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4 August 2020

Mr Peter Achterstraat, AM
NSW Productivity Commissioner
NSW Productivity Commission
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Dear Peter

Submission to the Review of Infrastructure Contributions in NSW

Thank you for the opportunity to provide a submission to respond to your July 2020 Issues Paper on the Review of Infrastructure Contributions in New South Wales.

IPART is the independent economic regulator in NSW for water, public transport and local government. We are also the licence administrator for water, electricity and gas utilities and the scheme administrator and regulator for the Energy Savings Scheme.

We have assessed local infrastructure contributions plans since 2011 under terms of reference from the Premier and in accordance with the Practice Note issued by the Department of Planning, Industry and Environment. To date, we have completed 24 reviews of 14 different contributions plans from seven councils and have one current assessment.

Our submission has been approved by our Tribunal and is attached. It addresses the issues and questions in the Issues Paper that are most pertinent to IPART's current role and responsibilities.

Should you require further information, IPART's contact officer for this submission is

[REDACTED]

Yours sincerely

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Independent Pricing and Regulatory Tribunal
New South Wales

Submission to the NSW Productivity Commission

Review of infrastructure contributions in NSW

August 2020

Tribunal Members

The Tribunal members for this review are:

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1 Introduction and executive summary

IPART is the independent economic regulator in NSW for water, public transport and local government. We are also the licence administrator for water, electricity and gas utilities and the scheme administrator and regulator for the Energy Savings Scheme.

We have assessed local infrastructure contributions plans since 2011 under terms of reference from the Premier and in accordance with the Practice Note issued by the Department of Planning.¹ To date, we have completed 24 reviews of 14 different contributions plans from seven councils and have one current assessment.

We have also set the rate peg for local councils and assessed applications from councils for Special Variations above this peg, since 2011-12.

Further, we have determined the methodology for setting Sydney Water, Hunter Water and the Central Coast Council's water, wastewater, stormwater and recycled water developer charges – although, since 2008 it has been NSW Government policy to set Sydney Water and Hunter Water's water, wastewater and stormwater developer charges for in sequence development to zero.

With the closing of the Local Infrastructure Growth Scheme (LIGS) on 30 June 2020, a review of the infrastructure contributions system in NSW is timely. We consider that achieving cost-reflective contributions should remain a key objective for reasons of efficiency and equity; while also ensuring the system provides a reasonable level of transparency and certainty for all parties. We have identified opportunities for improvements to the contributions system, including through:

- ▼ Application of our funding hierarchy to guide cost allocation – which indicates that in most instances 'impactors' should pay (ie, those that create the need to incur a cost should pay the cost)
- ▼ Early acquisition of land for public infrastructure
- ▼ Timely delivery of infrastructure to facilitate and service development
- ▼ Regular review of contributions plans
- ▼ Protecting minimum standards for all communities in NSW, while allowing flexibility to exceed these standards where there is a willingness to pay
- ▼ Increased transparency
- ▼ External review of contributions plans only on an exception basis, where there are unresolved material issues or concerns identified by the affected parties.

Appendix A provides an index to our submission, cross-referencing the relevant issues and questions raised in the issues paper.

¹ Department of Planning and Environment, Local Infrastructure Contributions Practice Note, January 2019 (Practice Note).

We would like to thank the Productivity Commission for the opportunity to provide a submission in response to its issues paper. We would be happy to discuss our response further, if that would assist.

2 Clear principles and objectives for a reformed contributions system

The NSW Productivity Commission has identified the inherent trade-offs in designing a workable contributions system, including between the competing principles of efficiency, equity, certainty and simplicity. It is essential that a reformed contributions system is principles-based, with clear objectives that apply to all development, irrespective of cost and location.

2.1 Cost reflective contributions are important for efficiency and equity

We consider that contributions that reflect the reasonable costs of local infrastructure provision are important for reasons of both efficiency and equity. Achieving cost-reflective contributions should be a key objective, applying to all development. Cost-reflective contributions are necessary to:

- ▼ Signal the costs of developing different areas – which, in turn, can assist in ensuring that development occurs where it should (ie, where the benefits of the development are greater than its costs)
- ▼ Ensure there are sufficient funds to provide necessary infrastructure
- ▼ Ensure that other parties (such as a council's ratepayers) do not have to fund any shortfall between the actual costs of providing local infrastructure and the revenue received from development contributions.

While efficiency is an important principle for the overall system, we note that it is difficult for councils to reflect efficient costs in contributions plans. This is because of the long lead time between planning infrastructure and procuring detailed site-specific cost estimates. We therefore consider that it is appropriate to require contributions plans to reflect the reasonable costs of infrastructure.

2.2 Certainty, simplicity and administrative efficiency

While cost-reflectivity is a key principle, we also recognise that the infrastructure contributions system should strive to maximise certainty and minimise administrative costs and regulatory burden.

Design of the infrastructure contributions system may require some trade-offs or balancing between cost-reflectivity on the one hand, and certainty and administrative efficiency on the other. We consider that the priority given to these principles in the system should be clear to decision-makers and stakeholders.

The objective should be to look at ways of achieving all of the above, or at least to get the balance right if trade-offs are required. We have adopted this approach in proposing the options for reform of the infrastructure contributions outlined in our submission.

2.3 The principles of nexus, apportionment and impactor-pays should remain central to the developer contributions system

As outlined in the issues paper, the principles of nexus and apportionment are specific to section 7.11 contributions.² Nexus requires a connection between the infrastructure provided in a contributions plan and the demand (or need) for infrastructure generated by new development. Apportionment ensures that development only pays for the demand (or need) for infrastructure it generates.

These principles align with the funding hierarchy that IPART has adopted to guide our cost allocation and pricing decisions in a range of sectors.³ This funding hierarchy is similar to that proposed by the Commonwealth Productivity Commission for the recovery of infrastructure costs, as outlined at page 12 of the issues paper. According to the funding hierarchy that IPART applies:

- ▼ Preferably, the party that created the need to incur the cost (**the impactor**) should pay in the first instance.
- ▼ If that is not possible, the party that benefits (**the beneficiary**) should pay. Further it is preferable for direct beneficiaries to pay, but if that is not possible then indirect beneficiaries should pay. Often, impactors are beneficiaries.
- ▼ In cases where it is not feasible to charge either impactors or beneficiaries (eg, because of social welfare policy, public goods, externalities, or an administrative or legislative impracticality of charging), the government (**taxpayers**) should pay.

This hierarchy promotes the efficient use and distribution of resources and is equitable. It is also practical to apply.

2.4 Minimum standards should apply, but councils should also have flexibility to exceed minimums to deliver infrastructure to meet community expectations

The infrastructure contributions system should ensure that all communities in NSW have the infrastructure they need, while maintaining flexibility so that councils can provide a higher quality or quantity of infrastructure provision where there is a willingness to pay.

We consider there is a need for minimum standards, particularly in the provision of open space and community facilities, to protect community interests. This could occur through a modified essential works list.

Councils could still seek to charge for infrastructure above the minimum standards, provided they can establish why this additional infrastructure should be funded via developer contributions. This could include, for example, information that shows that developers and/or future residents need, or are willing to pay, the reasonable costs of achieving higher standards.

² NSW Productivity Commission, *Review of Infrastructure Contributions in NSW*, July 2020, p 59.

³ See for example, *Review of Rural Water Cost Shares – Issues Paper*, April 2018.

This would be consistent with a place-based approach to planning, where councils have flexibility to ensure development is consistent with community needs and expectations. It could be achieved by re-focusing IPART's review function so that it applies only to plans on application by affected stakeholders where there is disagreement with a council about the reasonableness of the council's proposal. We discuss this further in section 5.1.

Review on an exception basis would assist in allowing 'the market' to make the potential trade off (or balance) between cost-reflectivity and certainty (or timeliness), while also providing a mechanism to resolve the material concerns of affected stakeholders if they arise.

2.5 Increased transparency, including through consultation

With the removal of funding through LIGS, developers now pay the full costs of local infrastructure to service their developments in most instances.⁴ This means there are now strong incentives for developers to scrutinise the reasonableness of council proposals that did not previously exist for high value plans which were eligible for LIGS funding. However, enhanced transparency and consultation is required to enable this to occur.

Stakeholders require sufficient information about a council's infrastructure contributions proposals. This includes the infrastructure design and costing information underpinning a contributions plan. To date, some councils have provided limited information through public exhibition, which has not enabled affected parties to adequately scrutinise draft contributions plans. Developers and industry groups have identified that they currently rely on IPART review to provide this level of scrutiny and assurance because inadequate information is provided by councils through their public exhibition of contributions plans.⁵ In addition, some councils submit new information to IPART following public exhibition that significantly impacts the scope and cost of infrastructure in contributions plans.⁶

Greater transparency in contributions plans and genuine consultation by councils with developers and other stakeholders at the time of public exhibition of the plans can only improve outcomes for all parties.

⁴ Except for development in The Hills and Blacktown Local Government Areas from 1 July 2020 until 31 December 2020, where a Ministerial Direction caps contributions at \$50,000 per lot or dwelling: *Environmental Planning and Assessment (Local Infrastructure Contributions) Amendment Direction 2020*, 18 June 2020.

⁵ See for example, the Urban Development Institute of Australia's (UDIA) comments in relation to Wollongong City Council's consultation on the West Dapto Contributions Plan: UDIA, *Submission to IPART Draft Report – West Dapto CP (2020)*, March 2020, p 7.

⁶ See for example, IPART's assessments of Hawkesbury City Council's Vineyard Contributions Plan in 2019 and The Hills Shire Council's Contributions Plan No 13 in 2019-20.

3 Issues with the current local infrastructure contributions system and options for reform

Developer contributions play a vital role in funding essential infrastructure in NSW, and signalling the costs of developing different areas. Currently, the costs of servicing growing communities with essential infrastructure are largely funded through the developer contributions system. While some aspects of the system work well, some changes could deliver a more efficient and fairer funding model to service new development in NSW.

We have identified the following issues with the current system and in the practices it encourages from councils. This section is intended to complement the views expressed in our recent submission to DPIE's reform package. A copy of IPART's submission to DPIE is provided at Appendix A, for reference.

3.1 Early provision of essential infrastructure would better enable precinct development, add certainty, reduce inefficiencies and deliver greater amenity to new residents

Essential infrastructure should be provided early in growing precincts to enable orderly development. Since 2011, IPART has assessed contributions plans covering some of Sydney's fastest growing communities. We have observed infrastructure delivery that has not kept up with the pace of development. In some instances, this has resulted in development delays, reliance on councils entering into Voluntary Planning Agreements (VPAs) with early developers, and a need for temporary works, such as temporary stormwater basins, to facilitate development.

The problem is largely a reflection of council's funding preference for areas covered by contributions plans. Councils are generally reluctant to borrow funds and take on risk to provide essential infrastructure. Through our assessments we have observed that councils generally wait to collect contributions revenue before acquiring land and funding essential infrastructure.

Councils should consider the benefits of providing more infrastructure early to ensure orderly precinct development.

