SUPPLEMENTARY QUESTIONS

Hon Rob Stokes MP, Minister for Planning and Public Spaces

ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (INFRASTRUCTURE CONTRIBUTIONS) BILL 2021

1. *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?*

Response:
The regional infrastructure contributions will focus on the regional infrastructure needed to support development, such as roads, regional open space, land for schools and hospitals. Water and sewer costs do not form part of the regional infrastructure contributions and are subject to other contribution mechanisms.

The NSW Productivity Commissioner's report identifies that affordable housing is not a comfortable fit within the development contributions framework. However, the report identified that there was insufficient evidence to make a recommendation at this time. Instead, he recommended that further information be collected about the contributions to inform a future review of the effectiveness (Recommendation 4.14).

In relation to biodiversity schemes, the NSW Productivity Commissioner has outlined his view that offsetting biodiversity loss is a development-contingent cost that benefits the landowners/developers. The strategic biodiversity contribution is a component to the regional infrastructure contribution, only applicable where a government has put in the effort to secure strategic approvals.

The NSW Biodiversity Offsets Scheme applies across the rest of NSW under the *Biodiversity Conservation Act 2016*.

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

Response:
This was not the conclusion of the NSW Productivity Commissioner's review that has been adopted by the NSW Government.

However, the Government recently expanded *State Environmental Planning No 70—Affordable Housing (Revised Schemes)* to allow all councils in NSW to collect affordable housing contributions if they have an approved affordable housing scheme. In line with the NSW Productivity Commissioner's recommendation (Recommendation 4.14), councils will retain the ability to collect affordable housing contributions under this policy until a review of their efficiency and effectiveness is undertaken.

3. *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 than saddle them with these problems and potential waste of money?

Response:
See response to question 1

4. *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?*

Response:
The NSW Productivity Commissioner sets out key features for the governance of regional infrastructure contributions (pages 94-95). Funds collected within a region will be hypothecated to growth enabling infrastructure within the same region. Criteria for projects funded by regional infrastructure contributions will be published. This will include that projects:

- reflect development contingent or development associated costs,
- support priorities identified in the government's strategic documents such as regional plans, district plans, or the State Infrastructure Strategy; and
- are supported by a completed business case and Infrastructure Investor Assurance (where applicable)

The expenditure of regional infrastructure contributions will be incorporated into the State budget-setting process and funding allocation will be determined between Treasury, Infrastructure NSW and the Department.

5. *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)?*

Response:
The NSW Productivity Commissioner recommended that the regional infrastructure contributions be introduced to four regions including Greater Sydney, Illawarra-Shoalhaven, Central Coast and Hunter (Recommendation 5.1).

A new State environmental planning policy will define where regional infrastructure contributions apply as well as areas where any strategic biodiversity (Recommendation 5.4) or transport (Recommendation 5.3) components apply.

The NSW Productivity Commissioner's Recommendation 5.1, proposes that the regional areas be comprised of the following local government areas:

Greater Sydney	Blue Mountains, Hawkesbury, Penrith, Camden, Campbelltown, Fairfield, Liverpool, Wollondilly, Blacktown, Cumberland, Parramatta, The Hills, Bayside, Canada Bay, Inner West, Randwick, Strathfield, Woollahra, Waverley, City of Sydney, Hornsby, Hunters Hill, Ku-Ring-Gai, Lane Cove, Northern Beaches, Mosman, Willoughby, Ryde, North Sydney, Georges River, Canterbury-Bankstown, Sutherland
Illawarra-Shoalhaven	Kiama, Shellharbour, Shoalhaven, Wollongong

Central Coast	Central Coast
Hunter	Cessnock, Dungog, Lake Macquarie, Maitland, Mid Coast, Muswellbrook, Newcastle, Port Stephens, Singleton, Upper Hunter

As described in response to question 4, the NSW Productivity Commissioner sets out key features for the governance of regional infrastructure contributions (pages 94-95). Funds collected within a region will be hypothecated to growth enabling infrastructure within the same region. Criteria for projects funded by Regional Infrastructure Contributions will be published and funding allocation will be determined between Treasury, Infrastructure NSW and the Department.

6. *Under the Bill, why doesn't the Minister have to create a RIC plan, similar to the s7.11plans 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?*

Response:
The Bill requires the Minister to make a State environmental planning policy which will fund infrastructure similar to a s7.11 plan, though at a regional scale. SEPP-making is an established process and involves community consultation, like the preparation of a s7.11 plan.

Consistent with the recommendations of the NSW Productivity Commissioner, Treasury will assume funds management responsibilities to ensure integration into the annual State budget process.

The reforms recommended by the NSW Productivity Commissioner retain the current collaborative processes between the Department and Treasury and allow for Infrastructure NSW to also be involved in infrastructure decisions. The reforms will make improvements to the funding allocation processes to streamline budget processes and provide certainty for State agencies.

7. *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?*

Response:
The NSW Productivity Commissioner sets out key features for the governance of regional infrastructure contributions (pages 94-95). Funds collected within a region will be hypothecated to growth enabling infrastructure within the same region.

Regional Infrastructure Contributions are not seeking full cost-recovery and instead represents a partial contribution to the program of infrastructure delivered by the State.

Criteria for projects funded by Regional Infrastructure Contributions will be published. This will include that projects:

- reflect development contingent or development associated costs,
- support priorities identified in the government's strategic documents such as regional plans, district plans, or the State Infrastructure Strategy, and
- are supported by a completed business case and Infrastructure Investor Assurance (where applicable)

The Secretary of the NSW Treasury will administer the new statutory fund. Payments out of the fund will be made in conjunction with and supported by decisions on the application of other sources of funding, such as the Consolidated Fund.

