Submission to IPART Review of Mamre Rd Stormwater Scheme – Andrew Chapman

I am providing this submission as an interested party, who supports Sydney Water's integrated water approach to servicing the Mamre Rd precinct. To achieve this, development charges need to fairly and reasonably distribute of costs to mitigating the impact from development in delivering better outcomes for waterways, the environment and the community. I am an industry leader and practitioner in integrated water management, including challenging and improving development charging approaches. While recently semi-retired, I have been providing strategic advice to Sydney Water on the Mamre Rd precinct, development charges, cosy allocation and drainage scheme principles. I was also involved in the industry challenge of Melbourne Water's development schemes and the consequential drafting of Melbourne Water's Principles for Provision of Waterway and Drainage Services for Urban Growth. The views expressed in this submission are my own and do not necessarily reflect Sydney Water or my employer, Aurecon.

I am supportive of the IPART review as it is a new area of responsibility for Sydney Water and a leading edge integrated water approach to mitigating the impact from development and delivering better outcomes for waterways, the environment and the community. Sydney Water is breaking new ground as an urban water company, traditionally providing water and sewerage services, that is taking on broader stormwater quality responsibility. To my knowledge Melbourne Water is the only other major Australian water corporation that has a large scale drainage responsibility. Predominately the responsibility for drainage has been with local government and larger waterways with state government.

The reviews terms of reference are reasonable given the restrictive time pressures for development to occur. The report has done good work in analysis of the scheme basis, delivering of the water quality targets approach, reasonableness of costing and cost allocation assuming using the current DSP approach used for Water and Sewerage. I would argue that the DSP approach is not fit for purpose as it fails to meet the NEXUS test with the inclusion of general costs of partial funding of ongoing recurrent and operating costs that are not sustainable. The infrastructure contributions system must deliver the public infrastructure required to support development while striving to be Certain, Consistent, Efficient Transparent and Simple. Industry best practice for drainage service charges should fund the capital cost to service and mitigate the impact of the development on the environment.

What the review has failed under its terms of reference, to look at the comparative costs of providing stormwater drainage schemes by NSW councils or nationally. It did not consider Melbourne Water's approach who have the largest portfolio of drainage schemes in the country and is the only other water and sewer authority with stormwater responsibility. The review also does not seem to reference NSW Productivity and Equality Commission's Infrastructure Contributions Review (2022) which included the provision of drainage infrastructure as a part of 7.11 local contribution plans, which is the local government alternative to drainage schemes. To assist IPART in consideration of the issue I have attached a summary of differing approaches to developer contribution plans for drainage.

In respect to the reviews chapter 5 Cost allocation which proposes a cost allocation framework where the developer charges cover the capital cost of servicing the land and a proportion of the ongoing operating costs of the infrastructure. This approach appears contrary to **IPART's Principles of Infrastructure Contributions** submitted to the productivity commission review of local infrastructure charges**.** Sydney Water Sydney Water has developed **Stormwater Scheme Principles** for cost allocation that have adapted the Melbourne Water stormwater schemes principles for cost allocation and IPART's Principles of Infrastructure Contributions principles. The IPART review appears not to of considered Sydney Water's Stormwater Scheme Principles in its review of cost allocation which does provide clarity on cost allocation.

I note the development landowners group have a number of times referenced Melbourne Water's waterway classification which should be used to water down the targets for the Mamre Precinct. As

understand it, this classification is used to focus management and investment effort in environmental protection of streams in its function as waterway manager which in not Sydney Water's new role. Melbourne Water does not use these classifications in determining stormwater quality targets to be achieved by Developer funded drainage schemes. The water quality targets are set by the State Environmental Planning Polices for Port Phillip and Westernport bay catchments.

