

NSW INFRASTRUCTURE CONTRIBUTION REFORMS

ATTACHMENTS:	1. IMPLICATIONS
RESPONSIBLE OFFICER:	DEBRA JUST – CHIEF EXECUTIVE OFFICER
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CITY STRATEGY OUTCOME:	5.2 – DEMONSTRATE LEADERSHIP AND ADVOCACY FOR LOCAL PRIORITIES
MEETING DATE:	3 NOVEMBER 2021

1. PURPOSE OF REPORT

To provide Councillors an update on the NSW Infrastructure Contributions Reforms currently on public exhibition and the upcoming steps.

2. OFFICER'S RECOMMENDATION

That Council:

- 1. Note the update on the Infrastructure Contributions reform proposals currently on public exhibition.**
- 2. Delegate authority to the Chief Executive Officer to make a submission on the suite of documents on Infrastructure Contributions reform from both the, Department of Planning, Industry and Environment and, the Independent Pricing and Regulatory Tribunal by their relevant due dates.**
- 3. Note that a formal position from the elected Council is required after the first meeting of the new Council in 2022.**

3. BACKGROUND

In 2020, the NSW Productivity Commission completed a review of the infrastructure contributions system, and in March 2021 the NSW Government confirmed it had accepted all 29 recommendations of the final report. Since that time, the following has occurred:

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| 19 April 2021 | Councillor briefing was held to provide an overview of key issues. |
| 10 May 2021 | Council endorsed a submission in response to Independent Pricing and Regulatory Tribunal's (IPART) discussion paper on linking the rate peg to population growth, highlighting Council's concerns that reforms to local infrastructure contributions could outstrip the benefits of linking the rate peg to population, leaving the Willoughby community significantly worse off. |

May 2021	NSROC engaged GLN Planning to assess the potential impacts of reforms to both the rate peg and infrastructure contributions. This work indicated NSROC councils, including Willoughby City Council, would face vast reductions in funding for community infrastructure as a result of proposed reforms to developer contributions. The report found that these losses were unlikely to be offset by increased rate revenue if the rate peg is linked to population growth.
22 June 2021	The NSW Government introduced the <i>Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021</i> to the NSW Parliament. The Bill was passed by the Legislative Assembly and referred by the Legislative Council to a Parliamentary Committee, which was required to conduct an inquiry on the Bill by 10 August 2021.
5 July 2021	Council made a submission to the above Inquiry on the Bill.
12 July 2021	Council resolved to advocate on the significant impact on revenue the proposed reforms to infrastructure contributions will have on Willoughby City Council. Council, along with NSROC, have undertaken various advocacy activities, which have been outlined in prior reports, to support genuine consultation with councils, separation of reforms of infrastructure contributions from rate pegging and a mechanism to ensure no council is worse off.
	The Parliamentary Committee conducting an inquiry into the Bill recommended progress of the Bill halt until draft regulations be released for consultation and IPART publishes its reviews into the rate pegging system, benchmarking and the essential works list (due October 2021).
25 October 2021	NSW Government progressed the <i>Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021</i> .
28 October 2021	Department of Planning, Industry and Environment (DPIE) released a suite of documents on Infrastructure Contributions for public exhibition.
29 October 2021	IPART released Infrastructure Contributions reports for public exhibition.

This report outlines the very recent changes in response to widespread advocacy, as outlined in the exhibition package. Insufficient time was available to re-model the detailed impact of those changes prior to this meeting. A summary of the major changes is provided hereafter with delegation sought for the Chief Executive Officer to make a submission to the Independent Pricing and Regulatory Tribunal by 26 November 2021 and the Department of Planning, Industry and Environment by 10 December 2021.

4. DISCUSSION

A suite of documents on reforms to the infrastructure contributions framework in NSW were released for public exhibition on 28 October 2021 with feedback being by sought in November and December 2021 (during the caretaker period). Making a submission will be Council's opportunity to influence the final Infrastructure Contributions framework before the next formal consultation with elected councils in February 2022 prior to further consideration and implementation from 1 July 2022.

DPIE State-wide Infrastructure Contributions Policies

On 28 October 2021 Department of Planning, Industry and Environment (DPIE) released numerous Statewide policies on infrastructure contributions for public exhibition. Exhibition closes on 10 December 2021.

The Policies include the following and can be found on DPIE's website (<https://pp.planningportal.nsw.gov.au/draftplans/on-exhibition>).

1. Regional contributions
2. Land use planning
3. Local contributions

IPART Infrastructure Contributions Review Reports

On 29 October 2021, IPART released reports on infrastructure contributions for public exhibition. A public hearing is anticipated in November, public exhibition closing 26 November 2021, and the final report released 31 December 2021.

The Reviews include the following and can be found on IPART's website (<https://www.ipart.nsw.gov.au/Home/Industries/Local-Government>).

4. Review of Benchmark costs for local infrastructure
5. Review of the essential works list, nexus and efficient infrastructure design

Key Recommendations

Given the recent release of the suite of documents, staff have had limited time to work through the proposed changes in detail. However, from an initial review, the State has made revisions to their original thinking on these reforms in response to the advocacy work from local government.

