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**CCL 27/07/2021 - ADOPTION OF DRAFT COMMUNITY
INFRASTRUCTURE INCENTIVES POLICY**

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**CCL 27/07/2021 - ADOPTION OF DRAFT COMMUNITY
INFRASTRUCTURE INCENTIVES POLICY**

PAGE 3 **ITEM-77** **Attachment A:** Draft Community Infrastructure
Incentives Policy

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Policy

Community Infrastructure Incentives

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Part A - Preliminary

1 Purpose

- 1.1 The purpose of this Policy is to enhance the delivery of community infrastructure to support urban renewal in the City of Newcastle (CN) through the provision of development incentives.

2 Scope

- 2.1 This Policy only applies to land within the Newcastle Local Government Area (LGA) that is identified as suitable for accommodating an increase in density within:
- 2.1.1 The Greater Newcastle Metropolitan Plan
 - 2.1.2 An adopted strategy or plan of Council
 - 2.1.3 A land use study or analysis prepared by or for CN to inform a planning decision by the Council.
- 2.2 CN will implement this Policy by the following means:
- 2.2.1 Including provisions within the Local Environmental Plan (LEP) that enable an increase in density as an incentive, on land identified by the Floor Space Ratio (FSR) and/or Height of Buildings (HOB) map, where proposed development delivers community infrastructure. The LEP provisions will identify the maximum incentive available on the land.
 - 2.2.2 A Development Control Plan (DCP) that identifies the community infrastructure CN seeks to deliver, for which the LEP incentives may apply to. The DCP guides how the level of incentive is determined having regard to the value of the community infrastructure proposed and the incentive Gross Floor Area (GFA) rate.
 - 2.2.3 Publishing the 'Incentive GFA rate' in CN's annual Fees and Charges for the land to which the incentive applies in the LEP.
- 2.3 This Policy does not provide a means of varying development standards for individual proposals outside the parameters identified above.
- 2.4 This Policy complements the existing Local Infrastructure Contributions framework. However, any outcomes of this Policy are independent of those delivered by a plan of the Council under Section 7.18 Contributions plans—making of the Environmental Planning and Assessment Act 1979 (NSW) (the Act). Nothing in this Policy affects the development contributions imposed as a condition of consent under Section 7.11 or 7.12 of the Act.

3 Principles

- 3.1 CN commits itself to the following:
- 3.1.1 Equity – by ensuring the benefits of urban renewal are shared through development incentives that facilitate community infrastructure.
 - 3.1.2 Certainty – by identifying the potential development incentives available on identified land and the requirement for achieving these, both applicants and the community understand the potential built outcomes and the community infrastructure to be delivered by way of the incentive.
 - 3.1.3 Transparency – by implementing the development incentives in the LEP and identifying community infrastructure in the DCP, enabling community input and transparency independent of any development proposal.

- 3.1.4 Voluntary – nothing in this Policy compels an applicant to access available development incentive for their land. Applicants can decide voluntarily if they wish to access additional GFA when preparing a development proposal. Likewise, this Policy does not reduce Council’s obligation to ensure that all planning decisions are based on sound evidence, justification on planning grounds, and considered to be in the best public interest.
- 3.1.5 Consistency – by ensuring CN has regard for this Policy when reporting to Council on potential increases in density through an amendment to the LEP development standards.

Part B - Context

4 Implications of planning decisions

- 4.1 CN recognises that planning decisions have the potential to promote urban renewal and an intensification of land uses, which in the right location and circumstance provide benefit to:
 - 4.1.1 the broader community, through provision of additional housing and employment, to meet existing and future demands consistent with population projections and emerging trends
 - 4.1.2 landowners, through increase in land value, which provides greater returns on investment at time of sale, as well as an increase in financial equity.
- 4.2 Planning decisions promoting urban renewal also have the potential to impact existing local communities due to:
 - 4.2.1 change in local character and amenity
 - 4.2.2 inconveniences and impacts of increased construction activity
 - 4.2.3 increased local traffic and demand for parking
 - 4.2.4 increased demand on and for community infrastructure.