3.1.1 Waiting for sufficient contributions revenue before delivering essential infrastructure is inefficient and does not support growing communities

Councils should be encouraged to borrow money to forward-fund infrastructure. A sharing of financial risk or co-funding arrangements from the NSW Government may be required to incentivise this borrowing. Developers could then be charged the interest expense on borrowed funds through contributions plans, because they receive the benefits of having earlier access to the infrastructure needed for development. This would be consistent with a principle of nexus-based development.

The approach proposed by Hawkesbury City Council in its Vineyard Contributions Plan is an example of a council forward-funding essential infrastructure. This council will borrow funds through a TCorp low cost loan facility to deliver the collector road network in the Vineyard Stage 1 Precinct within three years of adopting the contributions plan.⁷

In some other plans we have recently assessed, the councils' delivery of essential local infrastructure has not matched the pace of development. We have observed that delays in delivering essential infrastructure increase the costs of development and reduce amenity for residents moving to new growth areas.

3.1.2 Voluntary Planning Agreements do not always align with broader community interest and discourage competitive tendering for works

The lack of forward-funding for infrastructure incentivises councils to enter into VPAs with early developers to deliver infrastructure or dedicate land. The prevalence of VPAs in growth precincts may be symptomatic of the generally reactive way councils approach infrastructure delivery.

The Productivity Commission's Issues Paper identifies the inherent trade-offs in using VPAs to further planning outcomes. VPAs can increase flexibility, enable value capture and allow early delivery of key infrastructure. However, they may lack transparency, accountability, and be resource intensive to prepare.

VPAs should be mutually beneficial – ie, they benefit both the developer and the council (on behalf of the broader community). VPAs can provide flexibility and early access to infrastructure, however councils should ensure they align with broader planning objectives.

VPAs often include an offset against a developer's contributions commitment, based on broad estimates for land and works identified in the early life of a contributions plan. These estimates may not be reasonable or cost reflective, and the works may not have been through a competitive tendering process. This contrasts with the general procurement requirements that apply to councils under section 55 of the *Local Government Act 1993*.

Further, as a VPA may provide offsets against a contribution payment, an agreement that benefits one developer may come at the expense of other developers. For example, later developers may pay a contribution based on costs in an earlier VPA which were too high.

3.1.3 Some developers are required to construct temporary and duplicate works to facilitate development

Developers in some areas are required to deliver temporary works to progress their developments. This may include temporary access roads, detention basins and other stormwater management works. Usually, the developer will not be provided with an offset against their contributions amount for providing temporary works.

⁷ IPART, *Assessment of Vineyard Contributions Plan*, November 2019, pp 101.

The developer must weigh up the costs of providing the temporary facilities, such as construction costs and a reduced dwelling yield as they manage water run-off and retention within their development sites, against their holding costs as they wait for the council to deliver the works in the plan.

Forward funding and early delivery of essential infrastructure would reduce the need for temporary facilities. Constructing these temporary facilities may be inefficient and avoidable with the early provision of development-enabling infrastructure.

3.2 Early acquisition of land would reduce contribution rates and the overall costs of development

On average, land costs represented 42% of costs in contributions plans IPART assessed between October 2011 and July 2020. These costs include:

- ▼ The actual costs of land already acquired by a council, indexed by CPI
- ▼ The estimated costs of land yet to be acquired
- ▼ Any just terms compensation that has been or is likely to be paid in association with land acquisition
- ▼ Any conveyancing costs associated with the land acquisition.

Contributions plans reflect the estimated costs of acquiring land after it has been rezoned. After re-zoning, councils acquire land for which they are nominated as the acquisition authority on the relevant Land Reservation Acquisition Maps. However, councils often wait to acquire land until they have collected sufficient contributions revenue, or until they require the land to deliver infrastructure or open space.

This strategy results in unnecessarily high land costs in contributions plan. Regardless of the direction of the broader property market, the value of land in development precincts generally increases over time as more sites are prepared, infrastructure is delivered and amenity increases. If councils do not acquire land early, they pay more to compensate landholders for the increased amenity that has been delivered through a contributions plan. These higher land costs are reflected in higher contribution rates.

A strategy of early land acquisition would significantly reduce the cost of land in contributions plans. We consider that councils should pursue a strategy of acquiring or entering negotiations to acquire all land in a contributions plan within 12 months of rezoning. Councils could enter agreements with landholders to buy the land and transfer ownership at a later date when the land is needed for infrastructure delivery.

With an early land acquisition strategy, contributions plans would include mostly actual land acquisition costs, reducing councils' reliance on estimating the cost of acquiring land. For any remaining land that is not acquired early, the involvement of the NSW Valuer General in setting average per square metre land values would provide greater certainty for all stakeholders and consistency across contributions plans. Any review of the estimated costs of land in contributions plans would then be limited to the council's application of these values to the land in a plan.

There could also be significant additional savings if councils or the NSW Government acquired land before rezoning.⁸ This approach would require legislative amendments.

We note that any change to the strategy for acquisition of land for public infrastructure should provide a consistent and transparent approach to how land is identified and purchased, reflecting that rezoning decisions are made by government for the benefit of the community.

3.3 Integrated land use and infrastructure planning will result in faster delivery of new land for urban development

Greater coordination between councils, the NSW Government and utility providers would ensure precinct development is better aligned with the provision of infrastructure and services.

An approach similar to the Greater Sydney Commission led place-based infrastructure compact model, which was piloted in planning for the redevelopment of the Greater Parramatta and the Olympic Peninsula (GPOP), may be applicable in planning for smaller, council-led precincts.

Under this model, the NSW Government could provide a service as precinct manager to coordinate infrastructure delivery across both levels of government, while leaving councils to lead place-based planning activities and deliver local infrastructure. In a precinct infrastructure manager role, the NSW Government could publish a consolidated infrastructure delivery schedule which clearly outlines infrastructure delivery goals and timelines. A consolidated infrastructure delivery schedule would prioritise and outline expected dates for the delivery of state (such as Special Infrastructure Contribution (SIC) funded infrastructure) and local infrastructure and utility provision.

Infrastructure delivery could be tied to development milestones or time-based goals; and announced, updated and prioritised in advance to inform developer investment decisions.

3.4 Catchment-wide stormwater management planning and prioritisation would reduce costs

Precinct-based stormwater management planning is neither efficient nor effective and should be replaced by a catchment-based approach. There are significant cost savings in minimising duplicate works and prioritising delivery across a catchment so that it is aligned with development and environmental management goals.

Natural resource management legislation acknowledges the benefits of catchment scale management to minimise adverse cross-boundary impacts and negative externalities.

⁸ See: Infrastructure Australia, *Corridor Protection – Planning and investing for the long term*, July 2017.

Incremental stormwater delivery is also likely to be more costly, duplicate needs and increase the reliance on temporary stormwater detention basins. Stormwater infrastructure should be planned, prioritised and delivered at a catchment or regional scale. In the north-west and south-west of Sydney, this catchment-based planning would occur across precinct and council boundaries. Funding for stormwater infrastructure could occur through SICs, or the developer contributions system. Catchment-based stormwater infrastructure could be delivered by a new special purpose authority or a water utility – to optimise opportunities for integrated water cycle management.

Moving stormwater management responsibilities to a catchment-wide approach will also lead to better coordination and prioritisation of service delivery. It is also likely to lead to cost savings from removing the need for inefficient and duplicate works. Planning for stormwater management at a catchment or regional level could enable the delivery authority to prioritise delivery around clearly articulated water management, environmental management and economic development goals and promote integrated water cycle management.

3.5 Contributions plans include high contingency allowances and are overly reliant on estimated costs until late in the life of a plan

A number of minor changes to the developer contributions system could reduce inefficiencies and lead to substantial cost savings.

An efficient system should balance the risks faced by delivery authorities in providing works based on cost estimates that are sometimes derived years before the works are delivered, while also being fair to all developers. Currently, contributions plans include a ‘reasonable’ estimate of the cost of works to be constructed at a later date, plus a contingency allowance.

3.5.1 Contingency allowances are paid for by developers regardless of whether they are required

When planning an infrastructure project, consideration is given to an appropriate contingency allowance that represents a reasonable estimate of the cost risk for a given project. As it stands, contributions plans include contingency allowances for all or most estimated works costs. These allowances can vary between 10-40% of the base cost of each individual project. These costs are included in the total costs in a plan and reflected in contribution rates.

As an example, Wollongong City Council’s West Dapto Contributions Plan includes approximately \$120 million (or 14% of total works costs) in contingency allowances, which are currently being paid by developers.

The developer contributions system does not have a refund mechanism so the contingency is paid until a plan is updated with the actual cost of a project. This means developers pay the full contingency allowances within a contributions plan, until the estimate is replaced with the actual cost, regardless of whether the contingency is actually required. Greater consideration should be given to the appropriate level of risk sharing between councils and developers.

When assessing contributions plans, we consider the reasonable estimate of risk for a given project and make recommendations on contingency allowances.

We also note that the issue of high contingency allowances in contributions plans can be avoided, in part, with earlier delivery of infrastructure and regular review of plans.

3.5.2 Councils should regularly review their contributions plans

We consider that councils should regularly review and update contributions plans to ensure they reflect up-to-date planning assumptions (including population projections), infrastructure requirements, reasonable cost estimates and actual costs where available. We have consistently recommended that councils regularly review their contributions plans for this reason, based on the stage of development:

- ▼ For plans with development in their **early stages**, we consider councils should review and update the plan **every three years**
- ▼ For plans in later stages, where the infrastructure needs are more certain and a council has obtained detailed designs and cost estimates, review should occur **every five years**.

These timeframes are intended as a guide only. Earlier review may be desirable if significant development has occurred or planning assumptions materially change.

The consequences of failing to regularly review a contributions plan are highlighted by The Hills Shire Council's Contribution Plan No. 13 for North Kellyville (CP13), as outlined in Box 3.1.

Box 3.1 Issues arising from infrequent review of a contributions plan

CP13 was first assessed by IPART in 2011. The council next reviewed the plan in 2018 and submitted it to IPART for assessment in late 2018. The draft plan was submitted to IPART and the council's updated information provided through our assessment reflected:

- ▼ Significant changes to planning assumptions (the expected population in the North Kellyville Precinct increased by 5,030 people (32.3%) between our 2011 and 2018 assessments of CP13)
- ▼ Significant changes to the scope of infrastructure (including an \$18.42 million (87.7%) increase in the cost of delivering two major sporting fields)
- ▼ New design and costing information, including actual costs for works delivered, and site-specific estimates. For transport works, the council provided revised costs, reducing transport costs by \$2.64 million (2.9%).

The time between review and the significant changes to CP13 highlights a number of issues:

- ▼ **Differences in contribution rates over time:** Significant changes to planning assumptions and/or costs that are not addressed in a timely fashion through amendments to a plan, may result in large differences in the contribution rates paid by developers in early stages compared with the rates paid by developers in later stages of the development.^a
- ▼ **Infrastructure may not meet the needs of development:** Changes to planning assumptions will change the demand for infrastructure. Therefore, these changes should be a trigger for the review of plans to ensure councils can provide the necessary infrastructure. In the case of land for open space in particular, if review of a plan does not occur in response to changes to planning assumptions, then councils may not be able to acquire additional land to meet the needs of an increased population.
- ▼ **Potential for inefficient costs:** Regular review of a plan allows for early-stage cost estimates to be replaced with actual costs or site-specific estimates, as they become available. When early-stage estimates are not regularly updated, these estimates (and in some cases, significant allowances) are retained in the plan. These costs are passed on to development.