8. *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?*

Response:
See response to question 7.

9. *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?*

Response:
The reforms share the obligation to fund infrastructure across the broader base of beneficiaries of development and will result in an increase in money for infrastructure spending overall.

Economic modelling was undertaken for the NSW Productivity Commissioner by the Centre for International Economics. This used data and modelling to assess all 29 recommendations for the impact that they would have, both individually and collectively, on those paying contributions and those receiving them, as well as the broader NSW economy.

Details of the economic modelling are publicly available on the NSW Productivity Commissioner's website.https://www.productivity.nsw.gov.au/sites/default/files/2020-12/Evaluation%20of%20Infrastructure%20Contributions%20Reform%20in%20NSW.pdf

This concludes that the reforms are expected to result in a net increase in aggregate revenue for councils of 6.9% over a 20-year period. This includes an increase in rate revenue to better reflect population growth.

10. *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?*

Response:
The NSW Productivity Commissioner found that there has been a relatively low take up of s7.12 plans, speculating that the 1% rate is too low. Modelling undertaken for the NSW Productivity Commissioner indicated that at 4%, the rate is comparable to a s7.11 rate and would require a more rigorous demonstration of nexus and apportionment.

11. *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?*

Response:
The NSW Productivity Commissioner has made recommendations for a principles-based system. In shifting from a percentage of construction costs to different rates for residential, commercial, retail and industrial development, the Commissioner sought to ensure contributions are applied to development that generates demand. The Commissioner has not made a distinction on the scale of development (State significant or otherwise), but rather on the type of use.

Importantly, the shift recommended by the Commissioner means that infrastructure projects (such as schools and hospitals) are not levied – adding to the costs of the projects. The Commissioner has noted the important role of development consent conditions, which are an important focus of approvals and aimed at mitigating development impact.

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

Response:
As outlined in the NSW Productivity Commissioner's report, the land value contribution mechanism is likely to be limited in its application to greenfield release areas and some brownfield infill development – importantly, it will be where land is being upzoned.

The land value contribution will need to be included in a contributions plan and publicly exhibited with the rezoning. This means that it is unlikely to be used in areas where the rezoning plans are publicly exhibited before at least 1 July 2022.

The Department is convening a technical working group to develop detailed case studies on how the land value contribution will operate to inform preparation of regulations. The Bill creates the legal tools to enable a mechanism to be further designed. This is being done in partnership with key stakeholders, as suggested by the NSW Productivity Commissioner.

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

Response:
The land value contribution will be publicly exhibited with the rezoning plans. The exhibition of these plans allow for public participation and a review process through the Land and Environment Court. The contribution itself will be contained with the s7.11 contributions plan however the land value contribution is not individually determined for each development in the same way as a s7.11 contribution condition. It operates more like a s7.12 contribution which is a flat rate set in the contributions plan applied equally in every case.

Like a s7.12 contribution condition, which cannot be appealed, councils also require certainty that they will collect the contributions needed to deliver the local infrastructure land needed.

14. *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?*

Response:
The legislation retains the requirement for s7.11 contributions to be based on connection between the development and demand for infrastructure (sometimes referred to as nexus). The increased demand for local infrastructure generated by development is the basis for the

collection of s7.11 funds. The reforms will retain the regulatory requirements for s7.11 funds to be expended for the purposes that they were collected.

15. *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?*

Response:
The benchmark costs are seeking to create baseline costs that will help to streamline the preparation of s7.11 contributions plans. However, IPART may provide for geographical differences across NSW as part of the benchmark work. The Terms of Reference for their work specifically ask them to consider differences between metropolitan and regional contexts, as well as greenfield and infill development contexts. IPART will report on benchmark costs for local infrastructure at the end of 2021.

Councils will also be able to vary from benchmark costs where they have more detailed design work and associated costings. In this instance, a stakeholder may seek a by-exception review by IPART if they can demonstrate that the costing is unreasonable.

16. *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?*

Response:
IPART's benchmark costs are being developed for local infrastructure that is on the essential works list. The essential works list includes the cost of land for community facilities but does not include the capital costs of community facility which will not be benchmarked.

17. *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).*

Response:
Councils are already required to determine the quantity and general location of land required for infrastructure in a new release area, without a guarantee that the land will be developed within a particular timeframe. Undertaking this work earlier, in parallel with the rezoning, will be required if a land value contribution is to be applied but will not require additional costs.

The land value contribution mechanism is designed to improve the collection of land contributions and provide greater certainty for landowners, developers and councils. The integration of contribution planning with land use planning in this way is expected to achieve more effective local planning and has the potential to incentivise development of land.

Currently, the absence of a land value contribution creates a perverse disincentive for landowners to proceed with subdivision, as the longer this process takes, the more the land value may increase over the valuation at which land contributions are calculated.

18. *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?*

Response:
The change in the timing of payment results in a one-off lag when the policy is first introduced. The policy has been in effect since June 2020 in response to the COVID-19 pandemic.

The 29 recommendations by the Productivity Commissioner work together to form the reform package. Any revenue delays as a result of deferring payment of local contributions from construction certificate to occupation certificate is offset by other reforms.

Particularly, councils will have increased ability to pool funds and borrow. The Treasury Corporation will revise their lending criteria to include consideration of income from local contributions. Councils will also be able to recoup any interest costs from local contributions.

The changes do not prevent councils from working with developers to deliver infrastructure as works in kind at the same time as the private development is constructed.