5 Community Infrastructure

- 5.1 New development is ordinarily required to contribute toward the provision of community infrastructure as a condition on consent being applied under Section 7.11 or Section 7.12 of the Act.
- 5.2 However, in areas identified for increased density local government is limited by:
 - 5.2.1 the amount able to be charged in comparison to the full cost of providing the infrastructure and services required by the community
 - 5.2.2 the type of items that may be funded by contributions in comparison to the expanded range of facilities and services local government is responsible for providing
 - 5.2.3 The timeframe to collect or recoup adequate funds necessary for delivering community infrastructure.
- 5.3 CN recognises that the timely delivery of community infrastructure is essential to support the urban renewal and development process. This Policy aims to facilitate the enhanced delivery of community infrastructure through the provision of appropriate development incentives to support urban renewal.
- 5.4 In this Policy, community infrastructure may be delivered to CN in the form of land, works, a monetary contribution, or a combination of these.

Part C – Approach

6 Development incentives

- 6.1 In areas identified as suitable for supporting a change in land use/s and/or an increase in density of existing uses (as outlined in Section 2.1), CN will determine the maximum development incentives available based on the potential development standard to be applied, on potential development sites, where satisfied that the potential development outcomes meet the following criteria:
- 6.1.1 reflect the envisaged character and scale of the local area
 - 6.1.2 are justified on planning grounds
 - 6.1.3 are feasible, having regard for the cost of delivering community infrastructure
 - 6.1.4 result in the enhanced delivery of community infrastructure
 - 6.1.5 result in a net public benefit to the local community.
- 6.2 CN will identify and determine the cost of delivering potential community infrastructure, which:
- 6.2.1 address the immediate, intermediate, and long term needs of the area likely to experience change
 - 6.2.2 improve the amenity of the public domain
 - 6.2.3 expedite implementation of actions identified within an adopted plan or strategy
 - 6.2.4 are not otherwise provided for within an adopted contribution plan
 - 6.2.5 meets the required standards determined by CN.
- 6.3 CN will establish an 'Incentive GFA Rate' for an identified area, which will be used to determine the development incentive increase to be included in the development standard provided based on the additional density achieved in return for providing community infrastructure.
- 6.4 The 'Incentive GFA Rate', will be determined having regard to the following:
- 6.4.1 the estimated cost for providing identified community infrastructure within the identified urban renewal area, expressed in dollars.
 - 6.4.2 the potential incentive GFA that will be made available within the identified urban renewal area, expressed in square metres.
 - 6.4.3 the Incentive GFA Rate, being the proportion calculated by dividing the cost of community infrastructure projects (in 7.4.1) by the total GFA uplift in the urban renewal area (in 7.4.2) and expressed as dollars per square metre.
 - 6.4.4 Feasibility testing to compare likely development scenarios using a feasibility modelling approach, to determine if the proposed '*Incentive GFA rate*' enables a more viable outcome than the current LEP development standards to an extent where the outcome represents an incentive worth pursuing when weighed up against the potential additional risk.
 - 6.4.5 Where feasibility testing determines the incentive to be unviable, CN may review the priority or scope of potential community infrastructure projects.
 - 6.4.6 Despite the above, in certain circumstances CN may identify that an increase in density does not equate to improved development feasibility outcomes, regardless of the Incentive GFA Rate. In such circumstances the envisaged development outcomes may require further consideration to determine if increased density is warranted under current property market conditions.

Part D – Implementation

7 Mechanisms

- 7.1 CN will implement this Policy through amendment of the Newcastle LEP 2012 (LEP) to increase the following development standard/s on land identified on:
 - 7.1.1 FSR map, up to the maximum incentive, to provide additional GFA to prospective development proposals
 - 7.1.2 HOB map, up to the maximum incentive, to enable the realisation of GFA available to prospective development proposals from the FSR.
- 7.2 CN will include provisions within the LEP allowing for the transfer of GFA from land dedicated for community infrastructure onto the residual development parcel.
- 7.3 CN will introduce provision within the DCP to guide the preparation and assessment of development proposals seeking to access a development incentive on land identified within the LEP. Development controls will address such matters as:
 - 7.3.1 eligibility criteria for development proposals to determine suitability for attracting an incentive and the extent of incentive that may be applied
 - 7.3.2 identification of the particulars of the community infrastructure sought through the incentives offered
 - 7.3.3 the method for determining the level of incentive available for the provision of community infrastructure.
- 7.4 The established Incentive GFA Rate for a specified location will be published within the Schedule of Fees and Charges of the Newcastle Operational Plan, under Section 608 of the *Local Government Act 1993* (NSW). The Incentive GFA Rate is a 'charge' at full cost recovery for a 'service' (provision of community infrastructure) where provided on behalf of development seeking to access available incentive density on land. CN will review and index the Incentive GFA Rate annually.
- 7.5 Notwithstanding this part, CN may enter into an individual Planning Agreement, made under Section 7.4 of the Act, with a planning proposal seeking to achieve increased density, where consistent with Newcastle Planning Agreement Policy and justified:
 - 7.5.1 having regard for the principles of this Policy
 - 7.5.2 using the approach of this Policy to identify specific community infrastructure to be delivered under the agreement
 - 7.5.3 having regard for the value of the community infrastructure offered and the additional GFA the planning proposal will deliver, to determine the Incentive GFA rate
 - 7.5.4 based on the delivery of a net positive benefit to the local community.