^a To date, the impact of intertemporal inequality has been minimal because contributions above the cap (which was set at \$45,000 per residential dwelling prior to 30 June 2020) have been funded by the NSW Government through LIGS and not by developers.

Regardless of the stage of the plan, we consider there are elements of every plan that should be updated at each review:

- ▼ Underlying planning assumptions (including expected population)
- ▼ Actual costs incurred by the council to acquire land and deliver infrastructure
- ▼ The average values used to estimate the cost of land that the council is yet to acquire
- ▼ The timing of infrastructure delivery, based on the needs of development to date and anticipated development.

Failure to regularly review and update these elements of a plan can lead to sub-optimal outcomes, as shown by the example of CP13. For example, where there has been an increase in population in a precinct, we assess whether the infrastructure in the plan meets the needs of the additional anticipated population. This is particularly important in relation to the provision of transport infrastructure and open space. If this review and assessment does not occur, the infrastructure provided may not meet the needs of the future population.

Once the infrastructure needs of a development have been assessed against its updated population projections, it is also important to update the contribution rates. For a given level of infrastructure costs, a higher population estimate will result in lower contribution rates (and vice-versa), as most contribution rates are determined on a per person basis.

3.6 Exemptions from infrastructure contributions are not ideal

As all developments require or create the need for infrastructure, they should, in principle, all be subject to local infrastructure contributions. However, through our assessments, councils have identified practical challenges with charging contributions to all development, particularly some Crown development such as public schools.

We consider it would be fairer and more efficient for all impacting development, including Crown developments, to pay a developer contribution. This would be consistent with our funding hierarchy – where those parties that create the need to incur a cost (in this case, the provision of local infrastructure) should pay that cost (or an appropriate share of it), under the impactor pays principle.

If councils are required to charge contributions to all development, but in practice do not receive contributions from some categories of development, they will face a shortfall in funding in providing infrastructure. The council will require other sources of funding, such as from general rates revenue or grants, to cover the shortfall, or may not be able to provide the required level of infrastructure.

As a ‘second best’ option, in cases where Crown development does not pay a contribution, we consider that it is reasonable for other developments within the area to pay the Crown’s share if these other developments are the beneficiaries of the Crown development and/or the infrastructure. This is preferable to spreading the Crown’s share of infrastructure costs amongst broader ratepayers or the taxpayer base in these circumstances. For example, if a public school is being built to serve the residents of a contributions plan area, we would consider that residential developments within the area are the beneficiaries of the school and should pay towards its development contribution – if the Crown does not pay.⁹ This is consistent with our funding hierarchy, where ideally ‘impactors’ should pay, but if that is not feasible then ‘beneficiaries’ should pay (with direct beneficiaries paying before indirect beneficiaries).

⁹ In this example, we would recommend the inclusion of the school land in the residential net developable area (NDA) when apportioning costs between residential development and non-residential development (based on their respective shares of the total development area’s NDA), and then the apportionment of the residential share of costs to residential development on a per person basis.

We note the potential for competitive neutrality issues where Crown land is not subject to contributions while private sector equivalents are. For local infrastructure contributions, Crown educational establishments, law and order services and public authority health services are exempt from some categories of infrastructure contributions under Circular D6.¹⁰

We consider that, ideally, Crown development should pay infrastructure contributions, like all other development. If this is not possible, then it is reasonable to allocate the Crown's share of infrastructure costs according to our funding hierarchy (see section 2.3).

¹⁰ Department of Urban Affairs and Planning, *Circular D6 – Crown Development Applications and Conditions of Consent* – Revised Issue 21 September 1995.

4 Challenges in securing sufficient open space

Under the current system, there are two key challenges in delivering open space in new greenfield and infill precincts:

- ▼ Timely delivery, appropriate to the progress of development
- ▼ Ensuring that the quantity and quality of open space meets the needs of current and future development.

4.1 Early land acquisition would support timely provision of open space

Development of open space often occurs in later stages of precinct development, as it can be considered a lower priority relative to stormwater management or transport infrastructure in enabling development. Delays in provision can negatively impact residents.

One option to ensure timely provision of open space land and embellishment is for the council to acquire the land early in the life of the plan. As previously discussed in this paper (see section 3.1), the council could obtain the funding for early land acquisitions and embellishment through a TCorp loan, with contributions effectively repaying this loan over time.

4.2 Councils and the NSW Government have a role in ensuring open space meets the needs of development

It is also important that the provision of open space land and embellishment meets the needs of current and future residents. We consider that it is generally preferable for councils to make decisions about open space provision in consultation with their communities. This flexibility allows councils to consider the quantity/quality trade-off - ie, the choice between more open space land or higher standards of embellishment.

However, there is a role for the NSW Government to mandate a minimum rate of open space provision. This ensures that open space decisions not only consider the needs of current residents, but also protect the interests of future residents.

We acknowledge that application of the current benchmark of 2.83 hectares of open space per 1,000 people¹¹ is problematic. In our experience, some contributions plans just meet this benchmark level of provision. Where we have previously initially recommended removal of 'excessive' open space in a plan, such as in the Box Hill and Box Hill Industrial precincts, this has led to a shortage of open space when an increase in forecast population results in open space provision falling below the benchmark rate.

¹¹ Growth Centres Commission, *Growth Centres Commissions Development Code*, October 2006.

We also note that at a later stage of development, or for infill development, there may be limited options to increase open space. This was the case in Castle Hill North, where The Hills Shire Council investigated 23 possible sites for additional open space. The sites, particularly within the precinct, were mostly cost prohibitive or unsuitable due to issues such as location, geography and ecological constraints. The most favourable option involved the provision of additional open space in Holland Reserve, approximately 4.5km outside the Castle Hill North precinct.¹²

In place of a benchmark rate, the NSW Government could consider setting a minimum rate that councils must meet, with scope to allow them to exceed it, with sufficient justification, to ensure new precincts are developed to align with local character and community expectations.

We recognise the NSW Government Architect's (GANSW) guidance, which proposes a minimum standard of 4.4 hectares per 1,000 people in greenfield areas, and acknowledges the geographic location of different categories of open space (eg, local park, sporting space) to ensure greater access and equity.¹³ The use of an open space standard (or standards) in greenfield areas may be appropriate, given the erosion of open space provision over time as development densities and populations increase.

We consider the funding hierarchy of impactor, beneficiary and taxpayer pays (outlined above) should be used to determine who pays for open space (along with all other classes of infrastructure). This means that if open space is required to service a new development; that development should pay for it via infrastructure contributions. However, if open space, or a portion of it, is required for a broader group of impactors/beneficiaries (eg, the broader community in the local government area) – then other funding sources should be considered and used (eg, revenue from rates revenue or even state taxes).

We note, for example, the NSW Government could explore options to provide additional open space funding through a betterment or rezoning levy. The re-zoning process, which is intended to provide for liveable communities for future residents, imparts significant value on land and to existing landholders. The Productivity Commission could consider the merits of a betterment levy for inclusion in the funding mix to provide infrastructure for future generations.

¹² IPART, *Assessment of Contributions Plan 17 – Castle Hill North*, November 2019, pp 52-54.

¹³ Government Architect NSW, *Greener places - Open space for recreation guide, Draft for discussion*, 2018.

5 Review of local infrastructure contributions plans

The levels of the current and recent thresholds that trigger the requirement for an IPART review of contributions plans have meant that plans with high land values have been the most likely to require IPART review. With the exception of the *West Dapto Contributions Plan* and the *Rockdale Contributions Plan 2016 – Urban Renewal Area*, these plans have been for development in the North West and South West Growth Areas of Sydney.

The objective of the current review thresholds is for high value plans to be independently assessed against criteria set out in DPIE's Practice Note. This system was designed while LIGS or other co-funding arrangements were in place. However, the effect and apparent objective of an IPART review differs between when LIGS was in place and when it is not in place (post 1 July 2020):

- ▼ With LIGS, IPART provided assurance to the NSW Government that its funding of local infrastructure above the contributions cap was reasonable
- ▼ Without LIGS, IPART is effectively providing assurance to developers and the councils' rate payers that the contributions reflect the reasonable costs of infrastructure required to service the new development:
 - If contributions exceed these costs, developers pay too much and development could be unduly impeded
 - If contributions are below these costs, the councils' rate payers may have to fund the shortfall or the infrastructure may not be delivered.

Without LIGS, cost-reflective contributions (ie, contributions that reflect the reasonable costs of infrastructure required to service a new development) also signal the costs of developing different areas, which helps in ensuring that development occurs where its benefits exceed its costs.

In reviewing the contributions system, it is appropriate to consider the policy objective(s) of a review of local infrastructure contributions plans. The policy objective(s) should determine what types of plans are reviewed, and hence the threshold or trigger for review. Consideration should be given to the range of options, and the best way, to provide the above-mentioned assurances to developers and rate payers in a 'post-LIGS world'.

5.1 Options for review of contributions plans

Clear principles and methodologies should be established for developing infrastructure contributions plans and contribution rates, which are consistent with the objectives of cost-reflectivity, economic efficiency and equity. Councils would then be left to develop their plans and calculate their contribution rates, subject to a trigger(s) for external review by a body such as IPART.

While the trigger for review of contributions plans has, to date, been linked to a certain dollar threshold, there are other options that should be explored. For instance, a mix or sample of plans irrespective of contribution rate value could be reviewed or plans could be reviewed on an 'exception basis' - eg, in response to concern from developers or other parties that a council has not followed the required methodology in developing its contributions plan and the effect of this is material.

Depending on the objective, there are a range of options the Productivity Commission could consider, including:

- ▼ Maintaining the current focus on review of high value plans
- ▼ Different monetary thresholds for metro and regional areas
- ▼ Monetary thresholds applying only to works costs (excluding land costs)
- ▼ Determining plans for review based on:
 - The existence of unresolved material issues or concerns identified by the affected parties, and/or
 - Referral from a panel of industry experts.

We prefer the option of reviewing contributions plans only where there are unresolved material issues or concerns identified by affected parties (ie, 'by exception'). This option could apply to all contributions plans, irrespective of value and location.

We consider that, in a post-LIGS environment, the objective of achieving cost-reflective developer contributions can be achieved, in most cases, through genuine council consultation with interested parties. This should occur through public exhibition and council response to issues raised through this process. Greater transparency is required for public exhibition to be effective in achieving this objective. Councils would need to provide greater access to supporting information to enable interested parties to evaluate the reasonableness of a council's proposals.

With enhanced transparency and information on contributions plans, combined with genuine and timely council consultation with affected parties, developers and other stakeholders should be well placed to engage with councils in the development of contributions plans. This may mean that review of contributions plans by IPART is only required on an exception basis.

Under an exception-based review model, an affected party could submit an application for review. The applicant would be required to establish:

- ▼ How a contributions plan does not meet the required methodology, criteria or legislative provisions, and
- ▼ That this has a material impact on contribution rates in the plan.

These requirements would ensure that review occurs only where it is sufficiently justified.

