



INFRASTRUCTURE CONTRIBUTIONS

Infrastructure contributions system improvements

Submissions report

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Executive summary

This report provides an overview of the 89 formal submissions received from stakeholders during the infrastructure contributions system improvements exhibition from 15 April to 26 June 2020.

It also explains how the NSW Government has responded to submissions received during the exhibition to finalise the package and to inform implementation.

Overall, most responses supported the proposals to improve the transparency and efficiency of the infrastructure contributions system, to increase and index contributions and to provide additional guidance and certainty to users of the system.

Some submissions indicated concerns and provided feedback on some aspects of the proposals which have been considered on their merit. This submission report outlines how the Department has considered these suggestions and responded to them.

Table 1: Stakeholder response overview

Stakeholder	Overall feedback
Local government	<ul style="list-style-type: none"> Retain flexibility to meet the community's infrastructure needs Objection to the removal of value capture when established in council's policies Support for the review and indexation of section 7.11 thresholds Concerns about potential costs and seeking time to implement new processes Request flexibility that allows councils to reflect the different circumstances of regional councils
Industry stakeholders	<ul style="list-style-type: none"> Support for clearer guidance and consistent processes to provide certainty Support for changes in relation to Independent Pricing and Regulatory Tribunal's (IPART) role Support for improved reporting and online publication of reports Requests for clarity on draft Special Infrastructure Contributions (SIC) status to ensure charges are known upfront
Community groups and individuals	<ul style="list-style-type: none"> Lack of support for the draft practice note's position on value capture which will prevent provision of infrastructure as a result of uplift General mistrusts of the contributions process, lack of opportunity to comment and the community not benefiting from windfalls or provided with adequate infrastructure from increased development

Productivity Commission review of the infrastructure contributions system

In April 2020 the Minister for Planning and Public Spaces asked the NSW Productivity Commissioner to conduct a comprehensive review of infrastructure contributions system in NSW. A key objective was to determine whether the system meets the objectives of certainty and efficiency while delivering public infrastructure to support development.

In November 2020, the NSW Productivity Commissioner provided his Final Report on the Review to the Minister for consideration. The Productivity Commission's Final Report is publicly available at the NSW Productivity Commission's website¹.

The Productivity Commission's recommendations will form the foundation of reform to create more certainty about how infrastructure is funded and delivered to support new and existing communities. The NSW Government is proceeding now with three of the exhibited system improvements as a first step towards broader reform.

¹ <http://productivity.nsw.gov.au/infrastructure-contributions-review>

System improvements

The following system improvements, with some changes in response to submissions detailed in this report, will be immediately implemented:

- Updated Planning Agreements Practice Note.
- Section 7.12 Fixed development consent levies Practice Note to introduce criteria for assessing council requests for a higher percentage levy in draft section 7.12 (s7.12) contributions plans, including separate criteria for regional councils.
- *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) amendment to:
 - include new reporting requirements for infrastructure contributions and planning agreements
 - transfer planning agreement explanatory notes from the Regulation into the Planning Agreements Practice Note.
 - update clause 25K (cl25K) in relation to s7.12 levies.
- Clarification through a planning circular advising that councils are not required to re-exhibit an Independent Pricing and Regulatory Tribunal (IPART) reviewed draft infrastructure contributions plans following receipt of advice from the Minister's nominee.

The following system improvements will be considered in light of the PC's recommendations:

- Increase of IPART review thresholds for section 7.11 (s7.11) contribution plans.
- Annual indexation of review thresholds based on the Consumer Price Index (CPI).
- Reviewing the IPART terms of reference.
- Removing the grandfathered infrastructure contributions plans.

Further work by the Department will be undertaken on embedding a Special Infrastructure Contribution (SIC) framework, which includes finalising the SIC Guidelines.

All changes are in line with the objective of fixing the uncertainty of infrastructure contributions and build on recent policy, operational and legislative improvements to simplify the NSW planning system.

1 Introduction

1.1 Purpose

This report provides a summary of formal submissions received during the exhibition of a package of proposed improvements to the NSW infrastructure contributions system.

The package included five separate discussion papers addressing individual reforms exhibited from 15 April to 12 June 2020:

- draft planning agreements policy framework
- improving the review of local infrastructure contributions plans
- criteria to request a higher section 7.12 percentage
- draft Special Infrastructure Contributions (SIC) guidelines
- proposed amendments to the EP&A Regulation.

This report summarises key issues raised in the submissions and how the NSW Government has responded to feedback on each discussion paper in separate chapters.

It explains how feedback has been used to finalise the proposals and to inform the implementation of improvements to the infrastructure contributions system.

1.2 Background / Case for change

The NSW Government aims to fix the uncertainty of the infrastructure contributions system, to help unlock new housing supply, deliver public infrastructure and boost investment in NSW. This involves two complementary processes:

- The Department's proposed reforms to identify and make improvements to the infrastructure contributions system that will make it more transparent and easier to use.
- The NSW Productivity Commission's (PC) review of the infrastructure contributions system to assess how infrastructure is funded in NSW and look at matters in and beyond the planning system.