In summary my comments on the IPART review are as follows:

- the adoption of the current water and sewerage DSP approach for stormwater developer charges fails the NEXUS test with the inclusion of GENERAL operating and recurrent costs increasing charges.
- The IPART review has not considered industry best practice and costs for stormwater development contribution schemes, which schemes typically fund the capital cost only for drainage.
- A principles-based framework guides is required for the equitable distribution of costs, ensuring that planning authorities apply contributions mechanisms in alignment with the objectives of supporting sustainable development and delivering necessary infrastructure. IPART should review Sydney Water's Stormwater Scheme Principles.
- The decision on Land Tax is not consistent, as it imposes an extra cost on Sydney Water, that are not applied to local government for stormwater land, significantly increases the developer charges and ultimately the Sydney Water customers.

Drainage Development Charge Approaches

Sydney Water Developer Services Plan

Developer charges are upfront charges water utilities levy on developers to recover the costs of providing water, wastewater and/or stormwater infrastructure to new developments. Sydney Water are currently proposing to use IPART's Developer Services Plan methodology for water and sewer services to new developments for calculating development charges for stormwater services in Western Parklands. This methodology reviewed in 2018 for water corporations is primarily focussed on water and sewerage services, which have lower cost networks. The approach in the case has been extended to stormwater services, to consolidate them under the single determination.

The methodology for determination of developer charges for metropolitan water utilities the basic formula for calculating the maximum developer charge for a new development area can be simplified as:

$$\text{Developer charge} = \frac{\text{Net present value (30year) [capital costs + operating costs - revenue]}}{\text{Net present value [equivalent tenements]}}$$

Inputs in the formula are:

1. Capital costs, including past, present and future capital expenditure, required to service the development area (shared or allocated between the particular development and other customers).
2. Operating costs expected to be incurred in servicing the new development area.
3. Forecast revenue from servicing customers within the new development area, based on postage stamp retail prices (usage and service charges).
4. Equivalent income tax on "profit" revenue from development charges without recognising future liability of infrastructure to be funded by the scheme.
5. Equivalent tenements, representing the demand the new development will place on the water and wastewater infrastructure compared to an average residential dwelling. (This is not reflective of the quantum of stormwater being generated which is a function of impervious area)
6. Discount rate(s) to calculate present values over 30 years

There is underlying assumption in the DSP approach that revenue is greater than operating costs and as such the future customer in part contributes to the cost of the infrastructure that is servicing them, resulting in a reduction in development charges.

Key challenges for application of this methodology for stormwater is the relatively high site specific system and land acquisition costs of the stormwater system compared to water and sewerage systems (greater than 10 times). Additionally, the inclusion of land tax is a significant operating cost along with wetland maintenance resulting in cases where opex is greater than revenue resulting in the developer paying for part of opex costs. In the long term this unsustainable recurrent revenue (customer charges) must cover recurrent expenditure and depreciation to maintain the service in perpetuity.

The DSP approach is not consistent with that used by Council to fund stormwater under the Local Infrastructure Contribution (LIC) model. Under the LIC model Developers only contribute to the apportioned capital cost of infrastructure required as a consequence of development within the area. The LIC model is closer to the Melbourne Water model where scheme developer charges are ring fenced to fund capital costs required to service development within the catchment to achieve net NPV fully funded infrastructure at the end of the scheme.

Local Infrastructure Contribution

Local infrastructure contributions, also known as developer contributions, are charged by councils when new development occurs. They help fund infrastructure like parks, community facilities, local roads, footpaths, stormwater drainage and traffic management.

There are two forms of local infrastructure contributions:

- **Section 7.11 contributions**: Charged where there is a demonstrated link between the development and the infrastructure to be funded. Councils prepare contributions plans which specify what infrastructure will be provided and approximately how much it will cost. This is used to calculate a contribution rate, usually charged per dwelling or per square metre. Councils that want to charge a contributions rate above the threshold set by the Minister must submit their plans to IPART for independent review. Section 7.11 was previously known as section 94.
- **Section 7.12 levies**: An alternative to s7.11 contributions, charged as a percentage of the estimated cost of the development. The maximum percentage that can be charged in most areas is 1%, although there are a small number of areas that charge a higher percentage. Section 7.12 was previously known as section 94A.