An exception-based model may require enhanced guidance to councils and other stakeholders upfront, in terms of the principles, methodology and criteria contributions plans should comply with. Clarity around these requirements would benefit all stakeholders, including councils.

The benefits of an exception-based model are that the 'market' could effectively determine which plans should be subject to external review, and also make the trade-off between cost-reflectivity and accuracy in contributions plans (which could be enhanced by external review) versus certainty and timeliness (which could be enhanced by avoiding external review).

Given IPART's independence and experience in assessing local infrastructure contributions plans, we are well placed to review contributions plans as required under a reformed contributions system.

6 Issues related to the council rating system and rate pegging

IPART conducted a comprehensive review of the Local Government Rating System,¹⁴ and made a number of recommendations to the NSW Government to improve the equity and efficiency of the rating system. This included that NSW Government consider implementing the Capital Improved Value (CIV) valuation methodology as the basis for levying local council rates, and that rates revenue be allowed to increase above the rate peg in proportion to the increase in CIV. This would provide councils with a method of increasing their revenue with growth. The NSW Government has recently considered a number of our recommendations from this review, as outlined below.¹⁵

6.1 The NSW Government continues to support rate pegging for local councils across NSW

The NSW Government considers the current rate pegging framework the best model to ensure that councils keep a focus on efficiency and that residents are not paying more in rates than necessary. This is supplemented by the Special Variation (SV) framework, which enables councils to make the case for a larger rise than the rate peg to their community and IPART.

6.2 The NSW Government will implement recommendations to facilitate council income growth outside the rate peg

Currently, councils are permitted growth outside the rate peg through the supplementary valuation process¹⁶ and the Crown land adjustment process¹⁷. However, the increase in general income generated through these processes is typically much lower than the increase in demand for council services, and the associated costs of servicing these new residents and businesses.

To address this, IPART recommended that councils' rates income should increase over time in line with the growth in CIV arising from new development. The NSW Government has indicated it does not support a move to CIV at this time, however it is exploring changes to the rate peg to account for population growth.

¹⁴ IPART, *Review of the Local Government Rating System – Report*, December 2016.

¹⁵ See: www.olg.nsw.gov.au/strengthening-local-government/ipart-local-government-reports-consultation-2019

¹⁶ This involves a new value being assigned to a property due to changes being made to the property. For example, land rezoning (eg, the zoning of a property changing from farmland to residential), and/or changes in the number of rateable properties on the property (eg, through an increase in apartments or subdivision).

¹⁷ Crown land adjustments allow councils to increase their general income by the value of rates payable for parcels of Crown land that have been sold or transferred and become rateable.

IPART also recommended introducing a new type of special rate for joint delivery of infrastructure projects with the NSW and Australian Governments to meet increases in demand for infrastructure and/or services. Income from this special rate would be on top of general income (ie, unconstrained by the rate peg). The NSW Government supports this recommendation, and indicated in its response that it will examine how this recommendation can complement current reforms being made to the infrastructure contributions framework.

6.3 The Special Variation process could also be amended to support provision of funding for growth

Incremental improvements to the current SV process may also be able to provide councils with funds to service growth. For instance, there may be benefit in introducing streamlined processes below a threshold for SV increases of, for example, 1% above the rate peg if a council could demonstrate population growth and its impact on costs. This process could be similar to a Crown land adjustment where growth can be demonstrated.

7 Metropolitan water developer charges

IPART has an established methodology for determining and regulating Sydney Water and Hunter Water's developer charges for connecting new developments to their water, wastewater, stormwater and recycled water networks. These developer charges, which reflect the additional costs of servicing new development, are important to:

- ▼ Ensure that existing customers do not face higher costs as a result of new development
- ▼ Signal the different costs of providing services to different locations
- ▼ Enhance the potential for competition in the supply of water and wastewater services to new developments.

However, since 2008, the NSW Government has set Sydney Water and Hunter Water's developer charges for their water, wastewater and stormwater services to in-sequence development to zero. This has meant the cost of providing water and wastewater infrastructure to new development is funded by the broader customer base through general water and wastewater prices rather than by developer charges.

We consider there is merit in re-introducing Sydney Water and Hunter Water's cost-reflective developer charges – ie, applying the IPART determination for these charges, which was last reviewed and updated in 2018, and which continues to apply to the Central Coast Council's water and wastewater developer charges.¹⁸

Re-introducing Sydney Water and Hunter Water's cost-reflective water and wastewater developer charges is important for promoting:

- ▼ Efficiency and equity in the provision of water and wastewater infrastructure and services
- ▼ Competition in the market to supply water and wastewater services to new developments
- ▼ The viability and uptake of recycled water.

IPART's pricing framework recognises the system-wide benefits of recycled water, and ensures that recycling will be viable where the benefits it creates for customers exceeds its costs.¹⁹ This provides incentives to get the right solutions in place to meet the demands of customers and the broader community.

¹⁸ See: IPART, *Maximum prices to connect, extend or upgrade a service for metropolitan water agencies – Sydney Water, Hunter Water and Central Coast Council, Final Report*, October 2018; and *Maximum prices for connecting, or upgrading a connection, to a water supply, sewerage, or drainage system – Sydney Water, Hunter Water and Central Coast Council, Final Determination*, October 2018.

¹⁹ For example, our pricing framework allows public water utilities to recover costs from recycled water schemes from its broader customer base when certain conditions are met.

However, the policy of zero water and wastewater developer charges in Sydney and the Hunter effectively creates a cost disadvantage for private sector providers of water services – WICA licensees²⁰ – limiting their ability to compete to service new development within the Sydney and Hunter regions. Because WICA utilities often provide recycled water services, this policy therefore also acts to discourage the uptake of recycled water.

7.1 There are strong economic efficiency and equity arguments in favour of cost-reflective developer charges

As outlined in section 2 of our submission, we agree with applying the principles of efficiency, equity, certainty and simplicity for the review.

When assessed against these principles, zero water and wastewater developer charges is not efficient or equitable.

7.1.1 Zero developer charges do not send a cost reflective price signal

A key driver of infrastructure investment in Sydney and the Hunter are for Sydney Water and Hunter Water to service new developments as population expands. For many water utilities, a ‘developer charge’ is levied on a developer, to provide a signal to the developer about the costs of servicing new properties. In contrast, because developer charges are set to zero for Sydney Water and Hunter Water, these costs are instead added to the Regulatory Asset Bases (RAB) of these utilities and gradually recovered from their broader customer bases through general end-use water and wastewater prices.

Therefore, there is no price signal provided to new property purchasers and developers (or even Sydney Water and Hunter Water)²¹ about the costs of providing water and wastewater services to new development. This is clearly inefficient, as it does not signal the cost of servicing higher cost areas, or promote development in low cost areas, which should be considered as part of the decision to prioritise and stage development.

7.1.2 Zero developer charges are not equitable and could result in water bills rising significantly

The policy of zero water developer charges means that the costs of servicing new growth accumulate and place upward pressure on prices for all customers. The policy of zero water and wastewater developer charges therefore reduces the affordability of water for the broader customer base, which includes vulnerable households with limited willingness or capacity to afford large bill increases.

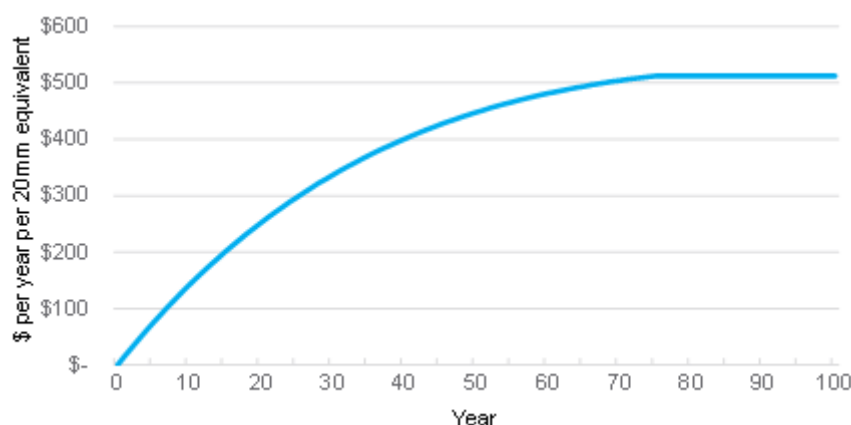
²⁰ That is, a water utility licensed under the *Water Industry Competition Act 2006*.

²¹ This is because the efficient costs of servicing new properties in Sydney Water’s and Hunter Water’s areas are passed through to the customer base.

Our recent Issues Paper for the Sydney Water pricing review illustrated these costs.²² In its July 2019 pricing proposal to IPART, Sydney Water anticipated that it will spend \$2.3 billion of capital expenditure to service growth over the next four years (2020-2024). And, if the current rate of spending and population growth is maintained, in 10 years' time the average customer could be paying an additional \$140 per year for water if the zero developer charges policy applied into the future.

Importantly, these costs accumulate and increase for every year that the zero developer charges policy applies. Figure 2.3 estimates the additional costs that an average customer could be charged if prices continue to include the cost of growth incurred by Sydney Water (ie, if the zero developer charges policy applies into the future).

Figure 7.1 The costs paid by the broader customer base for Sydney Water to service new properties



Note: This does not calculate the forgone revenue from setting developer charges to zero. It calculates the cost of funding growth capital expenditure to service new development, which is a major component of the developer charge formula. The developer charge formula also takes into account the net revenue generated from future customer tariffs above future operating and capital expenditure.

Data source: IPART analysis.

7.1.3 Zero developer charges may limit Sydney Water and Hunter Water in delivering what their customers want

The costs of servicing new growth form a significant proportion of customers' bills. Assuming customers have a limited ability to pay, this means that Sydney Water and Hunter Water have less revenue to deliver higher levels of service and improve performance, and may be missing out on an opportunity to deliver what their customers want. This could include expenditure to improve the environmental performance of their wastewater systems, encourage water conservation or deliver broader 'liveability' outcomes.

²² IPART, *Prices for Sydney Water from 1 July 2020, Issues paper, September 2019*.

7.1.4 There is a bias against recycled water and new entrants under zero developer charges

At the request of the NSW Government and Infrastructure NSW, Frontier Economics (Frontier) examined barriers to the take-up of cost-effective water recycling in NSW.²³ Of the 32 recommendations made by Frontier, 18 were directed to IPART. We have responded to these in our recent Recycled Water Review.²⁴

Frontier found that rescinding the Government's policy of zero water and wastewater developer charges (ie, re-introducing cost-reflective developer charges) would remove a clear bias against recycled water and new entrants and, more broadly, provide locational price signals. In line with Frontier's findings, IPART also considers there are strong economic efficiency and equity arguments in favour of cost-reflective developer charges.

For example, if a new development receives a 'traditional' water and wastewater service from Sydney Water, the 'developer charge' to provide that service is set to zero and the up-front costs to connect each property to the network are recovered from the broader customer base.

In comparison, recycled water services provided by Sydney Water and Hunter Water are subject to developer charges (although these charges are net of any external benefits and other recycled water cost offsets recognised in IPART's recycled water funding framework for public water utilities).