These proposed system improvements respond to a range of recent governance reviews, including the 2018 Kaldas Review, on how the planning system could be improved. The Kaldas Review² made three recommendations on the infrastructure contributions system:

- That the Department consider undertaking an audit of all infrastructure contributions and spending in NSW to enable evidence-based decision-making on the collection and monitoring of those contributions.
- That the Department update the Practice Note for Voluntary Planning Agreements to ensure consistency and transparency. To ensure Councils consider the Practice Note when negotiating or preparing a Voluntary Planning Agreement, the Minister should consider issuing a Ministerial Direction requiring Councils to have regard to the Practice Note.
- The updated Voluntary Planning Agreement framework should also include requirements for reporting and auditing where the funds are being allocated.

These measures were to ensure greater transparency, compliance and accountability in the contributions system and are reflected in the proposed system improvements.

² www.planning.nsw.gov.au/-/media/Files/DPE/Reports/Assess-and-Regulate/compliance/review-of-governance-of-decision-making-in-the-nsw-planning-system-report-2018-12-18.pdf

2 Consultation

2.1 Exhibition process

The exhibition material was placed on the Department’s website³. Submissions were accepted through the NSW Planning Portal, via mail and e-mail.

The exhibition period formally ran from 15 April to 12 June 2020. However, several stakeholders sought and were granted a two-week extension due to their regular operations and approval processes being impacted by the COVID-19 pandemic.

The Department hosted a webinar and Q&A for local government on the exhibition package on 20 May to inform councils’ specialist staff of the package. This was attended by approximately 120 council representatives from around NSW.

The Department presented to the Southern Sydney Region of Councils Strategic Planning Group meeting (5 May) and the Southern Councils Contributions Planners Network (6 May).

A total of 91 submissions were received by 3 July 2020. All submissions were registered, reviewed and entered into a database to capture the details of the stakeholder, their key issues and their position on reform options.

Two submissions were entirely out of scope requesting contributions information on specific sites. The enquiries were responded to by the relevant team, but do not form part of this report.

Comments were classified by the reform paper, topic, level of support and other suggestions. All submissions were then reviewed by subject matter experts in the Department’s Infrastructure Funding and Public Space Policy team to ensure that technical and policy issues were properly captured and addressed. New suggestions which were not part of the exhibition package were considered on their merit.

2.2 Overview of submissions

The table below summarises the submissions received by stakeholder group to each paper.

Table 2: Summary of all submissions by stakeholder and exhibition paper

Stakeholder	Overall	Planning agreements	IPART process	S7.12 criteria	SIC guidelines	Regulation amendments
Total submissions	91	82	71	66	66	62
Council	53	49	49	50	39	45
Public (Individual) and Community Groups	11	9	3	2	5	1
Industry	9	7	6	6	7	3
Peak body	7	7	4	5	5	6
Other	5	4	5	4	5	3
Government agency	3	3	2	1	2	2
Specialist	2	2	2	2	2	1
Political party / politician	1	1	1	1	1	1

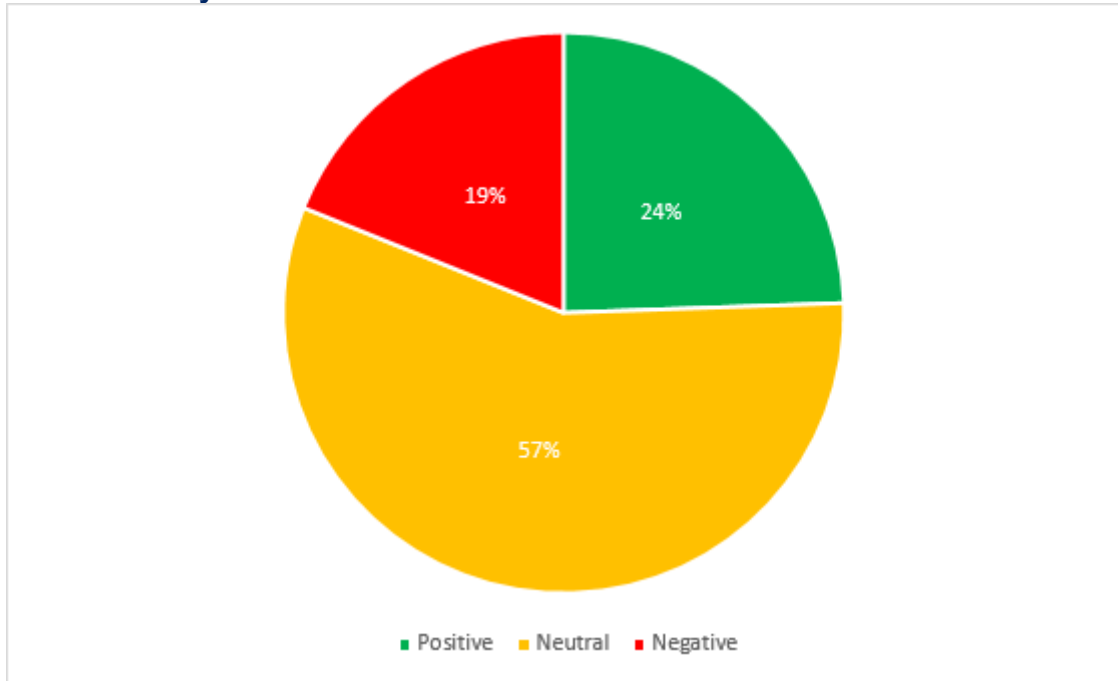
Infrastructure contributions collection and expenditure is a technical matter, as a result most submissions came from the stakeholders impacted. Not all stakeholders commented on each paper. Some of the most technical aspects of the exhibition, such as the proposed amendments to accounting and reporting requirements, received submissions mostly from councils and the development industry. Submissions from community groups mainly focussed on the transparency

