the Review recommended adopting a contributions charge for biodiversity offsets (Recommendation 5.4) that is separate to the RIC (Recommendation 5.1). This charge is <u>in addition</u> to the RIC for a given region where a biodiversity certification applies to areas within that region.

6.What is the evidence base the government is relying on to say the RICs can deliver more affordable housing on a regional scale?

As outlined in the response to Question 5, affordable housing costs represents general costs. Subject to a future evaluation of affordable housing contributions, its provision will continue under the existing section 7.32 mechanism (Recommendation 4.14).

7.Given the substantial administrative, accountability and integrity problems with existing government biodiversity schemes in NSW, wouldn't it be wise to leave biodiversity out of the RICs, rather then saddle them with these problems and potential waste of money?

Biodiversity loss is specific to particular areas, making it inappropriate for inclusion in the RIC scheme (as is the case for the Western Sydney Growth Areas SIC). Creating a new category of contributions specific to biodiversity (Recommendation 5.4) will promote a more transparent and consistent approach to determining and funding biodiversity offsets. A biodiversity contribution should be adopted for areas subject to biodiversity certification and <u>is additional</u> to the proposed RIC.

8.Do you agree that hypothecation in developer contributions (that also feed into housing costs) is essential in making these schemes work, both in terms of resident satisfaction (in seeing the funds benefit them directly) and the legal status of the contributions as a levy (not a tax feeding into general revenue for general purposes)? How will hypothecation be achieved in the RICs and why hasn't this been set out in the Bill as a basic methodology by which the RICs will function?

A broad, flat, and modest RIC will improve the timing, funding, and coordination of growth supporting infrastructure, which is key to unlocking new housing supply and improving housing affordability. Where new transport projects confer significant local benefits through reduced travel times and expanded development capacity, a transport contribution for major projects will be introduced.

Robust governance will support efficient operation of the RIC scheme. A new fund will be established for the collection of RIC, administered by NSW Treasury. Funds collected will be hypothecated for spending towards growth enabling infrastructure in priority growth areas. Spending of these contributions and the transport component will require the Treasurer's approval in consultation with the Minister for Planning and Public Spaces.

Projects seeking regional and transport contributions funding will be evaluated according to TPP17-03 *NSW Government Guide to Cost Benefit Analysis*. Evaluation will substantiate where development and growth are generating increased service needs and allow government to prioritise projects with the highest social returns. Spending priorities will also have reference to strategic plans under the *Environmental Planning and Assessment Act 1979* and the *Infrastructure NSW Act 2011.*

The new contributions digital tool (Recommendation 6.1) will promote greater transparency over the collection and spending of contributions and reporting on the contributions spending of infrastructure delivery pipeline. Through this tool, developers and the community can see what contributions have been collected by councils and the State to date and access information on infrastructure delivery, including what is proposed and its delivery progress.

9. How big conceptually is a region for RIC purposes, what are the communities of interest to determine this, and how far can the RIC funds stretch - that is, the feasible distance between where the funds are raised and where they can be spent (before hypothecation is broken)?

See response to Question 1.

The new contributions digital tool (Recommendation 6.1) will promote greater transparency over the collection and spending of contributions and reporting on the contributions spending on the infrastructure delivery pipeline. Through this tool, developers and the community can see what contributions have been collected by councils and NSW Government to date and access information on infrastructure delivery, including what is proposed and its delivery progress.

10. Under the Bill, why doesn't the Minister have to create a RIC plan, similar to the s7.11 plans required of Councils? Aren't these plans essential in building public confidence in the effectiveness of the RICs and developer satisfaction that the money being contributed actually has a valid, high-efficiency public use? Aren't the plans much needed in making hypothecation work?

The Review recommendations are based on a set of design parameters—certainty, cost reflectivity, simplicity, transparency, and consistency. These are derived from the impactor/beneficiary pays principles and different categories of costs:

- *development contingent* costs
- *development-associated* costs
- *general* costs.

Inevitably, trade-offs arise in applying the design parameters. For example, local infrastructure costs were identified as development-contingent and a high level of cost-reflectivity is necessary to estimate charges.

By contrast, State infrastructure costs tend to arise on a regional and network-wide basis, and so attribution to individual developments is difficult. The trade-off between certainty and cost-reflectivity means certainty was given greater emphasis in the design of State contributions compared to the existing regime. During the Review, stakeholders were universally critical of the complexity of the existing state infrastructure contributions (SIC). Councils and industry stakeholders, to varying degrees, noted their inconsistent and limited application of SICs in New South Wales, and uncertainty posed by the stop-start approach to their preparation, exhibition and adoption.