Further, if a developer receives its water and wastewater supply from a private-sector water utility (a WICA licensee) – which also often provide recycled water services – the up-front charges required to connect each property to the network often need to be borne by the developer (and ultimately passed on to its customers). This is because the private-sector water utility cannot spread these costs across its broader customer base like Sydney Water and Hunter Water currently do.

Cost reflective developer charges for all water, wastewater and recycled water services – whether provided by a public water utility or a privately-owned WICA provider – would create a level playing field in the supply of water and wastewater services to new developments. This would promote competition, and promote recycled water solutions from the private sector.

²³ Frontier Economics, *Economic regulatory barriers to cost-effective water recycling – A report prepared for Infrastructure NSW*, July 2018.

²⁴ IPART, *Review of pricing arrangements for recycled water and related services, Final Report*, Appendix A, July 2019.

7.2 Encouraging the uptake of recycled water

As emphasised above, zero developer charges for Sydney Water and Hunter Water create a cost disadvantage for private sector WICA providers. These WICA utilities often provide recycled water services, and therefore, the current policy works against the uptake of recycled water.

In addition, community preferences around the use of purified recycled water as an option for drinking water supply should be explored as a way of providing a reliable source of water at good value to customers in the future. Currently, additional costs are incurred to build and maintain an additional pipe network that keeps purified recycled water separate from the drinking water network.

Community engagement would enable policy-makers to understand community preferences for different water supply solutions, such as indirect potable re-use, which could significantly reduce some cost barriers.

Our pricing framework allows the costs of recycled water to be recovered from the broader customer base

IPART has established a pricing and funding framework for public water utilities' recycled water schemes.²⁵

Our approach has been guided by a number of objectives, which are consistent with the principles outlined in the Productivity Commission's Issues Paper.²⁶ Our objectives (a total of six) include:

1. Economic efficiency
2. Incorporating customer preferences and impacts
3. Transparency and simplicity.

Under our recycled water pricing and funding framework, we treat recycled water on an equivalent basis to 'traditional' servicing options, to promote recycled water servicing solutions where they are an efficient way of delivering a regulated service.

Firstly, if a recycled water scheme is the least-cost means of supplying water, wastewater and/or stormwater services, it will be fully funded through water, wastewater and/or stormwater customer and developer charges (where they apply). For instance, if a recycled water scheme is the most efficient means of collecting and treating wastewater, it will be funded from general wastewater charges to the broader customer base.

²⁵ IPART, *Review of pricing arrangements for recycled water and related services – Sydney Water, Hunter Water, Central Coast Council, Essential Energy, Final Report*, July 2019.

²⁶ See section 1b (page 14) of the NSW Productivity Commission's Issues Paper: [Review of Infrastructure Contributions in New South Wales](#).

Secondly, our framework acknowledges and accounts for the broader benefits of recycled water schemes, where they apply. For example, if the utility's broader customer base is willing to pay for a recycled water scheme because it has external benefits to the community, then the value of these external benefits, up to the broader customer base's willingness to pay, is recovered from general water and/or wastewater prices.

Only any remaining costs of the recycled water scheme are recovered from recycled water customers up to their willingness to pay and/or from developers via recycled water developer charges.²⁷

This funding framework allows public water utilities' recycled water schemes to be viable where their benefits exceed their costs.

²⁷ Subject to IPART's pricing principles and recycled water developer charges determination. Unlike water, wastewater and stormwater developer charges, Sydney Water and Hunter Water's recycled water developer charges continue to apply (see: IPART, *Maximum prices for connecting to a recycled water system – Sydney Water, Hunter Water and Central Coast Council – Final Determination*, July 2019).

A Index to our submission

Table A.1 provides an index of our responses to issues raised in the NSW Productivity Commission's (PC's) issues paper and the location of detailed responses to these issues in our submission.

Table A.1 Submission index

Issue raised by PC	IPART's response	Location of IPART's detailed response
1.1 – Striking the right balance	It is essential that a reformed contributions system is principles-based, with clear objectives that apply to all development, irrespective of cost and location. It is important the developer contributions are cost-reflective, for reasons of economic efficiency and equity; while the system also provides a reasonable level of certainty and minimises administrative costs.	Chapter 2 and chapter 5
2.1 - Enable a broader revenue source for the funding of infrastructure	The costs of infrastructure should be apportioned according to the funding hierarchy which favours 'impactor pays' – ie, the party that creates the need to incur a cost should pay that cost – followed by beneficiary pays, then taxpayer pays. This suggests that developers should pay for the reasonable cost of infrastructure required for the new development. We consider that the TCorp low cost loan facility should be considered as a funding source for councils to forward-fund essential infrastructure.	Section 2.3, section 3.1.1 and section 4.1
2.2 – Integrating land use and infrastructure planning	Integrated land use and infrastructure planning will result in faster and better coordinated delivery of new land for urban development. An approach similar to the Greater Sydney Commission-led place-based infrastructure compact model, may be applicable in planning for council-led precincts.	Section 3.3
3.1 – Principles for planning agreements are non-binding	Voluntary Planning Agreements may not always align with broader community interest and discourage competitive tendering for works.	Section 3.1.2
3.2 – Transparency and accountability for planning agreements are low	Agree based on anecdotal experience and information. In general, councils should provide more information to stakeholders during precinct and contributions plan planning.	Section 3.1.2
3.3 – Planning agreements are resource intensive	Agree based on anecdotal experience and information.	Section 3.1.2

3.4 – Contributions plans are complex and costly to administer	<p>Councils should regularly review and update contributions plans to ensure they reflect up-to-date planning assumptions (including population projections), infrastructure requirements and reasonable cost estimates.</p> <p>A range of reforms could improve the administrative efficiency of the system, including, for example:</p> <ul style="list-style-type: none"> ▼ A system of external review ‘by exception’ (supported by enhanced guidance) ▼ Earlier acquisition of land and delivery of infrastructure that provide actual values, reducing the need for cost estimates ▼ Use of the NSW Valuer General to provide land cost estimates ▼ Better coordination of infrastructure delivery. 	Section 3.2 , section 3.5.2 and section 5.1
3.5 – Timing of payment of contributions and delivery of infrastructure do not align	<p>Early provision of essential infrastructure would better enable precinct development and early acquisition of land would reduce the costs of development.</p> <p>We consider that the TCorp low cost loan facility should be considered as a funding source for councils to forward-fund essential infrastructure.</p>	Section 3.1.1 and section 3.2
3.6 – Infrastructure contribution rates and costs are rising	<p>IPART’s assessment of reasonable costs is appropriate as the information in contributions plans is insufficiently detailed to ascertain whether costs are efficient. Reframing to consider efficient costs would increase the complexity of the assessment process and the time for the review.</p> <p>We consider that it is time to review the essential works list to ensure councils are able to provide the infrastructure needed by their communities.</p> <p>A strategy of early land acquisition would also significantly reduce the cost of land in contributions plans.</p>	Section 2.1 , section 2.4 , section 3.2 and section 4.2 . Also see Chapter 9 of our submission to DPIE in Appendix B
3.7 -The maximum s7.12 rate is low but balanced with low need for nexus	No response	N/A
3.8 - Limited effectiveness of special infrastructure contributions	No response	N/A
3.9 - Difficulty funding biodiversity through special infrastructure contributions	No response	N/A
3.10 – Affordable housing	No response	N/A
4.1 – Sharing land value uplift	A betterment or rezoning levy could be one option for providing additional open space funding	Section 4.2
4.2 – Land values that consider a future infrastructure charge	No response	N/A

4.3 – Land acquisitions for public infrastructure purposes	<p>Early acquisition of land would reduce the costs of development.</p> <p>The NSW Government could explore options to provide additional open space funding through a betterment or rezoning levy.</p>	Section 3.2 and section 4.2
4.4 – Keeping up with property escalation	<p>These issues could be addressed through greater involvement of the NSW Valuer General and/or the development of standard instructions for valuers who advise councils on average land values in contributions plans.</p>	<p>See Chapter 9 of our submission to DPIE in Appendix B</p>
4.5 – Corridor protection	No response	N/A
4.6 – Open space	<p>One option to ensure timely provision of open space land and embellishment is for councils to acquire land early in the life of the plan. It is important that the provision of open space land and embellishment meets the needs of current and future residents and a need to review provision and embellishment if population forecasts materially change.</p> <p>There is a role for the NSW Government to mandate a minimum rate of open space provision. This ensures that open space decisions not only consider the needs of current residents, but also protect the interests of future residents.</p>	Chapter 4
4.7 – Metropolitan water charges	<p>There is merit in re-introducing Sydney Water and Hunter Water's cost-reflective water and wastewater developer charges to promote:</p> <ul style="list-style-type: none"> ▼ Efficiency and equity in the provision of water and wastewater infrastructure and services ▼ Competition in the market to supply water and wastewater services to new developments ▼ The viability and uptake of recycled water. <p>IPART has established a pricing and funding framework for public water utilities' recycled water schemes, which ensures these schemes will be viable if their benefits exceed their costs.</p>	Chapter 7
4.8 – Improving transparency and accountability	<p>Greater transparency in contributions plans and genuine consultation by councils with developers and other stakeholders at the time of public exhibition of the plans can only improve outcomes for all parties.</p> <p>With enhanced transparency and information on contributions plans, combined with genuine and timely council consultation with affected parties, developers and other stakeholders should be well placed to engage with councils in the development of contributions plans.</p>	Section 2.5 and section 5.1
4.9 – Shortage of expertise and insufficient scale	No response	N/A

4.10 – Current issues with exemptions	<p>Ideally, for reasons of economic efficiency, equity and competitive neutrality, all development that contributes to the need for infrastructure should pay an appropriate share of the costs of that infrastructure – including Crown development.</p> <p>However, if it is not possible for councils to recover the costs of infrastructure from direct ‘impactors’, they should follow the funding hierarchy of impactors, then beneficiaries, then taxpayers (or ratepayers) pay.</p>	Section 3.6
4.11 – Works in kind agreements and special infrastructure contributions	No response	N/A
Other – Local Government rate pegging	<p>IPART conducted a comprehensive review of the Local Government Rating System (<i>Review of the Local Government Rating System</i>, December 2016), and made a number of recommendations to the NSW Government to improve the equity and efficiency of the ratings system. The NSW Government has since responded to our recommendations. The NSW Government’s response indicates that it considers the current rate pegging framework is the best model to ensure that councils keep a focus on efficiency and residents are not paying more in rates than necessary. However, it has announced that it will implement recommendations to facilitate council income growth outside the rate peg. We note that the Special Variation process could also be amended to support the provision of funding for growth.</p>	Chapter 6
Other – Rising infrastructure costs	Early acquisition of land would reduce the costs of development.	Section 3.2 and section 4.2
Other – ‘Nexus’ requirements in s7.11 contributions plans	Clear principles and methodologies should be established for developing infrastructure contributions plans and contribution rates, which are consistent with the objectives of cost-reflectivity, economic efficiency and equity. Councils would then be left to develop their plans and calculate their contribution rates, subject to a trigger(s) for external review by a body such as IPART.	Chapter 5
Other – Misalignment between contribution payments and delivery of infrastructure	Early provision of essential infrastructure would better enable precinct development, reduce inefficiencies and deliver greater amenity to new residents.	Section 3.1
Other – Operation of the essential works list	We consider that it is time to review the essential works list to ensure councils are able to provide the infrastructure needed by their communities.	See Chapter 9 of our submission to DPIE in Appendix B

B IPART submission to DPIE contributions reform package

Our reference: [REDACTED]

12 June 2020

Dear [REDACTED]

Submission to *Improving the infrastructure contributions system*

Thank you for the opportunity to respond to the Department's proposed improvements to the infrastructure contributions system.