³ www.planning.nsw.gov.au/Policy-and-Legislation/Infrastructure/Infrastructure-Funding/Improving-the-infrastructure-contributions-system

of planning agreements and special infrastructure contributions, particularly in relation to increased density and development.

The diagram below illustrates the sentiment of the submission received.

Diagram 1: Summary of sentiment in stakeholder submissions



The following chapters outline the proposals in each exhibition paper, what we heard from stakeholders and the outcome. Some proposals will require further work with stakeholders and time to implement whilst others can progress more quickly. Some may be deferred until the PC's review, being conducted concurrently with this exhibition, is completed.

3 Planning agreements policy framework

The exhibition material comprised:

- Draft Secretary’s Practice Note on Planning Agreements including:
 - the principles, policy and strategic considerations for planning agreements
 - procedures for negotiation, preparation and registration
 - planning agreement and explanatory note templates.
- Ministerial Direction to all local councils to identify standard requirements for negotiating or preparing future planning agreements.

3.1 Summary of proposed reform

Planning agreements are a flexible way for planning authorities and developers to fund and deliver infrastructure and public facilities. The Ministerial Direction requires local councils to have regard to the Secretary’s Practice Note when negotiating or preparing new planning agreements. The draft Secretary’s Practice Note updates and replaces the former Department’s 2005 version and a draft previously exhibited in 2017. The policy has been reviewed in response to submissions received in 2017, to address the Kaldas Review’s recommendations and to align it with contemporary policies, practices and references.

The practice note aims to provide more transparency around the planning agreement process. It reinforces that planning agreements are a means to fund innovative solutions to the community’s infrastructure needs. The practice note has clarified that the use of planning agreements for the primary purpose of value capture is not supported, for example value capture for bonus or additional floor space or building height.

3.2 Issues raised in submissions

This paper attracted a high level of interest with 92% of submissions commenting on the proposals. Procedural and decision-making matters, and value capture were the areas of greatest interest.

Table 3: Summary of submissions on Planning Agreements Practice Note and Ministerial Direction

Stakeholder	Overall feedback
Local government	<p>Many councils with existing value capture policies strongly objected to the practice note’s position on value capture</p> <p>Mixed opinion on the requirement to align with strategic plans</p> <p>Concern that funding affordable housing through planning agreements is removed</p>
Industry	<p>Support for the draft practice note’s position on value capture</p> <p>Suggestions to improve use such as maximum negotiation times, emphasis on nexus, limits on broadening application e.g. maintenance</p>
Peak bodies	<p>Concerns for the draft practice note’s position on value capture</p> <p>Suggestion the practice note also applies to government agencies</p>
Community groups and individuals	<p>Mistrust of the use of planning agreements and lack of public input</p> <p>No support for the draft practice note’s position on value capture which will prevent provision of infrastructure as a result of uplift</p> <p>Suggestion the practice note should be applicable to mining projects and include affordable housing</p>

Stakeholder	Overall feedback
Other	<p>Support for clarification that the draft practice note excludes mining projects</p> <p>Suggestion to expand practice note to activities in rural areas such as solar / wind farms</p>

The clarification and position on value capture drew out the strongest comments and opposing positions from stakeholders. Many councils, peak bodies and community representatives objected to the changes, particularly those councils which had operated planning agreement value capture policies. Examples were provided by councils of benefits including flexibility of negotiated outcomes with developers.

Councils were concerned that the existing requirement to develop an affordable housing contribution scheme through the *State Environmental Planning Policy No. 70 – Affordable Housing (Revised Schemes)* rather than a planning agreement or contributions plan would impact their ability to raise funds to provide affordable housing. Industry bodies were also concerned about multiple levies and contributions, seeking clarity on the proposals to be able to assess financial viability of projects. Community housing peak bodies suggested the practice note be strengthened to help deliver the housing objectives of the Sydney Region Plan.

Several stakeholders considered the Ministerial Direction as an excessive means to enforce the practice note, elevating it from guidance material and removing flexibility for councils. In contrast, some developers appreciated that the guidance would provide a consistent approach. Others expressed concern that it did not go far enough.