19. *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?*

Response:
IPART is reviewing the essential works list and will be reporting that back to Government by the end of 2021. The existing essential works list is set out in a Practice Note and is available at https://www.planning.nsw.gov.au/-/media/Files/DPE/Practice-notes/practice-note-local-infrastructure-contributions-january-2019-01-21.pdf?la=en (pages 14-15).

The Minister for Planning and Public Spaces already has powers to direct consent authorities as to what public amenities and public services they may collect s7.11 contributions for under section 7.17(1)(a) of the *Environmental Planning and Assessment Act 1979*. Implementing the Productivity Commissioner's recommendation does not require legislative change.

20. *Which organisations are represented on the Technical Working Group referred to by the Minister and Department?*

Response:
The NSW Productivity Commissioner recommended (Recommendation 7.1) 'strong governance to guide implementation'. This includes an Implementation Steering Committee with senior representatives from the Department and Treasury. This is to be "supported by a Stakeholder Advisory Group with representatives from councils and industry groups to assist detailed design and management of implementation issues".

The Oversight Steering Committee has been established and is meeting monthly.

The External Advisory Group has been established and is meeting monthly. Membership includes representatives from:

- Urban Development Institute of Australia
- Property Council of Australia
- Urban Taskforce Australia

- Local Government NSW
- Local Government Professionals NSW
- Planning Institute of Australia
- Community Housing Industry Association
- Landcom
- GLN Planning (technical expert)

An Agency Reference Group has also been established, though was not specifically recommended by the NSW Productivity Commissioner. The group meets six-weekly and includes representatives from State agencies including Transport, Health, Education, Treasury, Investment NSW, Regional NSW, Customer Service and Infrastructure NSW.

The Department also meets with a group of metropolitan and regional councils on a six-weekly basis about the reforms.

There will be a number of Technical Working Groups (operating like sub-committees) formed under the External Advisory Group and Agency Reference Group on particular issues to support detailed work associated with the reforms. Technical working groups are currently being established for regional infrastructure contributions and the land value contribution.

The External Advisory Group has nominated members for these Technical Working Groups.

21. *How often does (or will) the Technical Working Group meet?*

Response:
The External Advisory Group meets monthly.

The Technical Working Groups are expected to meet over the period July-October, with the exact timing dependent upon the nature of the discussion could meet weekly or fortnightly if needed.

22. *How frequently will the Technical Working Group need to meet to consider the regulations and Ministerial Directives associated with this Bill, in order for the Government to meet the commencement date?*

Response:
See response to question 21. Additional meetings for both the External Advisory Group and Technical Working Groups will be added as required.

23. *Was consideration given to defining the number and geographic composition of the regions for the Regional Infrastructure Contributions? If so, why was this approach rejected?*

Response:
The NSW Productivity Commissioner recommended that the regional infrastructure contributions be introduced to four regions including Greater Sydney, Illawarra-Shoalhaven, Central Coast and Hunter (Recommendation 5.1).

The current system allows subsequent instruments to define where a Special Infrastructure Contribution will apply (refer to cl 7.25). The proposed arrangements in the Bill (refer to proposed section 7.25) carries forward these existing provisions, applying them to regional infrastructure contributions.

A new State environmental planning policy will define where regional infrastructure contributions apply as well as areas where any strategic biodiversity (Recommendation 5.4) or transport (Recommendation 5.3) components of the contribution will apply.

Transitional arrangements will identify where land within these regions is already subject to a special infrastructure contribution and will be excluded from the regional infrastructure contribution.

24. *Can the Government provide the names and local government areas proposed to make up regions for the purposes of regional infrastructure contributions?*

Response:
The NSW Productivity Commissioner (Recommendation 5.1), recommended that regional areas be comprised of the following local government areas (either in part or in full):

Greater Sydney	Blue Mountains, Hawkesbury, Penrith, Camden, Campbelltown, Fairfield, Liverpool, Wollondilly, Blacktown, Cumberland, Parramatta, The Hills, Bayside, Canada Bay, Inner West, Randwick, Strathfield, Woollahra, Waverly, City of Sydney, Hornsby, Hunters Hill, Ku-Ring-Gai, Lane Cove, Northern Beaches, Mosman, Willoughby, Ryde, North Sydney, Georges River, Canterbury-Bankstown, Sutherland
Illawarra-Shoalhaven	Kiama, Shellharbour, Shoalhaven, Wollongong
Central Coast	Central Coast
Hunter	Cessnock, Dungog, Lake Macquarie, Maitland, Mid Coast, Muswellbrook, Newcastle, Port Stephens, Singleton, Upper Hunter

25. *Why does the Bill contain no transparency provisions for the collection or expenditure of funds collected in Regional Infrastructure Contributions?*

Response:
The Productivity Commissioner set out key features for the governance of regional infrastructure contributions, including reporting mechanisms for the collection and expenditure of funds (refer to pages 94-95 of the NSW Productivity Commissioner's report).

The components of the governance framework that require legislative changes are included in the Bill (see proposed section 7.31). The provisions establish the Regional Infrastructure Contributions Fund administered by the Secretary of Treasury, and include prioritisation having regard to regional plans, district plans and the State Infrastructure Strategy.

The criteria set out by the NSW Productivity Commissioner include "Treasury would assume funds management responsibilities to ensure integration into the annual budget process".

Other components such as the digital tool, lie outside legislation. Automating the ongoing administration, tracking and reporting through the implementation of the digital tool will provide greater transparency.

Work is currently underway between Treasury and the Department to establish the governance arrangements and funding allocation criteria for infrastructure projects (Recommendation 5.1). This will identify any provisions that are to be included in the regulations.