IPART is the independent economic regulator in NSW for water, public transport and local government. We are also the licence administrator for water, electricity and gas utilities and the scheme administrator and regulator for the Energy Savings Scheme.

We have assessed local infrastructure contributions plans since 2011 under terms of reference from the Premier and in accordance with the Practice Note issued by the Department of Planning.

Our submission has been approved by our Local Government Committee and is attached. It addresses four of the five elements of the Department's proposals that are most pertinent to IPART's current role and responsibilities.

Should you require further information, IPART's contact officer for this submission is [REDACTED]

Yours sincerely

[REDACTED]

[REDACTED]

[REDACTED]



Independent Pricing and Regulatory Tribunal
New South Wales

Submission to the Department of Planning, Industry and Environment

Improving the Infrastructure Contributions System

Local Government

June 2020

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The Independent Pricing and Regulatory Tribunal (IPART)

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Committee Members

The Committee members for this review are:

[REDACTED]
[REDACTED]
[REDACTED]

Enquiries regarding this document should be directed to a staff member:

[REDACTED] [REDACTED]
[REDACTED] [REDACTED]

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1 Introduction and Executive Summary

IPART is the independent economic regulator in NSW for water, public transport and local government. We are also the licence administrator for water, electricity and gas utilities and the scheme administrator and regulator for the Energy Savings Scheme.

We have assessed local infrastructure contributions plans since 2011 under terms of reference from the Premier and in accordance with the Practice Note issued by the Department of Planning.¹ To date, we have completed 23 reviews of 14 different contributions plans from seven councils and have two current assessments.

With the closing of the Local Infrastructure Growth Scheme (LIGS) on 30 June 2020, a review of the local infrastructure contributions system in NSW is timely. We note that the Department of Planning, Industry and Environment's (DPIE's) package of reforms is targeted at improvements to the current system and that the NSW Productivity Commission's current review of the infrastructure contributions system may recommend wider reforms. We consider that some of the matters raised in DPIE's discussion paper on local infrastructure contributions should also be considered by the Productivity Commission and that the outcomes of both reviews should be considered before making any significant changes to the current system.

We would like to thank DPIE for the opportunity to provide a submission in response to its package of reforms. This submission includes our feedback on four of the policy documents:

- ▼ Improving the review of local infrastructure contributions plans
- ▼ Draft Special Infrastructure Contributions (SIC) guidelines
- ▼ Draft planning agreements policy framework
- ▼ Proposed amendments to the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation).

We have also identified a number of other opportunities for improvement of the current local infrastructure contributions system that could be considered by DPIE in a second stage of improvements and by the Productivity Commission.

We would be happy to discuss our response with DPIE further, if that would assist.

¹ Department of Planning and Environment, Local Infrastructure Contributions Practice Note, January 2019 (Practice Note).

2 Thresholds that trigger the review process

DPIE has proposed to:

- ▼ Increase the value thresholds that trigger the review process
- ▼ Implement an indexation mechanism for thresholds triggering the review process, based on CPI.

These proposals are based on a premise that the current thresholds are too low and need to be increased without consideration of the purpose of the thresholds and of IPART review of contributions plans more broadly. A review of the purpose of the thresholds and IPART review is timely, and is likely to form part of the NSW Productivity Commission's review of infrastructure contributions. We consider that it would not be appropriate to make significant changes to thresholds that trigger the IPART review process until the Productivity Commission has completed its review.

To support the broader discussion, this section addresses the aim of IPART review, the plans that should be reviewed by IPART, the application of the Practice Note and implications of the threshold.

2.1 The aim of IPART review

Broadly, our assessments are intended to bring greater transparency and accountability to setting local development contributions. More specifically, in conducting the assessment and making our recommendations, we aim to ensure the plan reflects the reasonable costs of providing necessary local infrastructure to support the new development.

If costs in the plan are too high (ie, higher than the reasonable costs of infrastructure with a nexus to the development), the NSW Government (when LIGS funding was in place) or new development (in the absence of LIGS funding) will pay too much for local infrastructure. Development could be unduly impeded, particularly when the caps on contributions are removed entirely (ie, from 1 July 2020 onwards). On the other hand, if costs in the plan are too low (ie, lower than the reasonable costs of infrastructure with a nexus to the development), then the new development would effectively be subsidised by the council's ratepayers or the infrastructure provided may be inadequate.

Contributions that reflect the reasonable costs of local infrastructure provision are important for reasons of both efficiency and equity. Cost-reflective contributions are necessary to:

- ▼ Signal the costs of developing different areas – which, in turn, can assist in ensuring that development occurs where it should (ie, where the benefits of the development are greater than its costs)
- ▼ Ensure that other parties (such as a council's ratepayers) do not have to fund any shortfall between the actual costs of providing local infrastructure and the revenue received from development contributions.

In conducting our assessments, we aim to minimise delay, ensure our analysis is suitably proportionate and targeted, and maximise transparency to stakeholders. Our assessments are generally completed within six to seven months from receiving a completed application form and contributions plan from a council. We publish:

- ▼ Draft Reports to seek stakeholder feedback on our draft assessments
- ▼ Final Reports for each assessment
- ▼ Consultant reports that we commission as part of our assessments, to the extent they do not contain information that is commercial-in-confidence
- ▼ Fact Sheets and Information Papers on key elements of our process and review methodology to aid understanding and transparency.²

We consider an infrastructure contributions system should aim for cost-reflective developer charges for reasons of economic efficiency and equity, while also seeking to ensure the process for setting and reviewing contributions charges is transparent, timely and provides reasonable levels of certainty to all stakeholders.

2.2 Which contributions plans should be reviewed by IPART?

The levels of the current and recent thresholds have meant that plans with high land values have been the most likely to require IPART review. With the exception of the *West Dapto Contributions Plan* and the *Rockdale Contributions Plan 2016 – Urban Renewal Area*, these plans have been for development in the North West and South West Growth Areas of Sydney.

The objective of the current review thresholds is for high value plans to be independently assessed against criteria set out in the Practice Note. This system was designed while LIGS and previous funding arrangements were in place. However, the effect and apparent objective of an IPART review differs between when LIGS is in place to when it is not in place (post 1 July 2020):

- ▼ With LIGS, IPART is providing assurance to the NSW Government that its funding of local infrastructure above the contributions cap is reasonable
- ▼ Without LIGS, IPART is effectively providing assurance to developers and the councils' rate payers that the contributions reflect the reasonable costs of infrastructure required to service the new development:
 - If contributions exceed these costs, developers pay too much and development could be unduly impeded
 - If contributions are below these costs, the councils' rate payers may have to fund the shortfall or the infrastructure may not be delivered.

Without LIGS, cost-reflective contributions (ie, contributions that reflect the reasonable costs of infrastructure required to service a new development) also signal the costs of developing different areas, which helps ensure that development occurs where its benefits exceed its costs.

² These are all available on our website: www.ipart.nsw.gov.au.

The policy objective(s) of an IPART review should determine what types of plans are reviewed by IPART, and hence the threshold or trigger for an IPART review. Consideration should be given to the range of options, and the best way, to provide the above-mentioned assurances to developers and rate payers in a 'post LIGS world'. For instance, IPART could review plans above a certain dollar threshold ('high value plans'), IPART could review a mix or sample of plans across a range of values, or IPART could review plans on an 'exception basis' – eg, in response to concern from developers or other parties that a council has not followed a reasonable methodology in developing its contributions plan.

Depending on the objective, there are a range of options DPIE and the Productivity Commission could consider, including:

- ▼ Maintaining the current focus for IPART to review high value plans
- ▼ Different monetary thresholds for metro and regional areas
- ▼ Monetary thresholds applying only to works costs (excluding land costs)
- ▼ Determining plans for IPART review based on:
 - The existence of unresolved issues or concerns identified by the affected parties, and/or
 - Referral from a panel of industry experts.

We would welcome the opportunity to discuss these options further.

While these and other options for reform are being considered, we recommend that the thresholds be indexed by CPI from the current financial year until the reforms are implemented. Indexing by CPI is widely used by councils and in the SIC system and should be used as an interim measure only.

2.3 Application of the Practice Note to plans reviewed by IPART

The exclusive application of the Practice Note to contributions plans that are reviewed by IPART effectively sets a different standard for these plans.

The most significant difference arises from the application of the essential works list. We understand that the objective of the essential works list is to:

- ▼ Ensure that all development is provided with the necessary 'base level' of local infrastructure
- ▼ Prevent 'gold-plating' of local infrastructure, and thereby minimise contribution rates.

These are sound objectives for all contributions plans, however the essential works list currently only applies to plans reviewed by IPART (which, to date, have been higher value plans).

The difference in the treatment of plans subject to the essential works list is seen most clearly in relation to open space and community services. For example, plans subject to IPART review may include land for community services (such as libraries and community centres) but not the capital costs associated with providing these services. For open space, these plans may only provide 'base level' open space embellishment that is defined to exclude items such as

skate parks and BMX tracks. Plans that are not subject to IPART review may include the capital costs for these items.

All stakeholders require certainty about the rules and processes that will apply to a certain development. If a different standard applies to plans there should be a clear policy rationale for the difference and any change to these standards (eg, through changes to thresholds or triggers for IPART review) should be phased in over a reasonable time to allow for adjustment in the industry.

2.4 Impact of a threshold triggering IPART review of plans below the threshold

To date, IPART has not reviewed an existing plan where contribution rates have moved from below the threshold to above the threshold because of an increase in costs. This is likely to be largely because of the application of the essential works list to plans subject to IPART review, which means plans previously not subject to IPART review would have to remove any infrastructure items not on the essential works list if they became subject to IPART review. It may also reflect that the IPART review process is an additional step for councils to undertake.

Without indexation of thresholds for IPART review, the threshold may have acted as an efficiency dividend, whereby councils find ways to deliver infrastructure against contributions that have fallen in real terms. Councils have had the option to apply to levy contributions above the threshold, but may have considered that this is not worthwhile given the requirement to comply with the essential works list and to be subject to IPART review.

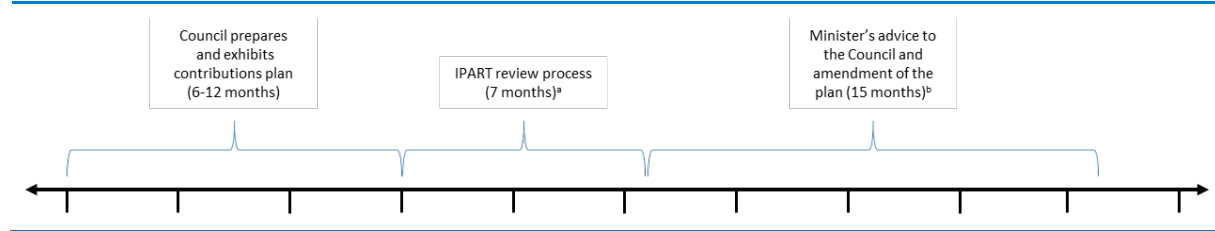
However, where reduced real contributions lead to a funding shortfall as costs increase, this may result in some councils not being able to deliver essential infrastructure to meet the needs of growing communities or to the cost of infrastructure being borne by ratepayers of the local government area.