Hypothecation will be maintained for State contributions in a different way to local infrastructure contributions plans. The State maintains strategic land use and infrastructure plans, such as the Greater Sydney Region Plan, the State Infrastructure Strategy, and State Infrastructure Plans. These public documents are supplemented by project business cases, cost benefit analyses, and infrastructure investor assurance processes, will be the reference

Under the new governance structure, NSW Treasury will administer the RIC fund, in consultation with DPIE and Infrastructure NSW. The Review recognises each agency's role and the expertise they bring to deliver a more efficient provision of growth enabling infrastructure across the State:

- DPIE will identify the infrastructure needs and associated costs and prepare business cases for projects.
- Infrastructure NSW will provide advice on the merits and prioritisation of projects.
- NSW Treasury will ensure its integration into the annual budget process (this can better leverage the State's capital program by recommending part RIC funding towards priority projects).

11. Can the Bill specify that RIC plans must be separate from the infrastructure spending set out in the forward estimates of the 2021/22 NSW Budget, thereby guaranteeing (at least for 3 years) no loss of government effort, no substitution effect for regional infrastructure provision under the new system?

This is an important implementation question that is best directed to the Minister for Planning and Public Spaces and the Treasurer.

12. How will RIC service-provision priorities be set to meet regional needs and in spending the funds, what will be done to guard against the Pork Barilaro effect?

See response to Question 8.

13. Can the government find a way of guaranteeing no loss of overall NSW local government revenue for service provision under the Bill, overcoming the problem of the fiscal overhang caused by immediate loss of some developer contribution money, but a slow 20-year build up in rating capacity under the growth-area-rate-peg reforms? Isn't this a basic fairness safeguard for Councils in the frontline of community provision, in making their LGAs functional and liveable? After all, developer contribution schemes are not primarily about housing affordability, developer profitability/cash-flow or intergovernmental relations; they must get right the big community service and amenity decisions that impact on people's lives for decades. Over the 20-year projections, we must ensure no loss of Council servicing capacity for any of those years, yes?

It is important to note that the rate peg reform and local contributions reforms are to be applied prospectively. It does not seek to compensate local government for funding shortfalls accumulated overtime due to the existing rate pegging. In recent years, the NSW Government has implemented schemes such as the Housing Acceleration Fund (HAF) to provide grants for critical infrastructure projects (both State and local) to help accelerate the delivery of housing. Projects funded under the HAF include transport, water, wastewater, drainage and community infrastructure.

Reforming the rate peg to account for population growth will improve councils' financial sustainability going forward by allowing them to maintain their general income on a per capita basis. In doing so, it removes the financial disincentive for councils to accept development.

Independent modelling of the benefits from the rate peg reform was undertaken by the CIE for the Review (see **Attachment B**). Collectively, councils will receive a modest increase in aggregate rates revenue (up 8.9 per cent or $18.5 billion over 20 years, undiscounted) under the reform. High growth councils will benefit more, receiving an additional $11.6 billion while low growth councils will receive an extra $3.7 billion.

14. Why was the 3% figure chosen for the levy rate in 7.12s? What would the number be to raise the same amount of money, on average, as 7.11s? Why wasn't this number chosen?

The Review noted that the section 7.12 mechanism allows councils to trade-off some of the rigor required by section 7.11 planning for a more administratively efficient system. While this supports the rate of section 7.12 being lower than section 7.11 the current rate is too low to be viable in many situations where it would be an appropriate tool.

The Review found a higher rate for section 7.12 that is lower than what most section 7.11 plans are equivalent to would strike the right balance. It will allow councils to more easily fund the infrastructure required to support development, without having to establish full nexus and apportionment as required under section 7.11.

Modelling undertaken on a sample of section 7.11 plans for metropolitan councils shows the distribution of contributions plans as a percentage of average construction value tend to be around the 2-3 per cent rate (see page 85 of CIE's report – **Attachment B**). CIE's modelling of a range of rates (3, 4, 5 and 8 per cent) suggests raising the threshold for section 7.12 levies to 3 per cent would encourage a relatively modest share (15.4 per cent weighted average) of section 7.11 contributions plans to switch to section 12 levies.

15. Is the government willing to amend the Bill to guarantee 7.12 contributions for Councils from State Significant Developments, again strengthening local government servicing capacity?

This is a question for the Minister for Planning and Public Spaces to respond to.

16. Can you please provide more detail and some case studies on how, where and on what scale the Land Value Contributions (LVC) will operate?

As part of the NSW Government's response to the Review's recommendations, case studies to showcase the way in which the land value contribution mechanism will work will be developed in consultation with the External Advisory Group.

17. As a question of fair due-process for the business community, shouldn't there be an appeal mechanism for the LVCs?

This is a question for the Minister to respond to.

18. Again to strengthen hypothecation, shouldn't the nexus between the specific purposes for which 7.11 funds are raised and how they are spent be restored in legislation?

The principles underpinning section 7.11 contributions plans continue to apply including the need for nexus (the connection between proposed development and the demand created for supporting infrastructure).

Requiring contributions plans to cover all development-contingent infrastructure (and its associated costs) required to service an area, will improve market signalling that encourages more cost-efficient development to be prioritised. The policy intent is captured in Recommendation 4.6 by application of the essential works list to all section 7.11 contributions plans.