The draft Planning Agreement and templates were generally supported. However, it was noted that many councils have their own agreement template with industry submissions noting this can lead to inconsistency, time and additional costs in developing agreements.

Additional suggestions were made to develop guidance for mining projects and developments in rural and regional areas such as wind and solar farms. Guidance was also sought on the need to include details of a planning agreement on land title and its removal.

3.3 Response

The exhibited position on value capture is maintained, as it is the Government’s policy position that planning agreements cannot be used for the primary purpose of value capture for the following reasons:

- It can create the perception that planning decisions are for sale, which undermines community confidence in built form outcomes.
- It adds additional costs, time and uncertainty for applicants as they may need to prepare a Planning Proposal or seek a variation to development controls, in addition to legal costs associated with drafting an agreement and public exhibition processes.
- The ad-hoc nature of approvals makes it difficult to plan for the cumulative impact of development on infrastructure, such as road network access and open space.
- It may be perceived as creating a disincentive for councils to appropriately undertake strategic planning as the council appears to benefit from deliberately retaining existing planning controls in order to extract payment for increased development yield.

The exhibited Ministerial Direction will not be progressed as it has been found that the same intent can be achieved through a new clause in the Regulation requiring councils to have regard to the practice note when negotiating planning agreements and for all planning authorities to have regard to the explanatory notes.

The updated Planning Agreement Practice Note includes some changes in response to submissions. The provisions relating to planning agreement preparation procedures have been

modified to better align with current practice. However, it should be noted that the procedures provided in the practice note are for general guidance and are indicative only. The actual steps taken in negotiating each planning agreement may differ.

In response to submissions, the subsections on pooling of funds and refunds have been deleted as they are inconsistent with current practice. Also, minor wording changes have been made for clarity .

Finally, the templates from the previous version of the practice note have been removed as they do not reflect current practice. Archived versions of the templates will be available on the Department's website.

4 Improving the review of local infrastructure contributions

The exhibition material comprised a discussion paper, *Improving the review of local infrastructure contributions plans*, which set out the proposed reforms.

4.1 Summary of proposed reform

The proposed improvements were designed to streamline the process of reviewing council's draft s7.11 contributions plans. They proposed improvements at different stages while maintaining the transparency and accountability underpinning the entire process. The proposed system improvements were:

- Increase the threshold which triggers a plan being reviewed by IPART, either by the CPI, increase to \$35,000 and \$45,000 respectively, or implement a single threshold of \$45,000.
- Index the thresholds to keep pace with cost increases so that the thresholds maintain their real value relative to infrastructure construction costs.
- Review IPART's terms or reference to make them clearer and remove duplications with the practice note, so that the practice note remains the source of guidance.
- Remove exemptions to identified grandfathered contributions plans so they are treated the same as other plans and subject to IPART review. This is to provide consistency and encourage councils to review old and outdated plans.
- Clarify that re-exhibition of an IPART-reviewed plan following the issuing of the Minister's (or Minister's nominee's) advice is not required as councils are constrained in making further changes to the plans at this point.

4.2 Issues raised in submissions

This paper attracted high levels of interest from most stakeholder groups, with 81% of submissions providing feedback. Most of the submissions on this discussion paper focused on options to increase the thresholds and suggestions for ways to index the thresholds.

Table 4: Summary of submissions on s7.11 Discussion Paper

Stakeholder	Overall feedback
Local government	<p>Support for increasing the thresholds. Preference for Option 3 (single \$45,000 threshold) as it provides flexibility, and most reduces review timeframes</p> <p>Support for indexation but mixed views on CPI with alternative indices suggested</p> <p>General support for improvements to the IPART process</p> <p>Some councils with grandfathered areas raised concerns about the removal of grandfathered plans, indicating that transitional arrangements should be implemented.</p>
Industry	<p>Mixed views regarding increasing the thresholds. Most support was for Option 1 (increase of thresholds by CPI)</p> <p>General support for introduction of CPI indexation</p> <p>Concerns about the removal of the re-exhibition of plans requirement in relation to the opportunity for public comment.</p>
Peak bodies	<p>General support for indexation, but suggestions to consider indices that better balance the cost of providing infrastructure and industry costs</p> <p>Support for IPART's Terms of Reference allow for the flexibility to reassess targeted contributions plan information without the need to assess whole contributions plans</p>

Stakeholder	Overall feedback
Community groups and individuals	Although community submissions were few, there was support for updating thresholds and processes to fund community infrastructure
Other	<p>Several submissions requested a review of the essential works list e.g. to include construction of health and community facilities not just land and to include other items such as blue and/or green infrastructure</p> <p>Some submissions requested a review of exemptions for infrastructure contributions</p> <p>Some submissions suggested that affordable housing should not be subject to contributions charges</p> <p>Some submissions recommended that the review of IPART Terms of Reference be reconsidered in line with the PC's recommendations</p>

Most stakeholders supported measures to increase the thresholds, acknowledging the need to accurately reflect current infrastructure costs, the effects of inflation and changes to councils' revenue collection. Despite the proposed increase some still noted there will be a shortfall in funding to deliver items in contributions plans. No option was uniformly supported by stakeholder groups. Councils tended to prefer the highest level in Option 3 whilst industry tended to prefer Option 1.