The local infrastructure contributions system is administered by local government as they are best placed to understand the needs of their communities.

Infrastructure contributions reform

The NSW Government has a plan to fix the uncertainty of infrastructure contributions, which will unlock new housing supply, deliver vital public infrastructure and boost investment in NSW.

After conducting a review of the infrastructure contributions system in NSW, in November 2020, the NSW Productivity Commissioner delivered his findings and recommendations in a final report. This report contains 29 recommendations which will form the foundation of reform to create more certainty about how infrastructure is funded and delivered to support new and existing communities.

In March 2021, the NSW government confirmed it had accepted all 29 recommendations from the Productivity Commissions Review of Infrastructure Contributions in NSW. The department is now working to deliver a reformed infrastructure contribution system. The proposed draft changes to the Environment Planning and Assessment Regulation 2000 are currently out for public comment.

The proposed Principles of Infrastructure Contributions are: "*Infrastructure contributions are a charge on development that reflects the demand for infrastructure created by the development. They are based on an impactor pays and beneficiary pays model and sit within a principles based framework. This framework is guided by the objectives of the contributions system and underpins how planning authorities can use the various contributions mechanisms.*

Impactor pays: *The development that creates the demand for the infrastructure is charged for their portion of the cost of the infrastructure. For example, a development might create the need for new drainage services and should pay for their share of the infrastructure.*

Beneficiary pays: *The developments that benefit when State or local government delivers infrastructure is charged for some of the cost of the infrastructure.*

Legislative requirements

Within the principles based approach there are several principles that are enshrined in the requirements of the Environmental Planning and Assessment Act 1979 (EP&A Act).

• Local infrastructure contributions under section 7.11 must be reasonable.

• Local infrastructure contributions under section 7.11 must have a nexus to development.

• Planning agreements must be voluntary"

*"**Objectives underpinning the infrastructure contributions system***

The infrastructure contributions system must deliver the public infrastructure required to support development while striving to be:

- *Certain.*
- *Consistent.*
- *Efficient.*
- *Transparent.*
- *Simple.*

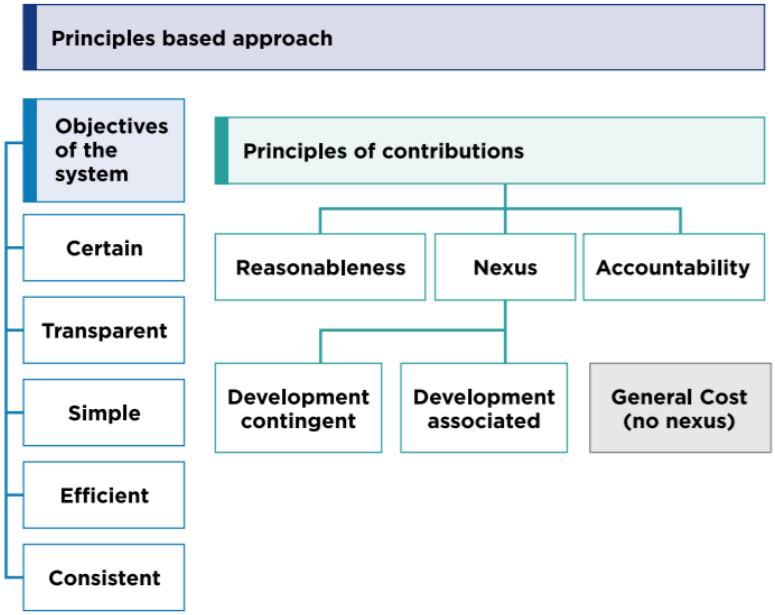
These objectives help State and local governments to deliver the infrastructure needed to support development. They can sometimes be at odds with each other; for example, it is difficult for a system to be at once completely certain, administratively efficient, and provide efficient market signals for development.

Different mechanisms under the contribution system will be influenced by some objectives more strongly than others. This in turn influences how rigorously or flexibly the principles of infrastructure contributions are applied and allows the system to be, on balance, certain, consistent, efficient, transparent, and simple."