26. *Did the Government consider including accountability and transparency measures in association with the Regional Infrastructure Contribution Funds as part of the drafting instructions for the Bill? If not, why not?*

Response:
As outlined in Question 25, the Productivity Commissioner foreshadowed reporting mechanisms for the collection and expenditure of funds, including expenditure and revenue being reported as part of the Budget process. (refer to pages 94-95 of the NSW Productivity Commissioner's report). These mechanisms do not require legislative change, but may require elucidation in delegated legislation such as the regulations and or the State Environmental Planning Policy. The Government is committed to ensuring that the Productivity Commissioner's recommendations are implemented in full, including mechanisms to ensure accountability and transparency in the application and reporting of Regional Infrastructure Contribution funds.

27. *Will the payments into, payments from and balances of the Regional Infrastructure Contributions Funds be reported as part of the Budget papers? If not, what reporting will there be on the payments into and from the RIC Fund?*

Response:
Yes. Reporting of all contributions received and expended (both State and Local) will also be delivered through the NSW Planning Portal. The digital system is currently being designed and reporting functions have been included in the build.

28. *How do the provisions of this Bill stop the prioritising of funding of initiatives in Coalition electorates at the expense of other electorates when all that is needed for spending from the RIC is approval of the Treasurer in consultation with the Minister?*

Response:
The NSW Productivity Commissioner sets out key features for the governance of regional infrastructure contributions (pages 94-95). Funds collected within a region will be hypothecated to growth enabling infrastructure within the same region. Criteria for projects funded by Regional Infrastructure Contributions will be published. This will include that projects:

- reflect development contingent or development associated costs,
- support priorities identified in the government's strategic documents such as regional plans, district plans, or the State Infrastructure Strategy; and
- are supported by a completed business case and Infrastructure Investor Assurance (where applicable).

The expenditure of Regional Infrastructure Contributions will be incorporated into the budget-setting process and funding allocation will be determined in consultation with Treasury, Infrastructure NSW and the Department.

29. *Why is the concurrence of the Treasurer necessary before recommending the making of the SEPP under the provisions of the Bill?*

Response:
Consistent with the recommendations of the NSW Productivity Commissioner, NSW Treasury will be responsible for the administration of Regional Infrastructure Contribution funds. The NSW Treasury will need to understand the revenue impacts of the State environmental planning policy and any subsequent amendments.

The Secretary of the NSW Treasury will administer the new statutory fund. Payments out of the fund will be made in conjunction with and supported by decisions on the application of other sources of funding, such as the Consolidated Fund.

30. *Under the current provisions of the Bill how can the public be assured that the Regional Infrastructure Contributions Fund won't be raided to pay for blow-outs in infrastructure budgets?*

Response:
See response to question 29. Moreover, the purposes to which the fund can be applied need to be identified in the SEPP.

31. *Why must the RIC Fund be administered by the Treasury and any payment made from it requiring the approval of the Treasurer "after consulting with the Minister"?*

Response:
Under the current system, the Department administers the collection and allocation of the special infrastructure contributions in consultation with Treasury NSW. This is managed separately from the annual budget process and the Treasurer is required to be consulted for determinations for infrastructure worth more than $30 million

Consistent with the recommendations of the NSW Productivity Commissioner, the NSW Treasury will assume funds management responsibilities to ensure integration into the annual budget process. Being payments for the provision of infrastructure, there is a clear role for the Department in advising on development patterns and infrastructure priorities to support development and housing supply.

The reforms recommended by the NSW Productivity Commissioner retain the current collaborative processes between the Department and Treasury and allow for Infrastructure NSW to also be involved in infrastructure decisions. The reforms will make improvements to the funding allocation processes to streamline budget processes and provide certainty for State agencies.

32. *Why is the Strategic Biodiversity Component Fund administered by the Planning Secretary?*

Response:
Consistent with the NSW Productivity Commissioner's recommendation (Recommendation 5.4) the costs of strategic biodiversity contribution will become a separate component of the regional infrastructure contributions.

It is important to note that this is only for areas where a Government has taken the lead in putting in place the strategic approvals required under State and Federal legislation to 'certify' the land. In areas where there is no strategic biodiversity certification in place, this component would not operate and landowners would secure their own biodiversity offsetting arrangements.

For strategic biodiversity certification, the Minister for Planning and Public Spaces, or a council, coordinate the relevant technical studies and make applications for biodiversity certification as part of the process of releasing rural areas for urban development. In these circumstances, the landowners are benefitting from these processes and do not need to secure their own biodiversity offsetting arrangements. In the current system, the costs of the environmental measures to support approval of the strategic biodiversity certification have been included in a special infrastructure contribution. Under the current policy settings, the special infrastructure contribution has not sought full-cost recovery of these measures and have been effectively subsidised through the State budget.

The NSW Productivity Commissioner has recommended (Recommendation 5.4) that the cost of the environmental measures to support the strategic biodiversity certification are ‘development-contingent’ costs (that is, but for the land being rezoned to facilitate urban development, the costs of biodiversity offsetting would not be incurred) and should be borne by those benefiting from their provision.

It is the planning authority (most commonly the Minister), as a party to the strategic biodiversity certification, that is responsible for ensuring that the approved conservation measures under the certification are implemented. It is therefore more appropriate that the administration of the new fund to be established for the strategic biodiversity component is undertaken by the Planning Secretary.

33. *Why is there a discrepancy in the control of these two funds between Planning and Treasury?*

Response:
See response to question 32. The funds for the strategic biodiversity component can only be spent on the approved environmental measures, which the planning authority has responsibility to implement. Unlike for the Regional Infrastructure Contribution and the major transport component, there is no streamlining or other budgetary process gain by having NSW Treasury involvement in funds administration.