8 Development proposals

- 8.1 The provision of a development incentive on land, because of this Policy, does not:
 - 8.1.1 provide for the relaxation of any other development standard and/or development controls applying to the land or the particular proposal.
 - 8.1.2 impose an obligation on the Council to consent to a development proposal seeking to apply the incentive.
 - 8.1.3 have effect on the development contributions imposed as a condition of consent under Section 7.11 or 7.12 of the Act.
 - 8.1.4 result in the imposition of additional cost to CN, where not already allocated for such purposes.
- 8.2 CN will consider all ongoing maintenance and liability costs when identifying, planning, and accepting community infrastructure under this Policy.

Annexure A - Definitions

The Act means the *Environmental Planning and Assessment Act 1979* (NSW), unless where identified otherwise.

CEO means Chief Executive Officer of the City of Newcastle and includes their delegate or authorised representative.

References to the Chief Executive Officer are references to the General Manager appointed under the *Local Government Act 1993* (NSW).

City of Newcastle (CN) means Newcastle City Council.

Community infrastructure means works, services and land provided and maintained by or on behalf of CN, for:

- recreation
- community facilities
- conservation
- public roads, walkways and cycleways
- drainage
- public car parking
- public domain improvement.

Council means the elected Council. A decision of the Council is taken to mean a decision by the elected Council or its delegates.

DCP means any part of Newcastle Development Control Plan 2012.

Density means the quantitative rate used to measure the concentration of development on land. Under the LEP Density is measured by FSR, with an 'increase in Density' meaning an increase in the amount of GFA able to be accommodated on a site.

Development Incentive means a Clause within the LEP, which enables a variation to development standards in order to increase development yield by way of GFA, based on the development meeting certain requirements.

Development contribution means the provision of money, or an agreed commodity of monetary value, by an applicant, toward the delivery of an identified item of Community infrastructure by or on behalf of CN. Development Contribution in this Policy refers to the required payment of money identified as a condition of consent to development, under an adopted plan of the Council. For more information refer to Section 7.11 or 7.12 of the Act.

FSR means floor space ratio, which is determined by dividing site area by the GFA. See the Newcastle LEP 2012 for more information.

GFA means Gross Floor Area and is the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes—

- (a) the area of a mezzanine, and
 - (b) habitable rooms in a basement or an attic, and
 - (c) any shop, auditorium, cinema, and the like, in a basement or attic,
- but excludes—
- (d) any area for common vertical circulation, such as lifts and stairs, and
 - (e) any basement—
 - (i) storage, and
 - (ii) vehicular access, loading areas, garbage and services, and

- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
- (h) any space used for the loading or unloading of goods (including access to it), and
- (i) terraces and balconies with outer walls less than 1.4 metres high, and
- (j) voids above a floor at the level of a storey or storey above.

HOB means Height of Building. See Newcastle Local Environmental Plan 2012 for more information.

Incentive GFA rate means the dollar value applied to each square metre of GFA provided to development as an incentive under the LEP.

LEP means Newcastle Local Environmental Plan 2012.

Unless stated otherwise, a reference to a section or clause is a reference to a section or clause of this Policy.

Annexure B - Policy Authorisations

Function	Position Number / Title

Document Control

Policy title	Community Infrastructure Incentives
Policy owner	Manager Regulatory, Planning and Assessment
Policy expert/writer	Section Manager Urban Planning
Associated Procedure Title (if applicable)	Newcastle Development Control Plan 2012 – Part 6 Locality Specific Provisions. Note: Procedures will be incorporated into relevant sections under this part, when CN nominates to apply this policy to a given locality.
Procedure owner (if applicable)	Manager Regulatory Planning and Assessment
Prepared by	Regulatory, Planning & Assessment
Approved by	Council
Date approved	To be completed by Legal
Policy approval form reference	ECM#
Commencement Date	To be completed by Legal
Next revision date (date Policy will be revised)	To be completed by Legal
Termination date	To be completed by Legal (one year post revision date)
Version	Version number (versions mean adopted versions only)
Category	Choose an item.
Keywords	Building, Community, FSR, GFA, Infrastructure, Density, Development, Height, Incentive, Infrastructure, Standard, Urban, Variation
Details of previous versions	Nil
Legislative amendments	Nil
Relevant strategic direction	Vibrant and Activated Public Places
Relevant strategy	Newcastle Local Strategic Planning Statement 2019
Relevant legislation/codes (reference specific sections)	This Policy supports CN's compliance with the following legislation: <i>NSW Environmental Planning and Assessment Act 1979</i>