Source: IPART Review of the essential works list, nexus and efficient infrastructure design – Draft Report

https://www.ipart.nsw.gov.au/sites/default/files/cm9_documents/Draft-Report-Essential-Works-list-Nexus-Efficient-design-and-Benchmarking-costs-for-local-infrastructure-29-October-2021-Review-2.PDF

Policy requirements



Source: DPIE Infrastructure Contribution – Practice Note Review – Policy Paper

https://shared-drupal-s3fs.s3.ap-southeast-2.amazonaws.com/master-test/fapub_pdf/GD1470+Infrastructure+Contributions++Practice+-+Note+Review+211026+Final.pdf

IPART Review of the essential works list, nexus, efficient design and benchmark costs for local infrastructure - Draft Report October 2021

IPART as part of DPIE review of infrastructure contributions was asked to provide advice to inform two key areas of the Government's reforms under two separate terms of reference:

- an Essential Works List (EWL)that would apply to all section 7.11 contributions plans and the approach councils should use to determine the most efficient local infrastructure to meet the needs of new development, applying the principle of nexus
- standardised benchmark costs for local infrastructure that councils may use to prepare local contributions plans that reflect the efficient costs of provision.

The approach advocated by IPART for local government LIC's is quite different to the Development Services Plan approach used by Sydney Water. The draft report is also out for public comment proposes a "*common set of principles should be applied to all circumstances including metropolitan and regional areas as well as infill and greenfield developments. This provides for councils to tailor infrastructure needs to each community and ensures that developers only pay for base level infrastructure associated with new development."*

"Stormwater infrastructure

The proposed EWL allows land and facilities for stormwater management. Nexus is established for upgrades to existing works or new works required to meet the increased demand for stormwater services due to the development:

• by showing the link to the increased impervious surface area created by new development

• up to relevant state and national standards by clearly identifying the stormwater outcomes or requirements (both water quantity/flow and water quality) that will be met with the proposed land and works. That is, the factors driving expenditure and the legislative requirements that are being met.

Nexus is also established for works required to restore the area to its pre-development state (consistent with impactor-pays) up to the standard that meets environmental protection outcomes in legislation.

However, it is unlikely nexus would be established for any works required to manage existing demand or repair damage to creeks and other stormwater infrastructure from pre-development land uses (inconsistent with impactor pays)

Further, it is unlikely nexus would be established for temporary works to facilitate development. Stormwater infrastructure should be delivered early to enable development to occur, which should minimise or eliminate the need for temporary works such as stormwater basins."

Melbourne Water Drainage Schemes

Development Services Schemes or Drainage Schemes operated by Melbourne Water comprise of a catchment-based drainage strategy outlining the functional designs of the relevant infrastructure required to service urban growth. There's a pricing arrangement detailing how infrastructure costs are recovered through financial contributions paid by developers. Each drainage scheme consists of a strategy for proposed (regional) assets, and some assets which may become local council assets. These include conceptual designs for works such as:

- pipelines
- retarding basins
- floodways
- overland flow paths
- wetlands
- other drainage and water quality treatment measures

The strategy ensures the orderly planning and provision of infrastructure to service urban development that meets appropriate standards for flood protection and environmental performance, including protection and enhancement of waterway and biodiversity values.

All developable properties pay a drainage contribution on the basis of the development size and the development type. Contributions include a hydraulic component which funds the flood protection works, and a water quality component which funds the water quality treatment works. The water quality

component may be reduced or negated by the developer undertaking their own on-site water quality treatment.

Contributions for each scheme are based on the capital cost of the works to be undertaken and use a discounted cashflow methodology to ensure that the income from contributions is equal to the planned expenditure over the expected life of a scheme.