2.5 The IPART review process

DPIE identifies the increasing length of the IPART review process as a key rationale for process improvement in infrastructure contributions. We note that DPIE's representation of the timeframe for typical reviews, at page 4 of the Discussion Paper, may be misleading. Over the past nine years, IPART's assessment has taken an average of seven months. Since June 2016, advice from the Minister to a council following IPART's final report has taken an average of 15 months.³ This is shown in Figure 1.1. The recent appointment of a Minister's nominee has been an important development that is likely to reduce the time between IPART finalising its review and providing it to the Minister and his nominee, and the Minister or his nominee then providing their advice to a council.

³ This is when Ministerial advice to councils was first published. Prior to this date, the Minister's advice was provided only to the relevant council.

Figure 1.1 Contributions plan timeline



- a** Average review time for all completed assessments (excluding when plans are 'on hold', pending further information from the council). This has not increased over time, despite an increase in the number of plans submitted to IPART and additional stakeholder consultation since 2019 with the release of a draft report.
- b** Average number of months between IPART final report and receipt of advice from the Minister, for all assessments finalised after June 2016. This does not include the time taken by councils to action recommendations and adopt the plan.

Source: IPART estimates.

We also note that councils are likely to complete IPART's application form for assessment of their plans by IPART either in preparation for public exhibition or during the period of exhibition of a plan. This should add very little time to the overall timeframe for a review.

3 The IPART terms of reference and the importance of regular review of contributions plans

DPIE has proposed to review the IPART terms of reference to:

- ▼ Clarify its purpose and remove duplications with the Practice Note
- ▼ Consider introducing a targeted review of additional information to facilitate quicker review
- ▼ Simplify consultation requirements so that IPART is only required to consult with the relevant council
- ▼ Modernise and clarify wording, references and definitions.

We agree with DPIE's proposals to clarify the purpose of the terms of reference, remove duplications with the Practice Note and to modernise and clarify wording, references and definitions. We also consider that councils should regularly review and update their contributions plans (eg, every 3 to 5 years, depending on stage of development).

However, we have concerns with DPIE's proposals for targeted reviews, on the basis that we consider that any review should be symmetric and not just review what has changed in the plan but also what should have changed. We consider that councils should regularly review and update contributions plans to ensure they reflect up-to-date planning assumptions and infrastructure requirements and that the estimated costs in a plan are still reasonable.

We also have concerns with DPIE's suggestion that IPART would not consult with all stakeholders on our draft report, as this would not be consistent with principles of procedural fairness or best practice regulation.

3.1 Targeted review of plans may result in sub-optimal development outcomes

A targeted review may allow councils to focus on areas of a plan where costs have increased, while ignoring other elements that could reduce contribution rates, such as increased population projections. We are concerned that the option of targeted review could lead to an asymmetric approach to review of contributions plans and sub-optimal outcomes for the residents of development areas.

We consider that any review of a contributions plan should be symmetric, in that it looks at both what the council has changed since the last review as well as what it should have changed – given changing circumstances and the latest available information. We note that a review of a plan can be holistic (and hence symmetric), while still drawing on information and analysis of an earlier review where it is still relevant – thus minimising the time and information required to undertake the review.

The current terms of reference requires IPART to review a whole plan against the Practice Note and EP&A Regulation on receipt of an application. However, when reviewing a plan that we have previously reviewed, we make sure our analysis is proportionate, with a greater focus on those elements of a plan that have changed or should have changed since we last reviewed the plan. For other elements of the plan, we may consider our previous analysis, and determine that the previous analysis remains relevant (eg, for aspects of a plan that have not changed and are not impacted by changes to underlying planning assumptions such as expected population). We followed this approach in our assessment of The Hills Shire Council's Contributions Plan 15 for Box Hill (CP15) in 2018, which took four months to complete.

It is also unclear under DPIE's proposal whether councils would be required to publicly exhibit a targeted revision of a contributions plan. We consider that, to afford procedural fairness to affected stakeholders, all revisions to a contributions plan should be subject to the consultation requirements under clause 28 of the EP&A Regulation.

3.2 Councils should regularly review and update contributions plans

We consider that councils should regularly review and update contributions plans to ensure they reflect up-to-date planning assumptions (including population projections) and infrastructure requirements and that the estimated costs in the plan are still reasonable. We have consistently recommended that councils regularly review their contributions plans for this reason, based on the stage of development:

- ▼ For plans with development in its **early stages**, we consider councils should review and update the plan **every three years**
- ▼ For plans in **later stages**, where the infrastructure needs are more certain and a council has obtained detailed designs and cost estimates, review should occur **every five years**.

These timeframes are intended as a guide only. Earlier review may be desirable if significant development has occurred or planning assumptions change.

The consequences of failing to regularly review a contributions plan are highlighted by The Hills Shire Council's Contributions Plan 13 for North Kellyville (CP13), as outlined in Box 3.1.

Box 3.1 Issues arising from infrequent review of a contribution plan

CP13 was first assessed by IPART in 2011. The council next reviewed the plan in 2018 and submitted it to IPART for assessment in late 2018. The draft plan submitted to IPART and the council's updated information provided through our assessment reflected:

- ▼ Significant changes to planning assumptions (the expected population in the North Kellyville Precinct increased by 5,030 people (32.3%) between our 2011 and 2018 assessments of CP13)
- ▼ Significant changes to the scope of infrastructure (including an \$18.42 million (87.7%) increase in the cost of delivering two major sporting fields)
- ▼ New design and costing information, including actual costs for works delivered, and site-specific estimates. For transport works, the council provided revised costs, reducing transport costs by \$2.64 million (2.9%).

The time between review and the significant changes to CP13 highlights a number of issues:

- ▼ **Differences in contribution rates over time:** Significant changes to planning assumptions and/or costs that are not addressed in a timely fashion through amendments to a plan, may result in large differences in the contribution rates paid by developers in early stages compared with the rates paid by developers in later stages of the development.^a
- ▼ **Infrastructure may not meet the needs of development:** Changes to planning assumptions will change the demand for infrastructure. Therefore, these changes should be a trigger for the review of plans to ensure councils can provide the necessary infrastructure. In the case of land for open space in particular, if review of a plan does not occur in response to changes to planning assumptions, then councils may not be able to acquire additional land to meet the needs of an increased population.
- ▼ **Potential for inefficient costs.** Regular review of a plan allows for early-stage cost estimates to be replaced with actual costs or site-specific estimates, as they become available. When early-stage estimates are not regularly updated, these estimates (and in some cases, significant allowances) are retained in the plan. These costs are passed on to development.

^a To date, the impact of intertemporal inequality has been minimal because contributions above the cap (currently set at \$45,000 per residential dwelling) have been funded by the State Government through the Local Infrastructure Growth Scheme and not by developers.

Regardless of the stage of a plan, we consider there are elements of every plan that should be updated at each review:

- ▼ Underlying planning assumptions (including expected population)
- ▼ Actual costs incurred by the council to acquire land and deliver infrastructure
- ▼ The average values used to estimate the cost of land that is yet to be acquired
- ▼ The timing of infrastructure delivery, based on the needs of development to date and anticipated development.

Failure to regularly review and update these elements of a plan can lead to sub-optimal outcomes, as shown by the example of CP13. For example, where there has been an increase in population in a precinct, we assess whether the infrastructure in the plan meets the needs of the additional anticipated population. This is particularly important in relation to the

provision of transport infrastructure and open space. If this review and assessment does not occur, the infrastructure provided may not meet the needs of the future population.

Once the infrastructure needs of a development have been assessed against its updated population projections, it is also important to update the contribution rates. For a given level of infrastructure costs, a higher population estimate will result in lower contribution rates (and vice-versa), as most contribution rates are determined on a per person basis.

3.3 IPART consultation through a draft report affords procedural fairness to affected stakeholders

The current terms of reference require IPART to consult with DPIE, the relevant council and any other person IPART considers appropriate.

For plans submitted since December 2018, we have published a draft report and invited comments from stakeholders. As DPIE notes at page 13 of the local infrastructure contributions plans discussion paper, IPART's consultation through a draft report provides an opportunity for the community to provide input on our draft recommendations.

In submissions to our draft assessment reports, development industry groups have identified that the opportunity for industry to engage in the IPART assessment process is welcome.⁴

The flexibility proposed by DPIE in requiring IPART to only consult with the relevant council, would not prevent us from consulting more broadly. If the terms of reference are amended in this way, we would continue to consult more broadly through a draft report to afford procedural fairness to affected stakeholders. We note that public consultation on our draft report occurs at the same time we consult the relevant council and therefore it does not delay our assessment process.

Table 1 shows the plans we have assessed since November 2018 and the breakdown of submissions we received on each draft report. We anticipate that the level of stakeholder interest in our reviews and our draft reports will increase with eligibility for LIGS funding closing on 30 June 2020.

⁴ For example, Urban Development Institute of Australia (UDIA) Submission to IPART Draft Report - *Assessment of Vineyard Contributions Plan*, 28 June 2019, Property Council of Australia Submission to IPART Draft Report – *Assessment of West Dapto Contributions Plan*, 27 March 2020.

Table 1 Submissions to our published draft reports

Contributions Plan	Submissions from				
	Council	Developers	Industry groups	Individuals	Total
Vineyard CP First Draft Report May 2019	1	2	1	6	10
Vineyard CP Second Draft Report September 2019	1	1	-	6	8
CP17 – Castle Hill North September 2019	1	-	-	3	4
West Dapto CP February 2020	1	3	4	12	20
Total submissions					42

Public consultation on a draft report is consistent with best practice regulation and affords procedural fairness to stakeholders who are affected by IPART's recommendations and the final decision of the Minister or Nominee – which is particularly important without LIGS funding. It allows us to seek comment on:

- ▼ Any new information submitted to us by the council during the review process (after public exhibition)
- ▼ Any consultant reports we have commissioned for assessment
- ▼ Our draft recommendations, and the reasoning, analysis and information underpinning them.

Our recent assessments demonstrate the extent of new information that is being provided by councils through our assessment process (see Box 3.2). In many cases, this new information would significantly impact costs and contribution rates in plans. Ideally, councils would not submit information through the IPART review process that was not available at public exhibition. To date, we have considered this information, but note that the provision of new information following public exhibition can undermine the public exhibition process and delay our assessment.

Without public consultation through our draft reports, stakeholders would not have an opportunity to comment on information that may affect their interests. There is a risk that this could amount to a failure to afford procedural fairness, and could give rise to a legal challenge of IPART's recommendations or report, or the Minister's or nominee's decision.

Consulting on our draft findings and recommendations is also consistent with best practice policy development and regulation, and hence is a common feature of IPART reviews across a range of other sectors.