Some of these changes seem to improve the process for councils and benefit the local community. However, there are still areas from our preliminary assessment where we anticipate that Council will likely lose revenue, and have impacts on economic benefits and jobs across the City.

To provide a more thorough understanding of the financial implications, particularly around proposed changes to Section 7.12, GLN Planning (engaged by NSROC) will refine the modelling recently undertaken, to assist member councils to illustrate the financial impacts of the proposed reforms. This information will inform Council's submission and likely assist in identifying if grandfathering of existing conditions is required to ensure Willoughby City Council is no worse off.

There are numerous findings and recommendations identified in the five documents on exhibition. Below are the key recommendations (further detail provided in Attachment 2) and the initial response from staff, noting that a detailed review is yet to occur.

Key issues	Council's initial response
1. Introduction of a principles-based framework is needed to meet community needs.	Neutral
2. Allowing councils to pool Section 7.11 contributions and to recoup interest costs.	Positive
3. Only small changes to the essential works list: Removing the requirement that embellishment of open space be 'base level' and instead consider this as part of the nexus and efficiency assessments; Including strata space for community facilities; and, Including borrowing costs.	Positive, however review of the detail is required to ensure benchmarks are appropriate
4. The addition of benchmarks and costing methods set out the quantum of costs that can be included in plans.	Uncertain, detailed review required
5. The addition of regulations to set section 7.12 rates in ways other than by percentage of construction cost and by area (four defined areas, Willoughby is located in East)	Negative, will require review of the detail and financial modelling to understand the likely impact. However anticipate that these rates compared to existing, particularly in Chatswood CBD, will have a negative impact
6. Set a four-year review period for local levy condition rates (s7.12).	Neutral, potential for negative impacts in future years
7. The addition of requiring local levy rates and conditions to be adjusted to reflect variations using the Producer Price Index (Road and Bridge Construction – NSW).	Neutral, detailed review required as typically use CPI
8. Provide savings and transitional provisions for existing section 7.12 contributions plans.	Positive
9. Replacing the Special Infrastructure Contributions (SIC) with a Regional Infrastructure Contributions (RIC), based on three components: Base contribution; Transport Project component; and Strategic Biodiversity component. Rates are identified which are specific for different types of development, compared to the current flat rate.	Neutral, small impact area, detailed review required of unintended impacts. May impact willingness of developers to enter into voluntary planning agreements and funds can be used outside the LGA they were raised in.

Next Steps

Staff will review the documents on public exhibition and assess the potential impact on the community and Council's long term financial sustainability. A submission will be prepared consistent with previous resolutions and adopted principles.

The timing of the public exhibition of all documents is in the midst of Local Government elections and the caretaker period. Therefore, DPIE have advised there will be two stages of feedback:

- Public exhibition period for technical submission from Council staff concluding 10 December 2021
- An opportunity for Council endorsed submissions due one week after the first meeting of the new councils in early 2022.

Given the timing of the public exhibition period, the technical submission will need to be made under CEO delegation, noting that the submissions will be reported to new Council. This approach does not breach caretaker guidelines as the Department is not asking councils to enter into an undertaking involving an expenditure or receipt of funding.

A report to Council will be provided in early 2022 to meet the second stage of feedback.

5. CONCLUSION

Infrastructure Contribution reforms have a significant impact on the Willoughby community and Council's financial sustainability. It is important that Council continue to advocate on the issues and impacts of the proposed infrastructure contributions reforms and provide a submission to the public exhibition under CEO delegation to meet the exhibition timeframes.

IMPLICATIONS	COMMENT
City Strategy Outcome	5.2 – Demonstrate leadership and advocacy for local priorities
Business Plan Objectives, Outcomes / Services	The report's recommendation is consistent with Council's recognition of its role in creating new liveable places, strong communities, and homes for the future, expressed in the <i>Community Strategic Plan: Our Future Willoughby 2028</i> .
Policy	This matter relates to the <i>Willoughby Local Infrastructure Contributions Plan 2019</i> .
Consultation	Previous consultation with staff has informed the development of this report.
Resource	This report was developed using existing resources.
Risk	There are no significant risks directly associated with the report's recommendation. However, there are a range of significant financial and service delivery risks associated with proposed reforms to infrastructure contributions. Proposed future submissions on the public exhibition aim to mitigate those risks.
Legal	There are no legal considerations applicable to this report.
Legislation	This report concerns proposed amendments to the <i>Environmental Planning and Assessment Act 1979</i> .
Budget/Financial	<p>There are no direct financial implications of this report's recommendation. However, the recommendation is consistent with Council's demonstrated intent, evident in its Long Term Financial Plan, to fund infrastructure needed to support ongoing growth of the City's population of residents, workers and visitors.</p> <p>Developer contributions are used to fund public facilities to meet increasing community demand. This takes the form of augmenting existing public facilities and providing new public facilities. Council has a strong history of delivery high quality and needed facilities through this funding.</p> <p>The Government's proposed reforms of infrastructure contributions would be significant for Council's future financial sustainability and performance.</p>