Most scheme works are constructed by developers, and developers who are required to construct scheme works are reimbursed from the contributions received in the scheme. Detailed contribution and reimbursement policies can be found here:

- **Melbourne Water Contributions**
- **Melbourne Water Reimbursements**

Melbourne Water has adopted 16 core principles for creating and funding schemes for provision of waterway and drainage services for urban growth. These principles were developed and endorsed by a panel of stakeholders including the development industry and local government and can be found here:

- **Melbourne Water Principles**

Sydney Water has reviewed and adapted the stormwater schemes principles for the Mamre and Western Sydney stormwater schemes, which can be found here:

- **Sydney Water Stormwater Scheme Principles**

Economic Development Queensland

Economic Development Queensland's infrastructure charges policies set development charges for identified Priority Development Area infrastructure to ensure that new development fairly contributes towards the shared costs. These charges which include water, sewerage and drainage are based only on the capital cost of delivery of infrastructure.

Summary of Key Differences and Recommendations

- **Nexus Test**: The DSP approach used by Sydney Water may not meet the strict nexus test applied to LICs, as it includes broader operational costs not directly linked to development impacts.
- **Basis of Calculation:** Best practice for stormwater is to determine charges on area of impermeability or site area which directly relates to the volume of stormwater runoff, rather than equivalent tenements which relates to water consumption.
- **Operational Costs**: Best practice for stormwater charges typically excludes ongoing operational costs, focusing on the capital costs necessary to mitigate the impact of development.
- **Clear Guidance**: A principles-based framework guides the equitable distribution of costs, ensuring that planning authorities apply contributions mechanisms in alignment with the objectives of supporting sustainable development and delivering necessary infrastructure

In summary, the DSP approach employed by Sydney Water has key differences when compared to LICs and industry best practices for stormwater charging. The DSP method may fall short of the strict nexus test recommended by the NSW Productivity Commission that is applied to LICs, as it includes operational costs that are not directly tied to development impacts. Best practice in stormwater charging focuses on using site area or impermeability as the basis for calculating charges, as these measures more accurately reflect stormwater runoff volume, rather than relying on equivalent tenements tied to water consumption. Additionally, stormwater charges should primarily fund capital costs while excluding ongoing operational costs to ensure system sustainability.

Land Acquisition & Land Tax

The cost of land acquisition for waterways is the most significant cost for the drainage strategy which is typically provided as public open space. Currently the DSP modelling includes the payment of land tax by Sydney Water as a major operational cost for the strategy. While LIC only includes the capital cost of land acquisition but local government is understood to be exempt from land tax for public open space. This is creating an inequity between the two between the two models, it is however understood government has determined Sydney Water Land is subject to land tax which is a recurrent cost.

Melbourne Water had a similar issue about land acquisition and land tax in the early days of establishing the drainage schemes. To resolve it Melbourne Water got tax advice and sought government determination that land tax was not applicable for public drainage land. This determination has had a broader community benefit of encouraging Melbourne Water to open up more of its land for community recreational uses.

Melbourne Water's approach includes land acquisition costs in schemes where the land is otherwise deemed to be developable, land not developable due to flooding is gifted to the scheme. Land acquisition costs based on the undeveloped broad acre value, recognising the underlying zoning and infrastructure works completed at the date of inspection by a land valuer. This however may not be possible in the NSW context where Sydney Water is Stormwater quality manager and not responsible for flood levels and mitigation.

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Your submission for this review:
In summary my comments on the IPART review are as follows: the adoption of the current water and sewerage DSP approach for stormwater developer charges fails the NEXUS test with the inclusion of GENERAL operating and recurrent costs increasing charges. The IPART review has not considered industry best practice and costs for stormwater development contribution schemes, which schemes typically fund the capital cost only for drainage. A principles-based framework guides is required for the equitable distribution of costs, ensuring that planning authorities apply contributions mechanisms in alignment with the objectives of supporting sustainable development and delivering necessary infrastructure. IPART should review Sydney Waters Stormwater Scheme Principles. The decision on Land Tax is not consistent, as it imposes an extra cost on Sydney Water, that are not applied to local government for stormwater land, significantly increases the developer charges and ultimately the Sydney Water customers.