Other related policies/ documents/ strategies	Newcastle Planning Agreement Policy 2021 Wickham Masterplan 2017
Related forms	Nil
Required on website	Yes
Authorisations	Functions authorised under this Policy at Annexure B

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**CCL 27/07/2021 - ADOPTION OF DRAFT COMMUNITY
INFRASTRUCTURE INCENTIVES POLICY**

PAGE 19 **ITEM-77** **Attachment B:** Summary of submissions

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Attachment B - Summary of submissions – Public Exhibition of Community Infrastructure Incentives Policy

Submitter	Issues	Comment	Action
Urban Development Institute of Australia (UDIA)	1.1 The Policy should only apply where there is additional FSR – not height.	<p>The FSR and HOB applying to land is a maximum development standard determined on the applicable maps in the LEP. In order to reach these maximums a development proposal must satisfy a number of heads of consideration prescribed in the EP&A Act 1979.</p> <p>The draft Policy applies to the provision of additional Gross Floor Area (GFA) to proposed development by providing an incentive increase to</p> <ul style="list-style-type: none"> • The FSR to enable the development proposal additional GFA than otherwise achieved • The HOB to enable additional GFA than otherwise not achieved. <p>Applicants are not required to seek an incentive HOB However, if they do choose to seek additional HOB, then the GFA of the part of the development above the otherwise maximum HOB is considered the incentive GFA.</p>	Noted. No change required.
	1.2 The Policy should make clearer that it is not a 'value capture' mechanism	The methodology applied by the draft Policy clearly demonstrates an approach that is not based on land values or land value uplift; hence it is not value capture.	Noted. No change required.
	1.3 The Policy should apply the same rigour to setting the Incentive GFA Rate as is required in setting other development contributions.	Agreed - The policy sets out the methodology required to determine the Incentive GFA Rate, as well as the requirement to report and exhibit the rate.	Noted. No change required.
	1.4 The Policy should make clear that it does not preclude the consideration of proposals that are inconsistent with the Policy.	<p>Not necessary as the draft Policy's purpose is to set out the approach CN will take to implementing applicable development incentives through the LEP. Where a resultant LEP clause applies proposed development will need to be consistent with this clause to achieve an incentive under the clause.</p> <p>Applicants can still propose something outside of this but will need to rely on the merits of their proposal.</p>	Noted. No change required.

Attachment B - Summary of submissions – Public Exhibition of Community Infrastructure Incentives Policy

Submitter	Issues	Comment	Action
	1.5 CN should complete robust local character statements, and clearly define the term 'net positive benefit to the local community' to provide more certainty and avoid conflicts.	Agreed – as outlined in Clause 6.1 of the draft Policy identifies the process for determining community infrastructure to be provided for incentives and the consideration of character (cl. 6.1.1) in determining the incentive to be applied.	Noted. No change required.
	1.6 The Policy should commit to the delivery of infrastructure at the earliest available opportunity and include a clear and transparent process for utilising the contributions collected.	Agreed, this is covered both by the principles of the policy and in clause 5.3 under the heading of community infrastructure, as well as covered by Council's accounting and reporting probity requirements.	Noted. No change required.
Property Council of Australia	2.1 CN needs to define how any monetary contributions will be used and ensure the nexus between collection and spend is relevant.	See response at 1.6 above. The nexus of the value of what is provided to CN and value of providing community infrastructure is outlined in clause 6.3 and 6.4 of the draft Policy.	Noted. No change required.
	2.2 Asks CN to consider The Policy and how it relates to current mechanisms such as developer contributions, Clause 4.6 variations and planning agreements, that achieve these same or similar outcomes.	The policy applies to those items not otherwise funded by a development contribution as per clause 5.3. Any subsequent Planning Proposal will address Clause 4.6 but CN does not believe that a variation using Clause 4.6 can be justified relying on the inclusion of an incentive clause but not complying with the requirements of the clause. This would be similar to justifying an increase under a design excellence incentive clause but not meeting the criteria or requirements of design excellence. While Clause 4.6 and Planning agreements may be used together to achieve a similar outcome in some circumstances, this approach does not provide certainty to applicants or the community and requires lengthy and costly negotiation, which will be avoided under the approach provided under the draft Policy.	Noted. No change required.