19. Given wide NSW regional variations in standards of community service provision and building costs (from labour and materials availability and the competitiveness of tendering markets), while a nice theory, isn't a service-cost benchmarking system incredibly hard to achieve in practice? Is there any sign from IPART that this is anything other than a technical and administrative nightmare?

Economically efficient benchmarking of local infrastructure should reflect the base level standard required to support additional development. Community preference for higher standards, such a higher order playing field embellishment, is a general cost as it does not arise because of a particular development. Developers should not be required to pay the additional costs that are not attributable to meeting the demand from the new development.

A standardised set of benchmark costs for development-contingent infrastructure would help to ensure that contributions plans are costed efficiently. Standard benchmark costs should cover the different infrastructure needs for infill, greenfield and regional development, and should reflect the base standard of infrastructure that is appropriately funded by development. IPART is best placed to determine these benchmark costs.

The benchmarked costs should be used unless a specific efficient cost estimate has been prepared or actual costs based on efficient design are determined following construction. This will increase consistency across local government areas, encourage efficient provision, and will ensure that contribution charges provide an appropriate price signal for development.

20. If, for example, a Council builds a prefabricated library, at very low cost, what stops this from being benchmarked as the local government standard across NSW? Doesn't this example also raise the problem of false savings, as the pre-fab might only last 20 years, versus a more expensive, better-built facility that lasts three times as long?

The benchmarked efficient costs are designed to determine the cost of building a library to meet the needs of the additional development. Where the community expresses a preference for higher order embellishments, councils can choose to fund these increased costs from other sources (i.e. increased rates revenues or user fees). Box 4.4. in the Final Report outlines these concepts for funding a sports field in a greenfield development.

The benchmarked costs should be used unless a specific efficient cost estimate has been prepared or actual costs based on efficient design are determined following construction. This will increase consistency across local government areas, encourage efficient provision, and will ensure that contribution charges provide an appropriate price signal for development.

21. Is there a way of improving the proposed in-kind land contributions to Councils (at rezoning stage) so as to provide greater certainty and effective local planning? That is, how will a Council know how much and which land parcels are needed without having a detailed subdivision plan prepared at the rezoning stage? This could be a substantial waste of money for Councils: preparing subdivision plans for rezoned land that sits idle for many years, without owners' intention to develop (say a land banking strategy or the current Leppington problem of infrastructure uncertainty).

The Review found that planning proposals supported by contributions plans will send clear market signals of the likely costs of development and provide clarity over developers'/landowners' contributions obligations. This is covered by Recommendation 4.1 which requires:

- concurrent exhibition of draft contributions plans with rezoning plans
- adoption of contributions plans prior to issuing development approval.

As part of the land use planning process, councils should consider, in preparing their contributions plans, the infrastructure needs and costs (including land required for public purposes). As part of stakeholder engagement currently underway, DPIE will consult with the External Advisory Group on strategies to overcome implementation issues.

22. Doesn't the proposed shift in the payment of developer contributions from Construction Certificate to Occupation Certificate stage run contrary to the 60-year struggle in Western Sydney to have decent services in place as the people move in? Can the government guarantee no lag in service provision under this proposed new system?

Allowing developers to defer upfront payment of contributions to the occupation certificate stage can better support their project financing arrangements. It will also remove barriers to small developers entering the market as it removes the big impost of borrowing upfront to fund project and construction costs.

While this change will delay the receipt of funds (compared to receipt upon Construction Certificate), this is balanced out by other recommendations in the Review that will improve councils' ability to forward fund infrastructure. For example:

- Recommendation 4.9 encourages councils to pool funds across projects and to borrow to forward fund infrastructure.

- The introduction of a land value contribution mechanism (Recommendation 4.2) will help councils control rising land costs (especially following a rezoning) and support early land acquisition.
- Reforming the rate peg to account for population growth (Recommendation 3.1) will allow councils to raise additional rates revenue that can be used to fund local operating and maintenance costs of providing services to a growing population. It can also service debt to forward fund infrastructure and allow councils to better coordinate infrastructure delivery with development.

23. Can you please produce an Essential Works List (what I believe the Productivity Commissioner calls Development Contingent Items) that is as comprehensive as possible, for high-quality service provision in new housing estates? Why can't this list be formalised as a schedule to the Bill?

Development-contingent costs covers infrastructure costs with a causal connection to a development because they would be avoided if the development did not proceed. Examples include:

- within-development open space, road, and pedestrian facilities
- network connections for water facilities (potable, waste, and stormwater)
- facilities shared between multiple developments e.g. local roads and open space.

It is intended that the rate peg reform (Recommendation 3.1) is combined with:

- development of standardised benchmark costs (Recommendation 4.5) that reflects the efficient cost of providing local infrastructure
- a review of the essential works list (Recommendation 4.6) to remove any items that are not development-contingent to be funded from the additional rates revenue collected.