34. *Did the instructions for drafting the Bill originate from you as Minister and DPIE, or from another source? If another source, please identify.*

Response:
The Department of Planning, Industry and Environment provided the drafting instructions to the NSW Parliamentary Counsel’s Office as is usual practice.

35. *The evidence to the public hearing stated that stakeholders, including local government, had been given an opportunity to consider and comment on a draft of the Bill. When was this offer made? Provide a list of organisations to whom the offer was made? What was the timetable for the receipt of comments and feedback on the draft Bill?*

Response:
Following receipt of a complete working draft of the Bill on 11 May 2021, the Department arranged a briefing session for all members of the External Advisory Group (refer to Question 1 for membership list) on Thursday, 13 May 2021. All members were invited, but not all took up the option to attend. Those attending included the Property Council and Urban Development Institute of Australia (UDIA). Local Government NSW (LGNSW) indicated that they could not attend and briefings were held for them on 26 May 2021 and 22 June 2021.

Key elements of the Bill were also discussed at other meetings and events, such as regular fortnightly updates with industry and council, and including the External Advisory Group meeting on 14 July.

Feedback was received up until the Bill was tabled in Parliament and is still being taken from all stakeholders.

36. *When stakeholders were consulted on the draft Bill, were they informed that the Bill would be introduced into Parliament as cognate to the Appropriation Bills? Were they otherwise informed the timing of when the Bill would be introduced into Parliament?*

Response:
All stakeholders at the briefings listed in response to question 16 were advised that the draft Bill would be introduced to Parliament cognate with the Appropriation Bills.

37. *Who made the decision to introduce the Bill cognate with the Appropriation Bills?*

Response:
The Minister for Planning and Public Spaces and the Treasurer both agreed to introduce the Bill cognate with the Appropriation Bills.

38. *Why was the Bill introduced to the Parliament without any of the supporting regulations and Ministerial guidelines?*

Response:
The Bill is to be supported by regulation and policy changes that are to be developed in consultation with stakeholders. Many of these changes require power in the *Environmental Planning and Assessment Act 1979* to be progressed, with material impacts for how they are drafted. Certainty about the legislative framework is needed. Work and consultation have commenced on the potential content, before investing the additional time and resources in detailed drafting.

This staged policy development process allows for stakeholder participation during each phase of the reform implementation.

The Bill implements the Government's policy on infrastructure contributions reform which is set out in some detail in the NSW Productivity Commissioner's report.

39. *Evidence from stakeholders across the spectrum of opinion and activity in the development space have said that it is not reasonable or possible to properly assess the effects of this reform package, without seeing the proposed regulations and Ministerial directions. How can Parliament responsibly enact this legislation, when so many of the key details of the package are not yet known?*

Response:
See response to question 38. To meet the timeframe recommended by the NSW Productivity Commissioner to commence most of the reforms by 1 July 2022, the Department has published an Implementation Roadmap which is available at https://www.planning.nsw.gov.au/Policy-and-Legislation/Infrastructure/Infrastructure-Funding/Improving-the-infrastructure-contributions-system.

40. *How do you respond to the claim from many individual submissions to this inquiry that this Bill will raise more money from new home buyers for infrastructure? How will this assist in dealing with housing affordability?*

Response:
The NSW Productivity Commissioner has recommended a package of reforms. The Commissioner engaged the Centre for International Economics to evaluate the reforms. This was published on the NSW Productivity Commissioner's website with the final report. It is available at https://www.productivity.nsw.gov.au/sites/default/files/2020-12/Evaluation%20of%20Infrastructure%20Contributions%20Reform%20in%20NSW.pdf. The

report indicates (page 6) that “over time, higher infrastructure contributions will be factored into lower land values, rather than higher housing prices”.

The recommendations of the NSW Productivity Commissioner ensure that the obligation to fund infrastructure is shared across a wider number of beneficiaries of development than under the current system. The development contributions established in the *Environmental Planning and Assessment Act 1979* is clear in setting the expectation that development that generates demand should contribute to the cost of providing the infrastructure.

41. What is the expected resourcing impact on councils from the changing the review of Local Strategic Planning Statements from 7 to 5 years? What is the policy justification for this change?

Response:
The NSW Productivity Commissioner recommended the change in timing (Recommendation 6.5) to better synchronise the State and local strategic planning frameworks. The change aligns the timing of the review of Local Strategic Planning Statements with the review period for other parts of the strategic planning framework. This includes the State Infrastructure Strategy, District and Regional Plans. This is expected to improve efficiency of the process and therefore reduce the resourcing impact on councils.

42. 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 land owners and others?

Response:
Economic modelling was undertaken for the NSW Productivity Commissioner by the Centre for International Economics. This used data and modelling to assess all 29 recommendations for the impact that they would have, both individually and collectively, on those paying contributions and those receiving them, as well as the broader NSW economy. The reforms share the obligation to fund infrastructure across a wider number of beneficiaries of development than under the current system and will result in an increase in money for infrastructure spending overall. The intent of the reforms is to ensure that the infrastructure needed to support development and growing communities can be provided in a timely manner.

43. 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?

Response:
Details of the economic modelling undertaken for the NSW Productivity Commission by the Centre for International Economics are publicly available on the Productivity Commissioner’s website https://www.productivity.nsw.gov.au/sites/default/files/2020-12/Evaluation%20of%20Infrastructure%20Contributions%20Reform%20in%20NSW.pdf

This concludes that the reforms are expected to result in a net increase in aggregate revenue for councils of 6.9% over a 20-year period. This includes an increase in rate revenue to better reflect population growth. In addition, changes to regional levies are expected to raise around $632 million in 2024 and to increase over time.