Attachment B - Summary of submissions – Public Exhibition of Community Infrastructure Incentives Policy

Submitter	Issues	Comment	Action
	2.3 The contribution should only apply to land where a development relies on uplift from the existing base controls. We further support the policy as an opt in, voluntary process.	Agreed and consistent with the draft policy	Noted. No change required.
	2.4 Asks CN to provide an understanding of how this mechanism will work with Clause 4.6 and the state-wide changes expected to that mechanism.	As per submission 2.2 above	Noted. No change required.
	2.5 Requests details on how additional Height and FSR within LEP will be set	Covered in clauses 2.2 and 7.1 of draft Policy but will be covered in greater detail within a subsequent Planning Proposal to include maps and clauses in the NLEP 2012, based on ongoing discussion with DPIE.	Noted. No change required.
	2.6 Supportive of additional density reflecting the envisaged character of the local area. Will be reliant on local character studies. Acknowledges CN's current work around local character studies	Agreed – as identified in clause 6.1 but will only apply to areas identified in clause 2.1 of the draft Policy	Noted. No change required.
	2.7 Requests clarification on whether the funding of items through a 7.11 or 7.12 plan excludes them from this, concerns that 'double dipping' may occur	Covered in 8.1.3 of draft Policy. The draft Policy does not allow double dipping as only applies to community infrastructure not otherwise funded under a 7.11 or 7.12 plan	Noted. No change required.
	2.8 Incentives must provide a feasible rate and would only be purposeful if set in a timely manner.	Agreed and covered by Clause 6.4 of the draft Policy.	Noted. No change required.
	2.9 Feasibility testing may still lead to a situation where a development would rely on more height or FSR than the LEP incentives limit allows, precluding any incentive.	In this case the landowner can decide not to proceed with the current proposal or within the current market. The policy is not a means of increasing profitability.	Noted. No change required.
	2.10 Request definition of 'net positive benefit to the local community' and definition of 'public benefit' in the glossary with common examples of what this might be	The draft Policy proposes an approach that identifies the community infrastructure upfront based on the specific needs of the local area. This together with the proposed densities will require to be established having regard to feedback received when the relevant draft planning measures are exhibited. The Community feedback will determine the 'net positive benefit' to that particular community.	Noted. No change required.

Attachment B - Summary of submissions – Public Exhibition of Community Infrastructure Incentives Policy

Submitter	Issues	Comment	Action
	2.11 Council could consider other incentives to assist with feasibility, which should be described in this policy so they can be linked into the process. These could include waiving assessment fees, concessions on parking or other elements of the development and application to 7.11/12 developer contributions	Generally, the waiving of cost for development as suggested will need to be paid by CN and thereby existing ratepayers. In essence revenue lost on these elements, means less funding is available for infrastructure through general revenue and therefore not a net gain but possibly a loss based on the administration of such an exercise. Applicants are always able to offer to negotiate a planning agreement when proposing alternative outcomes.	Noted. No change required.
Newcastle Greens Local Government Reference	Participation and scrutiny 3.1 All decisions are made after a participatory processes and public scrutiny based on full information prior to decisions	Agreed.	Noted. No change required.
	3.2 Outline consultation process involved in “amendment of the Newcastle LEP” and “identification of the particulars of community infrastructure sought through the incentives offered”.	This is covered by CN's community participation plan	Noted. No change required.
	Transparency and probity 3.3 Planning processes and decisions must be transparent, robust, evidence-based, rigorous and corruption proof.	Agreed – as per principles of the draft Policy.	Noted. No change required.
	3.4 The policy must not impose or imply any obligation on the Council to consent to a development proposal seeking to apply the incentive. This is achieved in Section 8 of the Policy.	Agreed and covered by Section 8 of the draft Policy	Noted. No change required.
	3.5 the 'Incentive GFA Rate' expressed in \$/sqm and published in the Council's annual Fees and Charges register delivers greater certainty and transparency than is possible when value capture is sought through Voluntary Planning Agreements (VPAs).	Agreed	Noted. No change required.
	Legal and procedural standing 3.6 Plans and plan-making have at least the same legal and procedural rigour as the LEP and DCP	Agreed – the policy seeks to be implemented through the LEP and DCP	Noted. No change required.
	3.7 outline minimum expectations to manage the impacts on outlook, wind and ventilation, accessibility, separation, solar access, and bulk and scale. Controls must ensure that developments approved with these variations respond to their site-specific context.	Agreed and covered by 6.1.1 and 6.1.2 of the draft Policy.	Noted. No change required.

