17 December 2021

Mr Jonathon Schipp
Executive Director, Planning System Policy
Planning and Assessment
Department of Planning, Industry and Environment

Via email: infrastructure.contributions@planning.nsw.gov.au
Cc: jonathon.schipp@dpie.nsw.gov.au; stakeholder.engagement@planning.nsw.gov.au; Kate.Speare@planning.nsw.gov.au

Dear Jonathon

NSROC Submission to the Department of Planning, Industry and Environment (DPIE) on the proposed reforms to the infrastructure contribution system.

NSROC member councils service an area extending from the Hawkesbury River in the north to Sydney Harbour in the south, west to Meadowbank on the Parramatta River. The eight NSROC member councils are Hornsby Shire Council, Hunter's Hill Council, Ku-ring-gai Municipal Council, Lane Cove Council, North Sydney Council, Mosman Municipal Council, City of Ryde and Willoughby City Council. The region has limited new release development areas and faces considerable cost constraints in sourcing land for community infrastructure. As at June 2018, the median house price in the region was 144% more than the state average (profile.id).

Northern Sydney Regional Organisation of Councils (NSROC) appreciates the opportunity to make a submission to DPIE on the proposed reforms to the infrastructure contribution system. While this submission represents an overarching position for the region, it is noted that individual member councils will provide submissions consistent with this and highlighting particular local issues. NSROC member councils have welcomed the engagement with government on the appropriate approach to implement the recommendations of the NSW Productivity Commission's Review of Infrastructure Contributions in NSW.

NSROC acknowledges that since the exhibition package was released the government has proposed changes as a result of issues raised by councils. However, NSROC remains concerned that the reforms as proposed will have a detrimental impact on council revenue and capacity to deliver high quality infrastructure for their communities in a timely manner.

NSROC is firmly of the view that:

- Councils require sustainable ongoing funding to deliver the NSW government priorities for open spaces and community placemaking.
- Councils should be given flexibility to spend infrastructure contributions consistent with that available to the NSW Government expenditure of the Regional Infrastructure Charge (RIC). Both levels of government should be required to demonstrate the principle of nexus for the works proposed.
- The essential works list should not apply to developer contribution (s7.11) plans. Councils are best placed to understand the infrastructure needs of their communities and plans are developed with significant public consultation.

- The reforms must not shift the cost of additional community infrastructure from new development to the existing community.
- Arrangements for the payment of infrastructure contributions should revert to the pre-COVID settings with contributions paid at the construction stage.

NSROC member councils appreciate the Minister's commitment to ensuring that no council is worse off however there continues to be a lack of clarity around how this is defined and over what time period.

To ensure that no council is worse off, the NSW Government should:

- **remove the essential works list from s7.11 contributions and allow councils a similar level of flexibility to spend local infrastructure contributions** that it has given itself for the Regional Infrastructure Fund. Councils are best placed to understand the infrastructure needs of their communities and plans are developed with significant public consultation.
- **Simplify the proposed policy settings for s7.12** and allow councils to levy a flat rate of up to 3% of the cost for residential development and up to 1% of the cost for non-residential development.

Local Contributions

The main contributions reform components that, if implemented, will have a negative effect on NSROC councils' contributions revenues are:

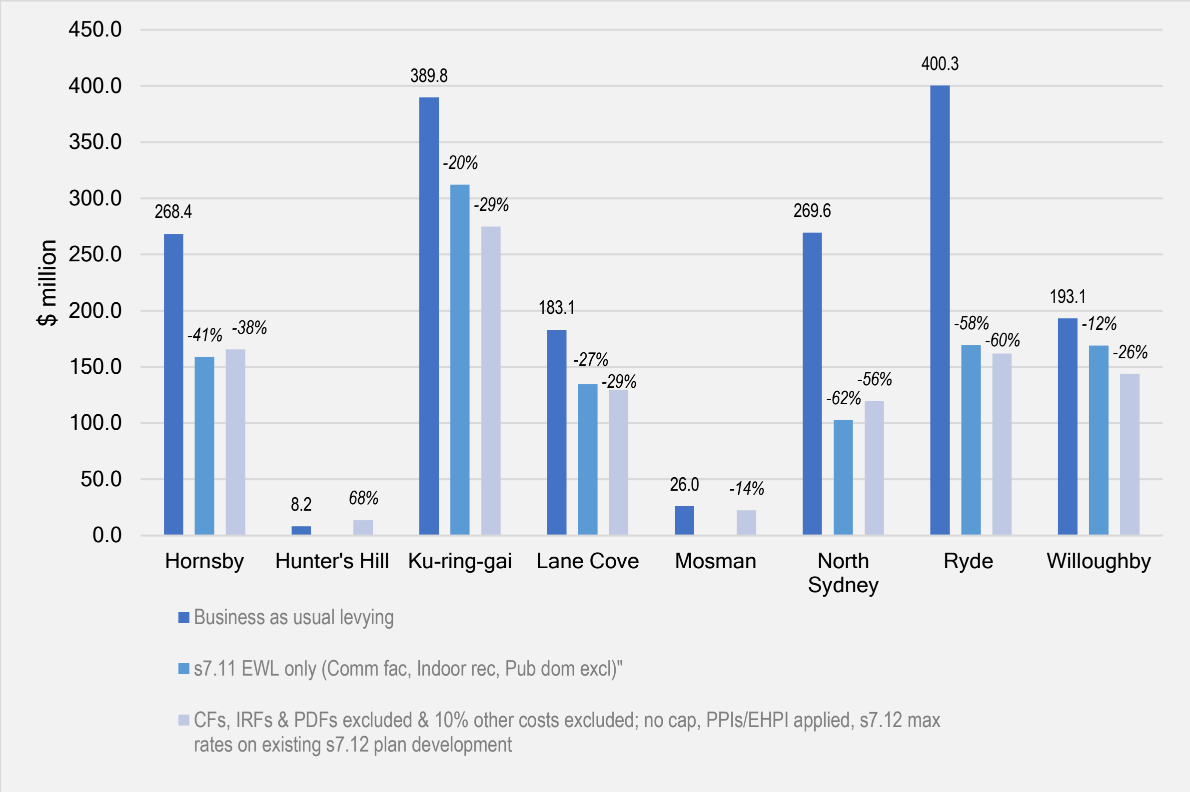
- The essential works list applying to future s7.11 contributions plans, with community facility works no longer allowed to be levied for (at least from 2025/26), and potentially also indoor recreation and public domain facility works.
- Proposed maximum s7.12 rates applicable to non-residential development being set below the current levy equivalent amount (a maximum of 1% (of development cost) in all LGAs but a maximum of 3% in the Willoughby LGA for the Chatswood CBD). The proposed rates are set below the 'intended' percentage equivalent levels (3% for residential development and 1% for non-residential development) in the NSROC region.

NSROC commissioned GLN Planning to assess the impact of the proposed reforms on its member councils. Findings included that **NSROC cumulative contributions income is expected to be $153 million lower than business as usual in the first 5 years** after the reforms commence (under the scenario where community facility, indoor recreation facility and public domain facility works cannot be included in s7.11 contributions). **NSROC cumulative income if maximum s7.12 rates are levied LGA-wide is expected to be $81 million lower than business as usual in the first 5 years**.

GLN also concluded that:

- income losses will be compounded by the proposal to exempt non-demand based development (essentially, alterations and additions, changes of use and fit outs) from s7.12 levies and instead only apply the levy to net additional floor area.
- the proposed s7.12 maximum rates for additional dwellings and additional non-residential floorspace were well below the intended percentage equivalents for NSROC councils.

Figure 1: Contributions income impacts over 20 years on NSROC Councils from implementing the s7.11 and s7.12 reforms (real terms). Note the analysis runs from the 2021/22 financial year, and hence includes three years in which reforms have not been applied. As such the impact of the reforms are understated and conservative.