Some stakeholders did not support the thresholds in general, noting that councils should be able to recoup the true costs of infrastructure provision and that a potential outcome would be more delays resulting from more plans being reviewed by IPART.

Most submissions supported periodically indexing the thresholds. However, there were many suggestions to use a different index than CPI, mainly the Road and Bridge Index and Residential Property Price Index for Sydney. CPI was viewed positively as a well understood index, but many councils were concerned that it does not fully account for the true increase in costs and is inadequate for land and works since land costs account for most of the infrastructure costs.

The IPART review process was viewed by several stakeholders as a disincentive to accurately reflect infrastructure costs. Some consider that it creates a cost burden for councils and adds time to already lengthy processes. There were mixed opinions from stakeholders about whether the IPART review added robustness and transparency to plans, and that the costs may outweigh the benefits unless review timeframes can be improved.

Stakeholders supported the review of IPART's terms of reference. Broader consultation with industry was sought. Views varied with some requesting that IPART's review be more focussed rather than a detailed analysis of all elements of the plan. Some industry stakeholders made suggestions on ways to expand the role of IPART in the review process, for example by having more plans subject to review.

The general principle to remove grandfathered plans was supported. However, there were concerns that existing plans would need to be reviewed and cause delays or that councils would not be able to collect the levies planned for. Councils preferred a transitional phase out of plans which had commenced, and requested further guidance to support this.

Clarifying that re-exhibition of an IPART-reviewed plan following the issuing of the Minister's (or Minister's nominee's) is not required was generally supported. While supporting measures to speed up the review, some industry groups did not want the extra scrutiny of being able to comment on revised contributions liabilities at this point removed.

Stakeholders also suggested additional matters for consideration including a review of items included on the essential works list, suggestions to look at land costs and to align the proposals with the PCs' review. These will be considered within the context of the findings made by the Productivity Commissioner following the broader review into the system.

4.3 Response

The proposal to amend the Regulation to clarify that councils are not required to re-exhibit an IPART-reviewed contributions plan following the receipt of advice by the Minister or Minister's nominee is not being progressed. Instead, clarification will be provided through a planning circular (refer to Section 7.3 for additional details).

The following proposals have not been finalised but are being considered as part of the Government's response to the PC's recommendations as part of broader system reform:

- Increase of IPART review thresholds.
- Annual indexation of review thresholds based on the CPI. The submissions included several and varied suggestions on other indexation mechanisms not included in the discussion paper. These suggestions are valuable and have been passed on to the PC to consider as part of its review.
- Reviewing the IPART terms of reference.
- Removing grandfathered infrastructure contributions plans.

5 Criteria to request higher section 7.12 levies

The exhibition material comprised a discussion paper, *Criteria to request a higher section 7.12 percentage*.

5.1 Summary of proposed reform

The discussion paper set out proposed principles and criteria for councils to address when requesting a higher percentage for s7.12 levies. This is a new approach to improve decision-making when councils request an increase from the standard 1% for s7.12 levies to a maximum of 2% or 3%.

Feedback was sought on the draft principles and criteria to be used by councils when preparing and the Department when considering requests. It also outlined how s7.12 levies currently operate including how variations to the maximum percentage rate of 1% are considered.

Respondents were asked to provide feedback on the proposed criteria including six questions.

5.2 Issues raised in submissions

This paper attracted high levels of interest from councils and industry groups, with 80% percent of submissions providing feedback. The principles to request a higher maximum percentage attracted the most comments and suggestions.

The paper asked six discussion questions, which attracted a similar response rate, except for the questions on changes to work schedules requiring approval by the Minister and on 10% value of contributions for district infrastructure which had considerably fewer comments.

Table 5: Summary of submissions on s7.12 Discussion Paper

Stakeholder	Overall feedback
Local government	<p>General support for the principles for a higher levy. Some suggested that the 1% general percentage should be reviewed. Others questioned why no criteria were included to justify rates above 3%</p> <p>Suggestions to apply the higher level to also fund public infrastructure provision associated with new residential growth, not only employment growth</p> <p>Regional councils concerns that the draft criteria are primarily designed for metropolitan councils</p>
Industry	<p>Suggestion to limit the ability to increase levies only to strategic centres and not to local centres or corridors</p> <p>Concern about the impact of a higher % levy on development feasibility, especially in current economic conditions</p>
Peak bodies	<p>Suggestion to allow a maximum 3% levy in all strategic centres and economic corridors without the need for councils to apply to the Department</p> <p>Suggestion for levies above 3% to be considered on a case by case basis on merit</p>
Community groups and individuals	<p>Support for increased levies to provide the infrastructure needed for new development whilst noting this has historically been inadequate</p> <p>Comments that the original 1% levy should be reviewed for adequacy</p>
Other	<p>Concern the criteria may discourage councils from using s7.12 efficiently if they do not meet all criteria</p>

There were high levels of support from all stakeholder groups for the proposals to establish clear principles and criteria for requests to increase the maximum percentage of s7.12 levies.