KEY FINDINGS AND RECOMMENDATIONS FROM EACH DOCUMENT ON EXHIBITION

1. Regional Contributions

- a. There will be a new framework replacing the State Infrastructure Contributions (SIC) with the Regional Infrastructure Contributions Scheme (RIC). Contributions to the RIC fund will provide funding to state agencies through the budget process to plan and deliver infrastructure in the regions where contributions revenue is collected.
- b. The RIC consists of the base contribution, along with two additional components which are only applied to specific areas within the region, Transport Project Component; and, Strategic Biodiversity Component.
- c. Proposed RIC rates include:

Commercial development	\$30 per square metre of new floor area
Industrial development	\$15 per square metre of gross floor area
Residential development within Greater Sydney	\$12,000 for a dwelling house \$10,000 for residential flat buildings and other forms of higher density housing
Retail	\$30 per square metre of new gross floor area

- d. RIC will be generally paid through monetary contribution, however in certain circumstances an equivalent contribution can be delivered through an Infrastructure Delivery Agreement and / or a combination of both. This allows developer to act as a delivery partner by building or dedicating infrastructure to the public that supports the development
- e. Due to commence on 1 July 2022, it is proposed to allow for a discount to the Base Contribution rate for the first 2 years after the SEPP is introduced, in situations where early payment is made. From the third year, no discount will be applied, and the full RIC will come into effect.
- f. When the RIC Framework comes into effect, it is proposed that all implemented SICs will be transitioned into the new system over time, and no new SICs will be made. It is expected that the Bayside West and St Leonards/Crows Nest special contributions areas will transition first.

2. Land Use Planning

- g. Contribution Plans will be prepared upfront (when needed) and exhibited at the same time as the rezoning proposal.
- h. Direction given to think about how opportunities for dual use and shared use of open space.

3. Local contributions

- i. Section 7.11 contributions (local infrastructure contributions) are charged where there is a demonstrated link between the development and the infrastructure to be funded.
 - A new land value contribution has been introduced as an alternative approach for councils to recover the cost of land acquisition in 'land value contributions areas' subject to planning proposals to rezone land if identified in section 7.11 contributions plans.

- Allows councils to pool contributions for purposes identified in more than one plan and provides a regulation-making power to allow councils to recoup interest costs associated with borrowing.
 - IPART's concurrent work in reviewing the essential works list and investigating benchmark costs for section 7.11 contributions plans to ensure local infrastructure contributions are used to fund the provision of development-contingent infrastructure.
- j. Section 7.12 levies (local levy conditions): An alternative to s7.11 contributions, imposed on development consents to fund local infrastructure with a relationship to overall development across an area.
- Allow regulations to set section 7.12 rates in ways other than by percentage of construction cost.
 - Set new local levy condition for named development types by area, Willoughby falls into Greater Sydney – East, outlined below:
- | Greater Sydney - East | Proposed |
|---|-----------------|
| House (per dwelling) | \$15,000 |
| Other residential (per dwelling (dual occupancies etc.)) | \$15,000 |
| Additional bedrooms (per room for additions) | \$6,000 |
| Commercial (per m2 new and additions)* | \$50/\$25 |
| Retail (per m2 new and additions)* | \$35 / \$17.50 |
| Industrial (per m2 new and additions)* | \$35 / \$17.50 |
| Boarding houses / group homes / student accommodation / hotels / motels / serviced apartments (per bedroom) | \$6,000 |
| Aged care facilities / nursing homes / hostels / backpackers' accommodation (per bed) | \$6,000 |
| Caravan parks / manufactured home estates (per site) | \$15,000 |
| Solar and wind farms (per megawatt capped at \$450,000 per project / DA) | \$2,000 |
- period for local levy condition rates
 - Require local levy rates and conditions to be adjusted to reflect variations using the Producer Price Index
 - Provides transitional provisions for existing section 7.12 contributions plans.
- k. Increase affordable housing reporting requirements.
- l. Simplify and standardise exemptions.
- m. Identify timing for review of contributions plans.

6. Review of Benchmark costs for local infrastructure

7. Review of the essential works list, nexus and efficient infrastructure design

The above two reviews have resulted in one report. A summary of the key findings and recommendations are outlined below:

- a. A principles-based framework is needed to meet community needs.
- b. Small changes to the essential works list to better meet objectives:
 - Removing the requirement that embellishment of open space be 'base level' and instead consider this as part of the nexus and efficiency assessments
 - Including strata space for community facilities
 - Including borrowing costs.
- c. Applying the principle of nexus and identified three principles to guide decision making: demonstrate demonstrable increase in demand; types of facilities proposed are required to address the demand; and, proposed facilities consider extent to which existing facilities meet the demand.
- d. Efficient design and planning principles and base level infrastructure, identifying two overarching principles: base level of performance; and, cost effective option for delivering base level performance.
- e. Benchmarks and costing methods set out the quantum of costs that can be included in plans.
- f. Guidance on how and when can costs within a plan change.