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30 June 2020

Executive Director
Planning Policy
Department of Planning, Industry and Environment
Locked Bag 5022
PARRAMATTA NSW 2124

Attention: Ruth Murphy

Email – ruth.murphy@planning.nsw.gov.au

Dear Ms Murphy,

Improving the review of local infrastructure contributions plans

The Property Council welcomes the opportunity to provide comments to the Department of Planning, Industry and Environment on the proposal to improve the review of local infrastructure contributions plans.

As Australia's peak representative of the property and construction industry, the Property Council's members include investors, owners, managers and developers of property across all asset classes. We are pleased to provide the following comments in respect of the discussion paper released in April 2020.

This proposal is one of five that were developed ahead of the COVID-19 pandemic and prior to the announcement of a broader review of contributions by the NSW Productivity Commission. We support the process of reforming development contribution arrangements and look forward to the implementation of most of the changes contemplated within the five issues papers.

Chapter 2 - Update the value thresholds that trigger the review process

The decision to increase the current thresholds that trigger the review of a draft contribution plan by IPART is supported.

The current \$20,000 threshold (\$30,000 for greenfield areas) was set in June 2010 and ignores the rising costs associated with the delivery of community infrastructure over the last decade. Without indexation of the thresholds, there is potential for a significant increase in the number of new and revised plans required to be submitted to IPART for review beyond which IPART has capacity to undertake.

The discussion paper provides three options for indexation of the thresholds:

- *Option 1 – Index the current threshold amounts by CPI from June 2010 (ie \$24,247 and \$36,370);*
- *Option 2 – Increase the threshold to \$35,000 per dwelling (and \$45,000 per lot in greenfield areas);*
- *Option 3 – Implement a single threshold of \$45,000 for all IPART reviewed plans.*

Our preference would be implementation of Option 1 as an interim measure, appropriately reflects the annual movement in inflation and enables consideration of recommendations from the NSW Productivity Commission.

Support for Option 1 over options 2 and 3, is prefaced on retention of a soft cap is applied to local councils when setting contribution rates. The IPART process is not easy for councils to navigate and imposes significant scrutiny of proposed infrastructure works (against the Essential Works List). We understand many councils set their contribution rates just below the thresholds to avoid the IPART review process which also enables them to collect contributions for the types of infrastructure that are excluded from the Essential Works List (such as community facilities and libraries). Option 1 involves the least change from the current threshold limits.

We also support the indexation of the new thresholds annually to an appropriate benchmark such as CPI. It is impractical for IPART to reviewing contribution plans simply due to annual movements of the CPI. This is consistent with the indexation of the contribution rates set out within contribution plans that are indexed either quarterly or annually.

There should be a transparent and simple process for the indexation of thresholds that trigger an IPART review of a draft contribution plan. The next indexed threshold amounts should be announced annually, commencing 1 July each year.

Further, there should be a simple and transparent process for local councils to publish the current contribution rates that apply under their contribution plans. Often a plan that is 3 years old will have been updated to provide contribution rates in 'real' terms. These should be clearly indicated on the council's website. Indexation of contribution rates that have been imposed on development consents must also be transparent and simple. Most councils index these amounts each quarter to the CPI and will provide the beneficiary of a development consent, with an adjusted amount at the time of payment.

Chapter 3 - Review the IPART terms of reference

We acknowledge that IPART's role reviewing contributions plans has changed following the closure of the Local Infrastructure Growth Scheme (LIGS). It is timely that IPART's terms of reference be reviewed to reflect the move from maximum caps to thresholds for review.

The current IPART review process is too lengthy and an unnecessary level of scrutiny and analysis. The current review process causes significant investment uncertainty and adds to the overall development timeframe, adds additional costs and consequently slows the supply of new housing development. The impact of these delays are heightened given the current economic climate and downturn in the residential housing market.

We generally agree with the key updates to the terms of reference proposed, being:

- Clarification of the purpose of the terms of reference and remove duplications with the Practice Note to ensure it remains the single source of detailed guidance on the review process;

- Introduce a targeted review of the necessity of additional information where a plan has already undergone review, to reduce timeframes.
- IPART only consult with the relevant council. IPART may still consult with other parties as appropriate on a case by case basis, but the terms of reference should not make this a requirement.
- Modernisation and clarification of wording, references and definitions.

Establish an alternative process for landowners and other stakeholders to raise concerns and objections with IPART, that local councils have failed to take into consideration.

We agree that the review of IPART's terms of reference should focus on the aspects which have the most impact to ensure that section 7.11 contribution plans are reasonable. We also suggest that there should be a further test to ensure that the cumulative cost of contributions is capped, ensuring development remains viable. This should involve an appropriate third party considering not only a section 7.11 contribution plan, but the cumulative impact of other levies and charges, such as affordable housing contributions, planning agreements, Special Infrastructure Contributions, biodiversity offsets, etc, and the impact on overall project viability and housing affordability.

Chapter 4 - Remove existing exemptions to the review process

This proposal will terminate the current exemption from the IPART review process that applies to contributions plans that were in place prior to 2010. These are listed in Schedule 1 of the Ministerial Direction.

At the time it was appropriate for these contribution plans to be grandfathered and contribution rates above the relevant caps imposed on development consents. In many cases the areas where these contribution plans applied are fully developed and the plans should be repealed. Where the plans are still in use it is appropriate they are reviewed by IPART,

We welcome removal of existing exemptions, and seek further clarification regarding implementation. Many of these plans may no longer be in use as they apply to areas that have become fully developed so it may be appropriate for them to be repealed. In cases, where any of these Schedule 1 contribution plans remain in use, we would ask for further information to be provided to explain whether these plans will need to be reviewed immediately for councils to continue collecting funds, or whether a transition period will be put in place to provide the affected councils with time to approach IPART to request a review.

Chapter 5 - Remove re-exhibition requirements for councils

Currently councils will exhibit a draft contribution plan before it is referred to IPART for review in accordance with clause 28 of the *Environmental Planning and Assessment Regulation 2000*. It may also re-exhibit the contributions plan following the making of changes recommended by IPART and endorsed by the Minister.

The proposal seeks to remove the re-exhibition requirement applying to plans that have been reviewed by IPART. We would support this step as it applies to draft contribution plans that are not significantly altered following an IPART review. However, where a significant change is made, we suggest a re-exhibition period should remain –, for example where a review results in a significant increase to contribution rates or impacts the nature or cost of works proposed.

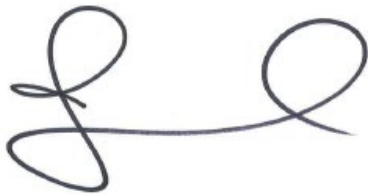
In many cases when council officers prepare reports for consideration at a Council meeting, they are provided with summarised or consolidated overview of issues raised by submitters, rather than detailed listing of concerns. When a council considers a report on a contributions plan, and fundamental issues about the validity, reasonableness and equity of a draft plan, there should be

more detailed consideration of those representations so that the Council can take those matters into proper consideration.

We thank you for the opportunity to provide the Department with comments on the discussion paper and would welcome the opportunity for our members to speak with the relevant officers on specific issues contained within the submission.

Should you have any questions regarding the content of this submission, do not hesitate to contact Troy Loveday, Senior Policy Advisor, on 0414 265 152 or tloveday@propertycouncil.com.au

Yours sincerely

A handwritten signature in dark blue ink, consisting of a large, stylized 'J' followed by a horizontal line and a large, rounded 'F'.

Jane Fitzgerald
NSW Executive Director
Property Council of Australia