Attachment B - Summary of submissions – Public Exhibition of Community Infrastructure Incentives Policy

Submitter	Issues	Comment	Action
	3.8 Council should expand the provisions for design excellence to cover DAs making use of this scheme. That is, to qualify for the bonus density, an applicant will have to demonstrate design excellence as per s7.5 of the Newcastle Local Environment Plan.	Noted Clause 7.5 of NLEP 2021 has a specific purpose and while this may overlap in certain circumstances, the process requirements of the clause may not always be necessary for achieving a desirable outcome.	Noted. No change required.
	From Strategy to DA 3.9 The draft Policy identifies implementation through changes to the LEP and DCP. The Policy should spell out more clearly requirements, particularly at the precinct and property level.	This will be more appropriately provided for in subsequent planning proposal to enable the LEP amendments as per clause 2.2 and 7.1 of the draft Policy.	Noted. No change required.
	3.10 The policy is unclear on how this community infrastructure plan and costings will be reviewed and open to public scrutiny. This community infrastructure schedule must be subject to the same level of rigour, transparency and community consultation as would be required for development contributions under s7.11 and s7.12 of the Planning and Environment Act. They should be properly exhibited and public engagement on these plans should be actively facilitated.	The policy sets the framework to enable the required process to occur. The detail and procedural requirements for implementing the mechanisms identified under section 7 Mechanisms is already specified by legislation applying to 'planning' and 'local government'. The Policy will be implemented through amendments to the NLEP 2012 and NDCP2012. There are legal requirements for the preparation, exhibition and adoption of amendments to these documents and will include being exhibited and providing for public engagement.	Noted. No change required.
	3.11 Council should set out additional development controls and community infrastructure objectives specific to each precinct. This may include 'design excellence' provision, affordable housing provision, accessibility provisions in individual units, or provision of 'park-and-ride' sites to reduce neighbourhood traffic.	Each area where the policy will apply will have its own unique set of requirements based on the analysis prepared as set out Part C approach and therefore it is not recommended to nominate each possible option as this may detract from identifying what is needed for the given urban renewal area. However, these are all suggestions worth consideration during preparation of amendments to the DCP.	Noted
	3.12 In addition to the types of community infrastructure to be supported (Section 5) the policy should include estimated cost-ranges, which should be included in all Strategies, Masterplans, LEPs, DCPs and other planning instruments that fall under this Policy. These lists must be developed in	Costs are subject to change. Therefore, CN will seek to have works costed by its Quantity Surveyors at the time of implementation.	Noted

Attachment B - Summary of submissions – Public Exhibition of Community Infrastructure Incentives Policy

	consultation with affected communities and other stakeholders and be regularly updated.		
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PAGE 27 **ITEM-77** **Attachment C:** Feedback from DPIE Infrastructure
Funding Policy team

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Attachment C: - Initial Feedback from DPIE Infrastructure Funding Policy team

“not align with the principles of the infrastructure contributions reforms”

The draft Policy (and proposed planning provisions) seek to deliver land and works that facilitate urban renewal outcomes in areas planned for growth, through development incentive provisions. While these are identified as ‘community infrastructure’ projects, the draft Policy is clear that these do not consist of ‘local infrastructure’ funded through CNs contribution framework and will be projects outside of the local contribution framework.

However, to also ensure compliance with the proposed reforms when preparing the draft Policy, CN took into consideration the principles and recommendations of the NSW Productivity Commission’s ‘Review of Infrastructure Contributions in New South Wales – Final Report’. Hence, the principles of the draft Policy (Equity, Certainty, Transparency, Voluntary, and Consistency) align with those outlined by the NSW Productivity Commission, being:

- **Certainty**
The proposed approach will provide a greater level ‘certainty’ to
 - the community, given increases in density are based on the necessary strategic and infrastructure planning to also identify the need for potential infrastructure and other community benefits.
 - the development industry, of what potential incentives are available, the community infrastructure sought by CN, and the predetermined correlation between the two will improve feasibility assessment of potential development projects.

- **Efficiency**
The draft policy seeks to improve efficiency of delivering improvements for the community as development occurs. By comparison, collecting contributions paid for local infrastructure can take considerable time to deliver.