In addition to the concerns outlined above, the proposed system for s7.12 is open to manipulation due to its reliance on bedroom numbers and floor area calculations. To avoid the levy, developers will increasingly deliver studies and media rooms rather than bedrooms. Also knock down rebuilds may become alterations by keeping a small portion of the existing development. Further consideration of the definition of bedroom or 'habitable space' is required. **These issues could be avoided by allowing councils to levy a flat rate for of up to 3% of the cost for residential development and up to 1% of the cost for non-residential development.**

<u>*Regional Infrastructure Contributions (RIC)*</u>

It is understood that the RIC will replace Special Infrastructure Contributions (SIC). However NSROC does not support the dilution of the governance and policy settings of the RIC from that applied to the SIC. The expenditure of the RIC does not rely on nexus and does not provide the necessary level of transparency for councils and the community on the works that are to be funded.

NSROC supports the concept of nexus and considers that both levels of government should be required to demonstrate the principle of nexus for the works proposed. NSROC supports in principle, the recently proposed amendments to the *Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021* requiring that the RIC be spent in the region in which the development is located. However, Districts as defined specifically for the purpose of strategic regional planning in A Metropolis for Three Cities and accompanying District Plans should be used rather than the regions described in the discussion paper for the proposed RIC SEPP.

The decision making role of Treasury and administrative burden associated with nominating regional projects for RIC funding is of concern. The process for councils to nominate regional infrastructure projects for RIC funding including the preparation of a business case and alignment with RIC funding objectives is likely to be administratively burdensome with limited likelihood of success. The policy settings should be modified to prioritise the allocation of funding to the contributing district.

Whilst it is acknowledged that the RIC is not intended to impact on councils' capacity to collect contributions, in practice it is likely that it will influence developers' willingness to enter Voluntary Planning Agreements with Council. Further information on how government will ensure this does not occur would be appreciated.

Payment of the RIC in addition to any local infrastructure contribution has the potential to increase the overall cost of development. This is inconsistent with the government's aim of addressing housing affordability as the increased cost is likely to be reflected in the end market cost.

Government has allowed itself significant flexibility in how and where the RIC is spent. Councils should be given a similar level of flexibility to spend local infrastructure contributions. Infrastructure Contribution Plans are widely consulted on and would guide the expenditure of local contributions. Consistent levels of governance are required at all levels of government.

Deferring Payment of contributions to occupation certificate stage

NSROC member councils do not support the proposal to permanently defer payment of developer contributions from construction certificate to the occupation certificate stage. This will impact Councils' liquidity. It will also constrain councils' capacity to deliver much needed infrastructure in a timely manner to meet the needs of the community and new residents as demand increases.

The Minister's commitment to 'seek financial assistance for councils that can demonstrate cash flow problems' does not provide any certainty that such assistance will actually be provided or the terms under which it might be.

If government pursues this reform, alternative policy settings could be considered including:

- increasing the limit of high value projects to which this requirement applies from $10m
- allowing councils to offer an incentive to developers to bring payment forward
- allowing councils to use funds from the proposed Regional Infrastructure Fund to cover the funding gap between construction and occupation certificate stages. Funds would be returned to the RIC when the respective contribution is received from the developer.

It should be noted that each of the alternative options would increase the administrative cost for councils which would be passed back to developers through the contributions plan, offsetting any perceived saving. **Accordingly, arrangements should revert to the pre-COVID settings with contributions paid at the construction stage.**

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

Whilst not part of the exhibition package, IPART's consideration of the essential works list is of direct relevance to the application of the proposed reforms. NSROC strongly objects to the inclusion of the following constraint in the Terms of Reference for the IPART review of the essential works list, nexus and efficient design. '*The essential works list must not expand beyond the current parameters and community facilities works must not be included.*' This is an unnecessary limitation on IPART. It has significantly fettered the independent consideration and identification of the most effective policy settings to support Councils' capacity to provide communities with much needed infrastructure.

Government has not provided a compelling justification for excluding critical community infrastructure from being part-funded through contributions from demand generating development.