Several stakeholder groups suggested that the standard 1% levy should be reviewed as they consider that it is no longer an adequate base level to provide the infrastructure needed and was not founded on strong economic analysis when introduced.

Many councils suggested that the proposed maximum 3% should be the starting point and that councils should be able to seek higher levels in areas associated with new residential growth. Industry bodies did not agree and suggested proposals to increase levies should trigger an IPART review and to limit additional locations, as increases may impact development feasibility. The Planning Institute of Australia considered the 3% an arbitrary maximum and supported councils being able to request and justify the levy rate needed to fund infrastructure generated by growth.

Councils did not support all criteria being mandatory on the basis that this reduces flexibility and does not allow for local differences in development scale and type, for example mixed use developments. Additional suggestions for criteria included growth generated from tourism and separate criteria for regional areas.

Questions were raised on how employment growth is to be measured, the percentage proposed and the ability to attract high levels outside of established and identified centres. Several comments argued that new residential growth generates more demand, and therefore justifies higher levies than office or retail development.

Numerous stakeholders requested that the Department clarify what is meant by district level infrastructure to clarify what items can be considered for higher levies. The suggestion to have spend identified for district level infrastructure was generally supported, but some considered this should be desirable rather than mandatory and that the 10% appeared arbitrary.

The proposal to require the Minister's approval for changes to the work schedules was strongly objected to by councils as would slow down delivery and places a burden on councils. Suggestions to address this included using the Minister's nominee or delegates and excluding minor changes.

5.3 Response

The Department has updated the existing 2005 s7.12 Practice Note to include the criteria for assessing draft s7.12 contributions plans seeking a higher percentage levy. However, the criteria have been streamlined in response to submissions and separate criteria will now apply to regional NSW councils. This will support the use of s7.12 levies in rural and regional settings where direct demand is difficult to establish.

Changes to the criteria include:

- replacing the exhibited requirement for the Minister's approval for updating work schedules, with a requirement for councils to review their s7.12 contribution plans every 5 years.
- the financial analysis that supports the higher s7.12 percentages will now only be required for applications for levies higher than 2%. This will reduce the administration costs of preparing applications that are not more than 2%.
- consultation with the Department will need to be sought on the councils' s7.12 work schedules as this will allow a broader perspective and strategic visibility of potential infrastructure needs in the area.
- the templates from the 2005 version of the practice note have been removed as they do not reflect current practice. Archived versions of the templates will be available on the Department's website.

6 Special Infrastructure Contribution Guidelines

The exhibition material comprised the *draft Special Infrastructure Contributions Guidelines*.

6.1 Summary of proposed reform

Special Infrastructure Contributions (SICs) help fund key state and regional infrastructure in growing areas of Greater Sydney and regional NSW. The Department is responsible for the operation and management of the SIC framework, including the preparation of plans and Ministerial determinations, the collection of SIC revenue, investment prioritisation and distribution of funds for infrastructure delivery.

The *draft Special Infrastructure Contribution guidelines* provide guidance on the purpose and function of SICs including:

- Purpose and objectives of the SIC framework applying to current SICs (particularly how to manage expenditure) and the development and implementation of new SICs.
- Key principles guiding the State Government in implementing and administering the SIC framework.
- Method for determining a new SIC.
- Process for allocating the SIC revenue to infrastructure projects.

6.2 Issues raised in submissions

The paper attracted submissions from all stakeholder groups with 74% of submitters commenting on the draft guidelines. Key topics raised in the submissions are summarised below.

Table 6: Summary of submissions on SIC Guidelines

Stakeholder	Overall feedback
Local government	<p>General support for the guideline and the key principles</p> <p>Suggestions to consider how the SIC aligns with the strategic and broader planning context rather than just high growth, rezoning areas</p> <p>Request for further clarity on where SICs will be introduced and why</p> <p>Request for better governance and coordination with councils</p> <p>Concerns that SICs may impact feasibility and council’s ability to achieve outcomes through mechanisms such as planning agreements</p> <p>Request for clarification on funding arrangements, timing and commitment of infrastructure delivery</p> <p>Suggestions to better align SICs and local contribution plans Further clarity required on the purpose and process of ‘satisfactory arrangements’ and voluntary planning agreements</p>
Industry	<p>Supportive of the guideline’s , principles of fairness and equity, and publication of revenue and expenditure of funds</p> <p>Concern that SICs should not unreasonably impact on development feasibility and that SICs should be developed in consultation with industry</p> <p>Request for further guidance on works-in-kind and SIC credits and on infrastructure delivery timeframes</p> <p>Suggestion to streamline process for releasing SIC revenue, including exploring opportunities for seed/pool funding</p> <p>Suggestions that a structure reform to the infrastructure contributions system is required</p>