The approach improves efficiency to industry by comparison to negotiating, exhibiting, and executing a Planning Agreement. This approach also ensures development standards (and therefore land values) are maintained, thereby improving the efficiency of delivering urban renewal outcomes.

- **Simplicity**
The proposed approach is based on a simple methodology for determining development incentives based on evidence.

- **Transparency**
The approach is transparent for all parties through the up-front identification of the land, the maximum incentives available, the community infrastructure to be delivered, and the amount of incentive made available to proposals that provide for community infrastructure.
- **Consistency**
The draft Policy provides a consistent method to be applied by CN, rather than relying on individually negotiated Planning Agreements.

The draft Policy is also consistent with the relevant principles identified on the DPIE infrastructure contribution webpage, being:

- **moving towards a principles-based infrastructure contributions system**
Addressed above.
- **enhance the capacity of councils to support growth**
The draft Policy provides a means for CN to facilitate growth in areas of urban renewal, by providing an incentive to development to take up the available GFA (by increase in FSR and/or HOB) and deliver improvements not otherwise available.
- **strike a balance between efficiency, simplicity and certainty for local infrastructure contributions.**
As noted above, the items to be provided for under the draft Policy are independent of those listed within CN's Contribution Plans.
- **develop a stronger funding base for State and regional infrastructure.**
The scale of projects likely to be delivered under the draft Policy are comparatively small by comparison to those for which State and regional infrastructure funding is sought under a SIC or similar mechanism. Given that the draft Policy is proposed to apply to catalyst areas and strategic growth areas identified under the NSW Greater Newcastle Metropolitan Plan, which are being planned for in partnership with DPIE (and other State Agencies), there will be a clear separation maintained between delivery of catalysing interventions at a state or regional level and will only seek to apply the provisions set out in the draft Policy to deliver those items that cater for the immediate needs of the community outside of other funding sources for urban renewal.
- **make the system more consistent, transparent and easy to navigate.**
Addressed above.
- **better align infrastructure contributions and strategic planning and delivery.**
As above, the draft Policy is not based on seeking infrastructure contributions but focused on development incentives. However, the draft Policy provides a very clear alignment between the potential increase in development standards (FSR and/or HOB) based on strategic land use planning and urban design, as well as identifying projects outside of the 'local contribution' framework that have been identified as a means of facilitating urban renewal.

“proposes to charge development for local infrastructure outside of the infrastructure contributions system”

CN proposes an approach within the draft Policy that is **not a ‘charge’**, or a levy applied on development. Instead, the approach is based on provision of incentives to development, through the LEP, to achieve a variation to development standards. The incentives are only provided on certain land and only available where development provides a defined outcome. This approach is similar to other existing incentive clauses within Newcastle LEP 2012 that provide a bonus or variation for identified development outcomes such as design excellence, lot amalgamation, or specified land uses desired in an area based on the outcomes of strategic planning.

In the case of the draft Policy, the defined outcomes identified through a strategic planning process have been labelled as ‘community infrastructure’. CN could just as easily have called these ‘urban renewal projects’, ‘local improvements’ or the like.

Despite the word infrastructure being used to define identified works, land, or improvements, CN is not seeking to provide these by applying a charge on development under a S7.11 or 7.12 plan. The above statement is contradicted further on in their initial feedback, in which it is acknowledged that ‘bonus’ provisions for ‘community infrastructure’ are provided for under other LEPs. This acknowledgement clarifies that the identified outcomes of such LEP provisions are for ‘community infrastructure’ and not ‘local infrastructure’, and that this approach has been applied elsewhere.

“proposed community infrastructure incentives LEP clause expands upon the current limited application. Parliamentary Counsel identify such clauses to be applied to the site, not to provide infrastructure off site or require a monetary contribution”

CN proposes to introduce its community infrastructure incentives through two separate clauses; one for varying HOB and one for FSR “on certain land”, subject to provision of ‘community infrastructure’. The intention being that this clause and the maps may be amended over time to include additional areas, where the strategic planning work underpinning the incentives and identifying the specific improvements for a locality have been undertaken and endorsed.

While some LEPs, such as Sydney Local Environmental Plan (Green Square Town Centre) 2013, are very specific as to the details of what, where, and how community infrastructure is provided for, others (including Clause 4.4A of Burwood Local Environmental Plan 2012, and Clause 8.7 of Penrith LEP 2010) take a similar approach to what CN proposes and the specific details of the type, location, and value, of the Community Infrastructure that may be delivered by development seeking to take up the available incentives are detailed in other accompanying planning documents.