44. *Please provide any details or modelling relating to your or DPIE's assessment of the impact of these reforms on the quantum of infrastructure funding.*

Response:
See response to question 43.

45. *What transition measures will be in place to support financial stability of individual councils as part of the implementation of the measures in this Bill?*

Response:
Councils will have time to transition to the reformed contributions system. While the legislative provisions are intended to come into effect on 1 Jul 2022, they will only apply when councils prepare new or revised contribution plans. It is intended that councils will review plans by 1 July 2024. Other transitional measures will be developed in consultation with stakeholders including councils.

46. *Local Government NSW has expressed concern about the risks posed by the change in timing of payments from construction to occupancy.*
    i. *What has the government assessed the financial risk to councils to be from this change and will this risk vary from council to council?*
    ii. *Will the government assist councils in managing this risk?*
    iii. *Will the government assist councils with the cost of recovering outstanding payments? If not, why not? If so, how will it do so?*
    iv. *Does the government agree with the recommendation of Local Government NSW that an offence should be created should certifiers issue a certificate without evidence of an infrastructure contribution should be retained? (Recommendation 3 LGNSW, p. 9)*

Response:
The proposed change in timing of payment from prior to Construction Certificate to prior to Occupation Certificate aligns the timing of payment with that for Regional Infrastructure Contributions, this provides for a simpler more streamlined process.

The primary risk associated with the change relates to the potential release of the Occupation Certificate, without payment being confirmed. The reforms propose three key measures to mitigate against this risk.

- The digital tools are being designed to ensure that Occupation Certificates cannot be issued unless payment of contributions has been made.
- The *Environmental Planning and Assessment Regulation 2000* has been amended (clause 154F) to require certifiers to verify contribution payments have been made. This specifically addresses the concern of local government about private certifiers.
- The contributions will be treated as a debt that is recoverable through the courts, making it easier for councils to remedy, in the unlikely event that a certificate is issued without the payment.

47. *Under the changes proposed, read in conjunction with the NSW Planning and Environment, Local Infrastructure Contributions Practice Note, the land for a building from which to deliver community services is included but not the buildings – how will such facilities be funded in the future?*

Response:
The Local Infrastructure Contributions Practice Note currently excludes the capital cost of community facilities from section 7.11 contribution plans. These facilities have been

excluded since 2010. Councils are expected to use rates revenue or grants to fund the capital construction costs.

The reforms propose to clarify the definition of land within the essential works list (contained in the Practice Note) to include strata title (provision of space within a building).

The reforms will apply these requirements equally to all future section 7.11 plans prepared under the new system. At the same time, the rate peg reforms will allow for councils rate base to increase with population growth. Councils and communities may direct these increased funds to the capital cost of community facilities. Councils will also continue to have greater flexibility with the infrastructure funded by s7.12 infrastructure levies.

48. *A number of submissions point to concerns about the current lack of detail regarding practical aspects of the application and determination of the Land Value Contribution. A more complete understanding of this will have to wait until the Technical Working Group has been set up and reported back. Why was this work not done prior to the introduction of the Bill?*

Response:
The Land Value Contribution is a specific recommendation of the NSW Productivity Commissioner (Recommendation 4.2) that was accepted by the NSW Government in March 2021. Work began at that time to determine how the mechanism could be implemented.

As the drafting instructions were being prepared for the legislative framework, consultation was undertaken with Treasury and Revenue NSW to determine how the legal mechanism would work. The result of this work is the Bill to establish the heads of power for the land mechanism.

The NSW Productivity Commissioner's report (pages 49-56) provide advice to the Department to inform the work on the land value contribution. Particularly, Recommendation 4.2 requires the Department to consult with key stakeholders from councils and industry in the design and implementation of a direct land contribution mechanism.

The heads of power are needed in phase one of the reforms in order for the more detailed policy work to commence. The next phase will be the preparation of a detailed case study in partnership with key stakeholders through a Technical Working Group. This work will inform the preparation of Regulations. It is good policy practice to design new mechanisms such as this in consultation with stakeholders.

49. *Apart from the regulations and Ministerial directions, the Parliament also does not have the benefit of the work IPART is currently conducting on the increasing of Council rate bases in line with population growth. How many other instruments have to be developed to implement the provisions of this Bill? When will they be completed?*

Response:
The IPART published an Issues Paper on 25 March 2021, available at https://www.ipart.nsw.gov.au/files/sharedassets/website/shared-files/investigation-section-9-review-of-rate-peg-to-include-population-growth/publications/issues-paper-review-of-the-rate-peg-to-include-population-growth-march-2021.pdf.

A draft report was published on 29 June 2021 and is available at https://www.ipart.nsw.gov.au/files/sharedassets/website/shared-files/investigation-section-9-review-of-rate-peg-to-include-population-growth/publications/draft-report-ipart-review-of-the-rate-peg-to-include-population-growth-june-2021.pdf.

The following policy instruments are currently scheduled for exhibition in October 2021 with completion by 1 July 2022:

- Draft Regulations
- Regional Infrastructure Contributions SEPP
- Practice Notes for local infrastructure contributions
- Local Plan making guidelines
- Digital tool demonstration

50. *Can the Minister guarantee that these proposed changes in this Bill will reduce house prices in Sydney, Western Sydney, and across NSW? If so, how will this guarantee be enshrined?*

Response:
The NSW Productivity Commissioner specifically requested the Centre for International Economics examine the impact of these reforms on housing prices. Details of this analysis are publicly available on the NSW Productivity Commissioner's website https://www.productivity.nsw.gov.au/sites/default/files/2020-12/Evaluation%20of%20Infrastructure%20Contributions%20Reform%20in%20NSW.pdf

The analysis recognised that there are many factors influencing house prices but that the combined direct and indirect impacts of the reforms would lead to a reduction in house prices, particularly in metropolitan Sydney. The Centre for International Economics further noted that this impact depends on a number of factors, including councils making use of their improved financial incentives and, as a result, is likely to occur gradually over time.