Stakeholder	Overall feedback
Peak bodies	<p>Support for key principles and approach to the guidelines</p> <p>Welcome the publication of revenue and expenditure of funds</p> <p>Concern about the ability of SIC in its current form to achieve effective infrastructure delivery outcomes</p> <p>Comment that SICs are only one source of funding for infrastructure and will not collect sufficient funds to deliver all items</p> <p>Comment that SICs should be in place when land is rezoned for certainty and to avoid the use of 'satisfactory arrangements' due to the long process</p> <p>Clarification sought on relationship between SIC and local contributions plans</p> <p>Suggestion that SICs should follow a similar process to local contribution plans including independent review by IPART</p> <p>Requests to strengthen process to clarify expectations, prevent speculation, address timing of adoption and clarify role of nexus and apportionment for SIC infrastructure</p>
Community groups and individuals	<p>Concern that SIC implementation delays are resulting in lost revenue and delay in infrastructure delivery</p>
Other	<p>Suggestions to apply financial reporting requirements to the SIC as are proposed for local government and planning authorities</p> <p>Concerns about disproportionate funding for some infrastructure categories</p> <p>Requests to strengthen process for SIC to demonstrate clear and transparent nexus to growth</p>

All stakeholder groups supported the general principles identified in the draft guidelines and welcomed reporting on revenue and expenditure.

Submissions focused on the preparation and implementation of SICs and selection, funding and delivery of infrastructure. The concerns raised included the need for clarification of the purpose of SICs, steps involved in the preparation of SICs, transparency and accountability in implementation of SICs and funding of infrastructure projects.

Submissions indicated that many of the processes used to initiate, calculate charge rates, finalise and implement SICs are unclear, resulting in a lack of confidence in the delivery of SIC-funded infrastructure. Concerns were raised around whether the principles relating to fairness and certainty outlined in the guidelines will be achieved.

Many submissions related to increasing transparency and accountability, including requests for the introduction of third-party review in the preparation and implementation of a SIC. Suggestions were made for more coordination and engagement with industry and councils to review assumptions such as feasibility and costing. Submissions also raised the idea of undertaking annual reporting on the SIC program focusing on SIC revenue and expenditure.

The complexity around infrastructure funding in NSW has produced concerns that:

- Funding is not available to a schedule which allows timely delivery of critical infrastructure.
- Funding is provided for projects with inadequate nexus to growth.
- Funding is insufficient for critical infrastructure delivery.

This has created a perception that critical infrastructure is not delivered by SICs in a timely fashion because of funding shortfalls.

6.3 Response

The Department will review the existing SIC framework as part of the Government's response to the PC's recommendations as part of broader system reform. Issues raised in submissions will inform this work. The SIC guidelines have therefore not been finalised at this time.

7 Proposed amendments to the EP&A Regulation

The exhibition material comprised:

- *Environmental Planning and Assessment Regulation 2000 proposed amendments* policy paper
- Draft legal instrument amending the *Environmental Planning and Assessment Regulation 2000*.

7.1 Summary of proposed reform

The *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) sets out how contributions are collected and spent. The proposed amendments to the Regulation include new requirements for reporting on the collection and use of contributions by councils and planning authorities which address the Kaldas Report’s recommendations. They also implement proposed changes to exhibition requirements for s7.11 IPART reviewed contributions plans and include minor changes to clause 25K (cl25K) relating to s7.12 levies. The exhibited amendments to the Regulation were to:

- require more detailed reporting by councils on receipt and expenditure of monetary contributions, land and works in kind and online publication of information
- improve planning authorities’ reporting of monetary contributions, land and works received via planning agreements and online publication of information
- transfer planning agreement explanatory notes to the new Planning Agreement Practice Note
- clarify that councils are not required to re-exhibit an IPART-reviewed draft infrastructure contributions plan following receipt of the Minister’s (or Minister’s nominee’s) advice.
- amend cl25K to limit the maximum percentage s7.12 levy that can be imposed in Gosford City Centre to 1% due to the introduction of the Gosford SIC of 2%
- update an outdated cl25K reference to the Wollongong City Centre LEP.

7.2 Issues raised in submissions

This paper attracted the least number of submissions (70%), but those received expressed a high level of support for the proposals. The increased reporting requirements and online publication were the main areas of interest.

Table 7: Summary of submission on EP&A Regulation Policy Paper and Legal Instrument

Stakeholder	Overall feedback
Local government	<p>Support in principle to improve transparency</p> <p>Clarification on the level of detail to be reported</p> <p>Requests for clarification on implementation and timing for online reporting</p> <p>Concern about the cost implication to administer and potential duplication of Local Government Act / Integrated Planning & Reporting Framework requirements</p> <p>General support for removal of IPART reviewed plan re-exhibition requirement</p>
Industry	<p>Support for increased transparency and reporting to demonstrate contributions collected are being spent and for the identified purpose</p> <p>Some concern about removal of re-exhibition requirement</p>
Peak bodies	<p>Support for increased transparency and reporting</p> <p>Expand reporting requirements to SICs</p>

Support was expressed by most stakeholder groups for the new reporting requirements. Stakeholders also supported the online publication of information. Most councils requested a staged introduction to implement the changes and some requested increased contribution plan administration costs to fund implementation.