Box 3.2 Recent assessments where councils provided extensive new information

Recent examples and implications include:

- ▼ **Vineyard Contributions Plan** – The council's submission to our Draft Report proposed revised cost estimates for land and works in the plan that were \$25.16 million (15.2%) higher than in the plan it originally submitted for assessment, with implications for total plan costs and contribution rates. Given the materiality of this information, we published a Second Draft Report taking into account this new information.
- ▼ **West Dapto Contributions Plan** – During our assessment, the council provided additional information including updated actual costs for land and infrastructure items in the plan, costs for four additional detention basins which were unintentionally omitted from the plan and updated information about council-owned operational land. The additional information increased costs in the plan by \$10.93 million (1.1%). We placed our assessment on hold while this information was collated, and the new information was publicly exhibited in our Draft Report.
- ▼ **Contributions Plan No. 13 North Kellyville Precinct** – The council's response to our draft assessment^a included extensive new information, including revised actual costs and detailed designs for transport works, and an \$18.42 million (87.7%) increase in the cost of embellishing two major sporting facilities. Given the stage of the plan, the extent of new information provided by the council, and the time since the plan was publicly exhibited, we considered that it was necessary to publish a Draft Report for public consultation.

^a The draft assessment was completed in May 2018 and provided to the council and the Minister only. Our practice of publishing draft reports commenced with plans received after December 2018.

4 Removing existing exemptions

DPIE has proposed to remove the list of grandfathered contributions plans from Schedule 1 of the *Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2012*.

We support a consistent and transparent approach to the regulation of local infrastructure contributions plans. As outlined earlier, we also support the regular review of contributions plans to ensure they reflect up-to-date planning assumptions and infrastructure requirements and that the estimated costs in the plan are still reasonable.

We note, however, that some of the grandfathered plans in Schedule 1 of the Ministerial Direction are likely to have contribution rates above the current thresholds and include infrastructure that would not be consistent with the essential works list. We consider that it would be reasonable to allow councils a period of time to review these plans and adjust the infrastructure included in them as necessary, where they are likely to be subject to the essential works list.

Examination of the current thresholds and the operation of the essential works list are matters that would be well-suited to the Productivity Commission's current review. We consider that a decision about removing the existing exemptions should be delayed until this review is finalised.

5 Removing re-exhibition requirements

DPIE has proposed to streamline the process following IPART review by removing the requirement for councils to re-exhibit a contributions plan following receipt of advice from the Minister or Minister's nominee.

We support this proposal. As DPIE notes, the community has opportunities to comment on a contributions plan through the council's public exhibition process and IPART's consultation on a draft report. A council must make the amendments requested by the Minister or Minister's nominee for a plan to be an IPART-reviewed plan, therefore there is sufficient incentive for a council to comply with the request. Re-exhibition of the amendments required by the Minister is not necessary.

We also support DPIE's proposal to amend the EP&A Regulation to require councils to publish contributions plans on their websites or on the NSW Planning Portal. This will provide transparency for the community and accountability for councils who are required by the Minister or Minister's nominee to make amendments to a contributions plan. We also recommend that DPIE consider requiring councils to publish contributions plans on both platforms, to provide consistency and certainty for stakeholders who operate across multiple Local Government Areas and to allow comparison of councils' contributions plans.

6 Special infrastructure contributions draft guidelines

We welcome the focus in the draft Special Infrastructure Contributions (SIC) Guidelines on strengthening the framework and principles governing SICs.

SICs should be regularly reviewed to ensure they cover the infrastructure required for regional development.

The key principles and framework outlined in the draft guidelines should identify which infrastructure should be funded through a SIC rather than a local infrastructure contributions plan, and clarify the role of each funding mechanism. We note that Principle 3 – The SIC will be reasonable and fairly apportioned – includes a statement that the SIC will not duplicate charges for infrastructure covered by local contributions. We consider this is a reasonable position, however greater clarity is required around how a decision is made about inclusion of an infrastructure item in a SIC rather than a contributions plan.

The funding of Boundary Road, on the border of The Hills and Hawkesbury Local Government Areas (LGAs), is an example that highlights the difficulties in determining the classification of a road and securing funding for infrastructure that transects LGA boundaries and may have regional benefits. The partial costs of Boundary Road are currently included in Hawkesbury City Council's Vineyard Contributions plan and The Hills Shire Council's Contributions Plan 15 – Box Hill. Both councils have experienced difficulties in achieving the certainty they require to coordinate the delivery of this road, including certainty about the classification of the road, its reasonable cost and the proportion that should be funded by each council. We consider that infrastructure that provides a regional or sub-regional benefit or is difficult to fund through other mechanisms should be considered for funding through a SIC.

We also observe that the contingency allowances outlined at page 11 of the draft guidelines are high compared with the allowances specified in IPART's 2014 Benchmark Report⁵ and compared with contingency allowances included in cost estimates prepared by councils and their consultants for contributions plans that have been submitted to IPART for assessment.

⁵ IPART, *Benchmark costs for local infrastructure contributions*, April 2014.

7 Planning agreements draft policy framework

Our comments on the draft planning agreements policy framework relate to our observations in assessing local infrastructure contributions plans, specifically:

- ▼ Planning agreements use early stage cost estimates with high contingency allowances from contributions plans
- ▼ There are timing issues associated with planning agreements and IPART review of contributions plans.

7.1 Some planning agreements use early stage cost estimates with high contingency allowances

We have observed that some planning agreements include early stage cost estimates from local infrastructure contributions plans. These early stage cost estimates include high contingency allowances, reflecting that further detailed design and costing work is required to provide greater certainty. It is appropriate for a council to include these cost estimates in the early stages of a contributions plan and to refine the design and cost estimate as planning progresses.


The use of early stage cost estimates in planning agreements locks the estimate in as the actual cost of an infrastructure item in a contributions plan. This is because, where a planning agreement is based on an early stage cost estimate that we have assessed as reasonable for that stage, we do not have an opportunity to reconsider our assessment of this cost. This precludes the council pursuing a more efficient cost through an open tender process. It also contrasts with the general procurement requirements that apply to councils under section 55 of the *Local Government Act 1993*. Section 55(1) requires councils to invite tenders before entering into specified contracts (although section 55(3) excludes certain contracts from the tendering requirements, for example contracts that involve an estimated expenditure or receipt of less than \$250,000).

We are concerned that this practice may inflate the costs of local infrastructure contributions and preclude the pursuit of more efficient costs.

7.2 Planning agreements do not limit IPART review

We have also observed that some councils enter into planning agreements that include costs for infrastructure items before the relevant contributions plan has been submitted to IPART for assessment. This practice may lead to sub-optimal development outcomes for a community or a funding shortfall that would be met from a council's general revenue.

If a planning agreement includes infrastructure that does not meet the needs of new development, nexus would not be established for the infrastructure. We would recommend the council provide infrastructure to meet the needs of the new development, as required by the assessment criteria in the Practice Note. For example, a council may agree with a developer



that a roundabout be provided at an intersection when the relevant technical study recommends a higher cost signalised intersection. If the council has entered into the planning agreement before IPART review, the community may be faced with either the sub-optimal roundabout or the higher cost of providing the signalised intersection that is needed.

Similarly, if a contributions plan includes infrastructure at a cost that is not reasonable, we would recommend the council remove the unreasonable portion of the cost as required by the assessment criteria in the Practice Note. If we find that the costs in a planning agreement are higher than the reasonable cost, the developer would receive an offset greater than the value of the infrastructure in the plan. This may result in the council facing a shortfall in contributions.

To ensure that councils understand the risks of entering into planning agreements before the relevant contributions plan has been reviewed by IPART, we suggest the practice note clarifies that the provisions of a planning agreement do not limit IPART's assessment of a contributions plan under the criteria in the Practice Note.

8 Amendments to the EP&A Regulation

We support the proposed amendments to the EP&A Regulation to:

- ▼ Improve the reporting on contributions received through contributions plans and planning agreements
- ▼ Streamline the process to adopt a contributions plan following receipt of advice from the Minister or Minister's nominee.

We agree that the proposed amendments to require planning authorities to provide more detailed reporting on infrastructure contributions and planning agreements will provide greater transparency and accountability. We currently request some of this information from councils to inform our assessments of contributions plans and would not have to request the information if it is publicly available.

Our comments on DPIE's proposal to streamline the process for making a contributions plan following receipt of advice from the Minister or Minister's nominee are outlined in section 4 of our submission.

9 Other opportunities for improvement of the current system

We have identified a number of other opportunities for improvement of the current local infrastructure contributions system that could be considered by DPIE in a second stage of improvements and by the Productivity Commission. These include:

▼ Land costs in contributions plans

In recent assessments of land costs in contributions plans we have found:

- Variation in the quality of advice and adequacy of analysis provided by valuers engaged by councils
- Inconsistency in valuer advice across plans assessed by IPART
- Insufficient information provided by councils and valuers to support proposed cost allowances associated with land acquisitions.

These issues could be addressed through greater involvement of the NSW Valuer-General and/or the development of standard instructions for valuers who advise councils on average land values in contributions plans. These measures would address a number of the issues that arose in our assessment of land costs in Hawkesbury City Council's Vineyard Contributions Plan, where various registered valuers held different opinions on the average market values of land in this precinct.⁶

▼ Infrastructure items that are consistent with the essential works list

The essential works list explicitly excludes some items as not being consistent with base level embellishment, including skate parks, BMX tracks and multi-storey carparks. We consider that given changing recreation patterns and trends in higher density development, it is time to review the essential works list to ensure councils are able to provide the infrastructure needed by their communities.

▼ Certainty around planning assumptions (particularly population projections) to be used in contributions plans

Currently, there is a lack of clarity on the appropriate source of planning assumptions that underpin contributions plans. These assumptions, particularly population estimates, are critical for our assessment of contributions plans. Councils should have certainty about these assumptions before a plan is placed on public exhibition. Confirmation of the appropriate population estimate to use in a contributions plan should be provided to the relevant council by DPIE on request when the council prepares or reviews a plan.

⁶ See IPART, *Assessment of Vineyard Contributions Plan*, November 2019, Chapter 9.

▼ **Consultation by councils on contributions plans through public exhibition**

Council engagement with stakeholders could be greatly improved by providing access to all supporting information that would not be classified as commercial-in-confidence. With greater interest in contribution rates post-LIGS, there may also be opportunities to improve the presentation and accessibility of information about contributions plans for public exhibition across all councils. This could be achieved through the use of a template providing standard information about contributions plans and with improved mapping that allows stakeholders to identify the location of all land and works in a plan.

▼ **Development that is exempt from paying contributions**

The approval of the relevant Minister to the levying of contributions on Crown development is required but rarely granted and, in effect, Crown developments (particularly schools) are often exempt from contributions. This creates an issue for councils, as Crown development creates demand for infrastructure but it cannot recover costs from the State. This infrastructure is then funded through higher contributions from other development, or through general rates. Councils have adopted varied approaches to apportioning the costs associated with Crown development, with varying implications for stakeholders. Reform of the contributions system could provide a consistent approach to apportioning the costs of infrastructure required to meet the demands of Crown development.