51. *What is the estimate in the reduction in house prices for homebuyers from these proposed changes?*

Response:
See response to question 50.

52. *How many councils have not yet completed the mandated review of the LEPs?*

Response:
The mandated review of Local Environmental Plans applies to Greater Sydney councils only (33 in total). This includes 18 councils that received funding under the Accelerated LEP Review Program.

- 13 councils have completed the LEP review and have been notified.
- 20 councils are still completing the mandated review of their LEP.

53. *Has the terms of reference for the IPART review of the Essential Works list been finalised? If not, why not?*

Response:
The Terms of Reference for IPART's review of the essential works list has been finalised and copy is attached as **Attachment 1.**

54. *When will the terms of reference be issued?*

Response:
See response to question 53.

55. What is the reporting timeframe and response from the Government?

Response:
The report from IPART is required by 31 December 2021. The revised essential works list will be implemented from 1 July 2022.

NSW GOVERNMENT

Gladys Berejiklian MP
Premier of New South Wales

Ref: A5004959

06 JUL 2021

Ms Deborah Cope
Acting Chair
Independent Pricing and Regulatory Tribunal
PO Box K35
HAYMARKET POST SHOP NSW 1240

Dear Ms Cope,

I am writing on recommendation of the Minister for Planning and Public Spaces, the Hon. Rob Stokes MP, to request that IPART undertake two reviews pursuant to section 9 of the *Independent Pricing and Regulatory Tribunal Act 1992*. The reviews will be in relation to developing a standardised benchmark of costs for local infrastructure and reviewing the current essential works list.

The terms of reference for these reviews are enclosed.

Yours faithfully,

Gladys Berejiklian MP
Premier

CC: The Hon Rob Stokes, Minister for Planning and Public Spaces

NSW GOVERNMENT

Terms of Reference

I, Rob Stokes MP, Minister for Planning and Public Spaces, with the approval of the Premier, have entered into an arrangement for the provision of services by the Independent Pricing and Regulatory Tribunal (IPART) under section 9 of the *Independent Pricing and Regulatory Tribunal Act 1992* in accordance with these Terms of Reference.

Background

The NSW Productivity Commissioner undertook a review of the infrastructure contributions system in NSW in 2020 and made findings and recommendations for reform that were outlined in a Final Report released on 3 December 2020.

On 5 March 2021, the Treasurer and I announced that the NSW Government had accepted and is implementing all 29 of the NSW Productivity Commissioner's infrastructure contributions reform recommendations.

Recommendation 4.5: Contributions plans use benchmarked costs

Independent Pricing and Regulatory Tribunal to develop and maintain standardised benchmark costs for local infrastructure that reflect the efficient cost of provision.

These recommendations included that IPART develop and maintain standardised benchmark costs for development-contingent local infrastructure that is included in local infrastructure contributions plans under section 7.11 of the *Environmental Planning and Assessment Act 1979*. The NSW Productivity Commissioner identified that a standardised set of benchmark costs for development-contingent infrastructure would help to ensure that contributions plans are costed efficiently.

Matters for consideration

I am requesting IPART deliver a report recommending:

- Standardised benchmark costs for efficiently designed, development-contingent infrastructure on the essential works list, where the costs of that infrastructure are suitable to benchmark. These costs should cover the different transport, stormwater and open space infrastructure needs for infill, greenfield and regional development, and should reflect the base level of infrastructure that is appropriately funded by development.
- A standardised benchmark cost or costing approach for local infrastructure plan preparation and administration costs that specifies the components that are included in this cost category.
- Standardised allowances for inclusions such as contingency, project management and design.
- A costing approach that councils should use for any base level infrastructure costs that are not derived from the standardised benchmark costs.
- Differential costs to reflect geographic issues (i.e. metropolitan versus regional areas) and development typologies (infill versus greenfield) for the same types of infrastructure.

In undertaking the review, IPART should have regard to the NSW Productivity Commissioner's recommendations and guidance in relation to:

- contribution plans reflecting development-contingent costs only,

- benchmark costs reflecting base level embellishment (with embellishment above base level being funded from other sources), and
- benchmark costs being used unless:
  - a specific, efficient cost estimate has been prepared, or
  - actual costs based on efficient base level design are determined following construction.

In this section—

development-contingent costs means infrastructure costs with a causal connection to a development because they would be avoided if the development did not proceed, and includes**:**

- within-development open space, some roads, and pedestrian facilities
- network connections for water facilities (potable, waste, and stormwater) *(NOTE: only stormwater facilities are to be included as water and wastewater connections are dealt with under separate legislation).*
- facilities shared between multiple developments, e.g. open space and some collector roads.

Where nexus is shared between multiple developments, the relative demand each development places on infrastructure can be quantified through apportionment (being the equitable sharing of benefiting developments based on the level of demand they generate).

efficient costs means the most cost-effective means of creating assets that provide the minimum acceptable level of service.

Consultation

The reformed infrastructure contribution system will commence from 1 July 2022.

As the issues the subject of this review have previously been canvassed through the work of the NSW Productivity Commissioner, and noting the Government response, an issues paper is not required for this review.

IPART will conduct targeted consultation as part of its review including forums established to support the implementation of the NSW Productivity Commissioner's recommendations which include an External Advisory Group (comprised of peak industry and council representative bodies), an Agency Reference Group and the Department's Internal Working Group.