Some councils questioned the need for the new reporting requirements because they are already accounting and reporting at sufficient detail. Several stakeholders suggested that there should be a similar level of transparency for all contributions collected by State and local government.

There was support for transferring planning agreement explanatory notes from the Regulation into the new Planning Agreements Practice Note. Some submissions questioned if the requirement for councils to have regard to the Practice Note when drafting planning agreements should be in a Ministerial Direction.

The proposal to remove the re-exhibition of an IPART reviewed contributions plan was predominantly supported. However, some stakeholders expressed concern that its removal reduced transparency and/or sought greater clarity on the proposed wording of clause 30A.

Reducing the maximum s7.12 levy amount that Gosford Council can levy to 1% due to the application of the Gosford SIC and updating the reference to Wollongong's LEP were supported by the affected councils. Willoughby City Council requested that an outdated reference to their contribution plan also be updated.

7.3 Response

The Department proposes to amend the Regulation to introduce the new reporting requirements, with some changes in response to submissions including:

- Deferred commencement dates for mandatory compliance to allow for a staged introduction.
- Separating reporting of financial and non-financial local infrastructure contributions information into annual financial statements and annual reports.
- Removing some detail such as expenditure for components of projects.
- Requiring online publication of local infrastructure and planning agreements contributions information on the planning portal in addition to councils' and planning authorities' websites.
- Limiting new public reporting requirements for planning agreements to planning agreements executed after the date the amendment is made.

The Department recognises that councils have different systems, resourcing and practices and will work with councils and other stakeholders to implement the changes.

The Department supports consistency in how contributions are reported between State and local government. No major changes are proposed to reporting requirements for planning agreements which, like local contributions, will require information on monetary contributions, land and works received as well as how and where monetary contributions have been spent or land and works delivered. The Department is developing online reporting capacity for SICs.

Planning agreement explanatory notes will be transferred from the Regulation into the new Planning Agreements Practice Note as proposed. For clarity and simplicity, two requirements in relation to the Practice Note will be included in the Regulation. First, the Regulation will now require councils to consider the Planning Agreements Practice Note, and second, the Regulation will now require all planning authorities to consider the explanatory notes section of the Practice Note. This means the proposed Ministerial Direction will not be made.

The proposal to amend the Regulation to clarify that councils are not required to re-exhibit a draft IPART-reviewed contributions plan following their receipt of the Minister's (or Minister's nominee's) advice is not being progressed. Most submissions supported the intent but sought clarification.

Following exhibition Parliamentary Counsel advised that a Regulation amendment is not required to achieve the policy intent. Their interpretation is that the Regulation provides no formal legal obligation to re-exhibit IPART-reviewed draft contributions plans following receipt of the advice. Clarification will now be provided through a planning circular. The existing requirement for councils to publicly exhibit a contributions plan for a minimum of 28 days prior to submitting a draft plan to IPART for review will be retained.

Clause 25K will be updated and an outdated reference to Willoughby City Council's (WCC) contributions plan will also be updated in response to WCC's submission.

Glossary of Terms

CPI	Consumer Price Index
Department	Department of Planning, Industry and Environment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Reg	<i>Environmental Planning and Assessment Regulation 2000</i>
LEC	Land and Environment Court
LGA	Local Government Area
LIGS	Local Infrastructure Growth Scheme
IPART	Independent Pricing and Regulatory Tribunal
IP&RF	Integrated Planning and Reporting Framework
Minister	Minister for Planning and Public Spaces
PC	Productivity Commission
SIC	Special Infrastructure Contributions
VPA	Voluntary Planning Agreement

Stakeholder Groups

The following definitions were used to classify the different stakeholder categories making a submission on the infrastructure contributions package.

Stakeholder groups	Definitions
Public (Individual) & Community group	An individual member of the public or community group representing a specific issue, location or group of people
Council	Representative of any local Government, regional organisation of councils or other local Government funded organisation, local government peak body, and an elected councillor or mayor of a local council
Industry	Any person from a large or small business, or peak body representing the planning and development industry with an interest in the infrastructure contributions package including consultants
Peak body	Any representative of a non-industry peak body that expresses an interest in the infrastructure contributions package
Specialist	Person or organisation identified as a contributions or planning specialist including academics and other specialists (i.e. economist, contributions planner) with expertise or interest in the infrastructure contributions package
Government Agency	Representative of an NSW Government department or agency
Political party /politician	An elected member of the NSW Parliament or representative of a political party
Other	Groups of mixed or unclear membership base, includes government