In relation to IPART's consideration of benchmark costs, NSROC engaged Mitchell Brandtman (expert quantity surveyors) to review IPART's proposed benchmark costs. Their response is attached to this submission. Importantly, Mitchell Brandtman have confirmed that contribution planning estimates completed within NSROC are well planned, documented, more complex in nature and cost more than comparable scope of work adopted in the Cardo Report. The level of detail and appropriateness of Cardo's scope of works and rates do not reflect the items commonly included in NSROC contribution plans which are delivered in brownfield and infill environments.

Government's relentless pursuit of reform across a broad range of sectors is creating a significant financial and administrative burden for councils at a time when councils need to be working closely with community and local business to restart the local economy and build resilience. The ongoing pace of reform, which in turn generates financial uncertainty, is not sustainable and will impact on service delivery. Following is a small sample of what has been requested in recent months, it is not exhaustive. Councils have been asked to provide detailed data and feedback on:

- Waste and Sustainable Materials Strategy implementation and the move to mandate FO/FOGO
- Changes to Domestic Waste Charges
- Changes to the rate peg to include population growth
- Changes to the collection and expenditure of infrastructure contributions
- Changes to the essential works list
- Establishment of benchmark costs for local infrastructure
- Australian Energy Regulator – Ring-fencing Guidelines
- Local Government Tendering Regulations
- Review of General Manager and Senior Staff Salaries

Much of this consultation has occurred with short timelines for feedback, during a period of council uncertainty as local government elections were delayed, and more recently the constraints of caretaker period. NSROC member councils seek greater coordination at the State Government level to ensure that local councils are not overwhelmed with simultaneous and significant requests.

This notwithstanding, given that infrastructure contributions are critical to the ongoing financial sustainability of councils, NSROC would welcome further engagement on contributions as the new policy settings are being finalised. This would include through the previously agreed, but yet to be established, General Managers Forum/Committee. If you require further information, please don't hesitate to contact me on 0401 640 823 or mmontgomery@lanecove.nsw.gov.au.

Yours sincerely

M. Montgomery

Dr Meg Montgomery
Executive Director NSROC

Executive

Shane Brandtman
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Matthew Kritzler
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Tass Assarapin
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10th December 2021

Northern Sydney Regional Organisation of Councils
48 Longueville Road
LANE COVE NSW 2066

Attention: Dr Meg Montgomery

Dear Dr Montgomery,

RE: REVIEW OF DRAFT CARDNO BENCHMARK REVIEW

I have reviewed the Draft Cardno Benchmark Costs for Local Infrastructure, dated 10 November 2021 and consider that the scope of work and rates do not reflect work that is commonly included within Northern Sydney Regional Organisation of Councils (NSROC) Local Government Areas (LGA's) contribution plans.

Cardno's Report does not clarify what the 'base costs' represent. Based upon my experience as a quantity surveyor the rates appear to reflect costs for delivering large, highly productive projects in new residential subdivision developments in Sydney's growth areas.

Most contribution planning estimates that I have completed within NSROC LGA's include projects being delivered in brownfield environments. Typically, these projects are well planned, well documented, smaller, more complex in nature and cost more than comparable scope of work adopted in the Cardno Report. Estimates are measured in detail and not on a square or lineal metre basis. Therefore, the level of detail and appropriateness of Cardno's scope of works and rates do not reflect the items commonly included in NSROC LGA's contribution plans.

NSROC LGA's contribution plans include a high degree of upgrading existing infrastructure or building infrastructure in an existing environment to accommodate a growth in population in lieu of providing new infrastructure. Examples of these works are underground concrete water storage basins in parks in lieu of above ground water storage basins, small pocket parks in urban rezoned areas with a high percentage of hardscape in lieu of large active greenfield parks, building parks and playgrounds on building podiums in lieu of greenfield environments, upgrading existing playing fields in lieu of new green field playing fields. Cardno's Report does not include for this scope of work or include appropriate adjustment factors that could be applied to their rates to accommodate the cost differential. Cardno have included some adjustment factors that can be applied to their rates such as regional and raw material sourcing; site constraints; soil condition; indexation; on-costs and contingency. These allowances do not include for all factors that can influence costs on brownfield projects such as:

a) Demolition, clearing and disposal of rubbish left on land from previous owners;

b) Smaller amounts of work being delivered in stages due to fragmented land ownership;

c) Demolition, clearing and disposal of rubbish left on land from previous owners;

d) Remediation including the disposal of general solid waste and contaminated material off-site and the replacement with suitable fill;

e) Demolition and removal redundant infrastructure to deliver new works;

f) Requirement to import or dispose fill due to existing site constraints as the balance cannot be integrated into the design process;

g) Undergrounding, relocation and protection of existing utility infrastructure;

h) Staging of works due to half road construction and works adjoining developments;

i) Generally work is not as productive on brownfield sites when compared to greenfield subdivisions resulting in higher comparable rates;

j) Additional costs associated with significant horizontal and vertical road realignment when upgrading existing infrastructure;

k) Additional costs associated with community consultation and design amendments in areas with an existing population of residents;

l) Delivering smaller scale projects resulting in higher costs per square metre;

m) Delivering projects on a building podium in lieu of ground level;

n) Scope increases to tie-in with existing infrastructure;

o) Modification and adjustment of adjacent impacted properties;

p) Noise walls and sound attenuation of adjacent dwellings;

q) Out of hours work requirements;

r) Maintaining property access during works;

s) Traffic and pedestrian management during works;

t) Temporary works including diversions to deliver transport and stormwater infrastructure

u) Additional preliminary, margin and cost escalation associated with prolonged delivery programmes;

v) Additional design and coordination costs.

The extent of soil condition impacts is not typically determined until subgrade is encountered and tested. Therefore, the factors included in Cardno's adjustment factor for '*Note 3 Soil Condition*' cannot be readily applied at the planning or design stage unless the worst-case scenario is adopted without the necessary due diligence having been undertaken. Typically, a rate for sub-grade improvement would be included in lieu of a percentage if this scope is expected based upon geotechnical reports or expected local conditions.

Cardno do not include an adjustment factor for removing debris, general solid waste and contamination from sites. Brownfield projects would need to allow for these factors and the costs can potentially outweigh the embellishment costs.

Cardno's suggested escalation factor adjustment method of applying ABS data in '*Note 4 Indexation*' is more appropriate than using CPI Sydney All-Groups. Over the past decade building indices has escalated at a higher rate than CPI so the proposed is perforable, however specific escalation should be applied to certain items if required. For example, steel has increased over 40% in the last year so items like street lighting and reinforced concrete culvert and pipes should escalate at a higher rate that ABS indices if deemed appropriate.

On-cost rates can vary considerably depending on the complexity of a project and should not be categorially calculated based upon the cost. For an example a $5M rail over bridge collector road with multiple underground services would likely require an on-cost of over 12% to enable the delivery. It would be ideal if the on-costs could be flexible so that percentages could be adjusted if required to reflect the actual expected cost of the works being delivered. Typically, on-costs for brownfield works would be higher than comparable greenfield projects due to the smaller nature and complexity of projects.

Contingency rates should be applied depending on the risk profile of specific projects and not just fixed percentages. For example, at 'planning' stage a greenfield collector would only require a 5% to 10% contingency, where a large intersection upgrade would require 30% to 40% contingency. The suggested rate of 20% is therefore not applicable to all work with this project category. At a 20% rate, the contingency on greenfield projects would excessive, whilst brownfield projects would be insufficiently calculated. Improvements to the contingency would include the option to include specific rates dependent on the works being delivered or contingencies calculated after undertaking a P90 Monte Carlo simulation.

Based on my experience and review of Cardno's Benchmarking costs, there would be very limited instances where I would deem the rates or adjustment factors appropriate for works I have estimated in NSROC LGA's.

Should you require further information and details, please contact the undersigned.

Yours faithfully
MITCHELL BRANDTMAN

MATTHEW KRITZLER
PARTNER