In October 2021, IPART will publish a draft report and conduct public consultation.

Reporting

IPART should submit its final report to the Minister for Planning and Public Spaces by 31 December 2021.

Progress briefings on costs structure

The Department is developing a suite of digital tools to support the reformed contributions system. This includes shifting contributions plan to the NSW Planning Portal to be delivered in a digital format. A critical input to this process will be the creation of standardised 'schedule of works' as a key feature of the template contributions plans.

Progress briefings from IPART on the ‘cost structure’ are required six-weekly or as requested by the Group Deputy Secretary Planning and Assessment at the Department of Planning, Industry and Environment. These will inform how costs are presented in the schedule of works.

The ‘cost structure’ should include the categories of infrastructure, charging methodology (such as rate per lineal metre, rate per square metre) and cost components required to be shown in the schedule of works (such as margins, approvals, contingency). The ‘dollar amount’ to be charged is not required as part of this review.

Terms of Reference

I, Rob Stokes MP, Minister for Planning and Public Spaces, with the approval of the Premier, have entered into an arrangement for the provision of services by the Independent Pricing and Regulatory Tribunal (IPART) under section 9 of the *Independent Pricing and Regulatory Tribunal Act 1992* in accordance with these Terms of Reference.

Background

The NSW Productivity Commissioner undertook a review of the infrastructure contributions system in NSW in 2020 and made findings and recommendations for reform that were outlined in a Final Report released on 3 December 2020.

On 5 March 2021, the Treasurer and I announced that the NSW Government had accepted and is implementing all 29 of the NSW Productivity Commissioner's infrastructure contributions reform recommendations.

Recommendation 4.6: Contributions plans reflect development-contingent costs only

i. Apply the essential works list to all section 7.11 contributions plans.

ii. Independent Pricing and Regulatory Tribunal to review the essential works list and provide advice on the approach to considering efficient infrastructure design and application of nexus.

iii. Subject to review by the Independent Pricing and Regulatory Tribunal, issue a revised practice note.

These recommendations included that local infrastructure contributions plans under section 7.11 of the *Environmental Planning and Assessment Act 1979* should reflect development-contingent costs only. To help achieve this, the NSW Productivity Commissioner recommended that IPART review the essential works list and provide advice on the approach to consider efficient infrastructure design and application of nexus. The objective is to ensure that new development pays the capital costs of efficiently designed local infrastructure needed to service the new population.

Matters for Consideration

I am requesting IPART deliver:

- A review of the essential works list for efficiently designed development-contingent cost to determine the contents of the essential works list. This would apply to all section 7.11 contributions plans.
- A report providing advice on the approach councils should use to determine the most efficient local infrastructure to meet the needs of new development, applying the principle of nexus.

The report should include the evidence and documentation required to demonstrate that local infrastructure included in a contributions plan is:

  - contingent on development, and
  - efficient in design.

In delivering the report, IPART must have regard to the following:

- The NSW Productivity Commissioner's recommendations in relation to:
  - the principle that local contributions are cost-reflective charges on impactors, applied through a consistent framework but with some flexibility for adaptation to local circumstances
  - infrastructure planning as part of the strategic planning process to encourage early identification of infrastructure needs and optimisation of infrastructure costs.
- IPART's review of the local government rate peg to allow councils' general income to increase with population and provides the flexibility for additional rate revenue being used to fund the general costs from population growth.
- The essential works list must not expand beyond the current parameters and community facilities works must not be included.
- Differential infrastructure needs to reflect geographic issues (i.e. metropolitan versus regional areas) and development typologies (infill versus greenfield).

In this section—

development-contingent costs means infrastructure costs with a causal connection to a development because they <u>would be avoided if the development did not proceed</u>, and includes**:**

- within-development open space, some roads, and pedestrian facilities
- network connections for water facilities (potable, waste, and stormwater) *(NOTE: only stormwater facilities are to be included as water and wastewater connections are dealt with under separate legislation).*
- facilities shared between multiple developments, e.g. open space and some collector roads.

Where nexus is shared between multiple developments, the relative demand each development places on infrastructure can be quantified through apportionment (being the equitable sharing of benefiting developments based on the level of demand they generate).

efficient costs means the most cost-effective means of creating assets that provide the minimum acceptable level of service.

Local Government Rating Reform – population growth factor

The NSW Government response to the IPART review of the local government rating system in NSW includes allowing for the better alignment of council income growth with population growth.

This Government policy is being implemented by:

- Terms of Reference issued to IPART to review the local government rate peg to allow councils' general income to increase with population, and
- The Local Government Amendment Act 2021 assented on 24 May 2021, which will give effect to the review.

Councils will have a reliable and sustainable revenue stream to provide key infrastructure for growing communities into the future.

Allowing for the local government rate peg to reflect population growth is highlighted as one of the key components underpinning a reformed contributions system in the Productivity Commission Review of Infrastructure Contributions. The rate peg reform enables general population costs to be removed from local infrastructure contributions.

Consultation

The reformed infrastructure contribution system will commence from 1 July 2022.

As the issues the subject of this review have previously been canvassed through the work of the NSW Productivity Commissioner, and noting the Government response, an issues paper is not required for this review.

IPART will conduct targeted consultation as part of its review including forums established to support the implementation of the NSW Productivity Commissioner's recommendations which include an External Advisory Group (comprised of peak industry and council representative bodies), an Agency Reference Group and the Department's Internal Working Group.

In October 2021, IPART will publish a draft report and conduct public consultation.

Reporting

IPART should submit its final report to the Minister for Planning and Public Spaces by 31 December 2021.