CN proposes to identify the specific Community Infrastructure Projects, their location, and the means in which they are provided to Council within a locality specific DCP applying to the same areas as where the development incentives apply on the LEP maps.

Development works or subdivision related to providing community infrastructure, which requires consent, would need to be identified on the same DA as the proposed development and would be in proximity to the development site. However, if the term 'site' is interpreted to mean that community infrastructure is provided on the same Lot and DP as development, this would be cause of concern for the following reasons:

- CNs approach is based on evidence based strategic planning to identify potential uplift in density and the need for potential community infrastructure projects. Both density and Community infrastructure projects are identified independent upon one another. Density is based on site capacity and ability to deliver compliant development, whereas community infrastructure is based on identifying a need and the best location from an urban design perspective. Maintaining this independence of the two is consistent with the premise that "planning decisions should not be bought or sold".
- A requirement to provide community infrastructure on the same 'site' as development assumes this would provide both the best urban renewal outcomes and the best outcome for the development. This is not necessarily going to be the case, hence, to ensure equity and fairness among development sites, CNs approach proposes to apportion the cost (of providing community infrastructure) and the benefits (of additional GFA to development) among all potential 'incentive sites' within a defined urban renewal area (e.g., Wickham area).

As a result, development incentives are linked to the amount of community infrastructure provided rather than forcing a development to pay for a whole project, without being able to utilise all the resultant incentive, likewise development on land that does not consist of an identified community infrastructure project, or only consisting of a minor project, are still able to take up an incentive corresponding to the identified capacity of the land.

- CN questions why an incentive provision would carry a greater burden of nexus than conditions imposed on consent, given Section 4.17 (1) (f) allows for conditions to require works on land other than where the application relates. Conditions of consent, work-in-kind, and planning agreements often relate to works being carried out off site (particularly within the public domain) and Section 7.4 allows for Planning agreements to provide monetary contribution for provision (or recoupment of cost) for items identified as 'a public purpose' under subsection (2). Given applicant's would take on the available incentives in a voluntary capacity, a similar approach to the interpretation of 'site' and 'provision of community infrastructure' would be prudent and provides consistency and transparency.
- CNs intension is for community infrastructure to be provided as land and/or works where practicable but also propose to include an 'Incentive GFA rate' for each applicable locality within its annual schedule of fees and charges, pursuant to Section 608 of the Local Government Act 1993. This will allow applicants to pay into a designated fund, whereby CN provides the applicable community infrastructure, as cost, for this service, if they choose. Councils already provide a range of services, including civil works, tree planting etc and provided CN does not give itself exclusive rights to provide such services this is a legitimate practice.
CN notes that existing LEP clauses do not outline such particulars and therefore this is not considered relevant to Parliamentary Counsel.

“Councils have been able to apply community infrastructure clauses by linking them to development bonuses – but because the bonus only exists on the site of the development, so must the community infrastructure”

Further to the response above, CN is not aware of what (legal) grounds this requirement could be applied given that this has not been applied within other similar LEP clauses.

CN recommends that a nexus is established between the area where an incentive is made available and the areas where community infrastructure is provided by development. However, as with the nexus established between development and conditions of consent requiring public domain improvements outside of the development site, or the indirect nexus between development and matters provided for under a planning agreement, this nexus is not limited to the provision of land or works in kind only, nor is it limited within the confines of the development lot/s.

Provided the development site and the confines of the community infrastructure projects are defined then the definition of ‘the site’ may encompass more than the specific lot to which the incentive GFA may be applied. Furthermore, if PC suggests that the same site refers to a lot and DP, then this is problematic given this would imply that all development sites would require lot amalgamation prior to DA consent being issued, despite requiring development sites to be subdivided or involve a boundary adjustment to enable land dedication (for community infrastructure).

“Council should develop a s7.11 infrastructure contributions plan or use another contributions mechanism to deliver the local infrastructure. Council should also consider using conditions of development consent and general council funds to deliver local infrastructure”

In preparing a draft DCP CN will consider which items would be better funded through other means, including:

- ‘local infrastructure’ to be funded under S7.11
- applied as conditions of consent
- or through other funding streams.

Only items that are not provided through these means but are required early to facilitate urban renewal are proposed as community infrastructure projects within an identified area.

CN understands that similar provisions apply in other Standard Instrument LEPs across the Sydney metropolitan areas, hence does not find this initial feedback from the Policy team consistent, given the clear intent under the draft Policy is to provide incentives for items not otherwise funded under Council’s contributions framework.