



#E2021/140809

Contact: Christopher Soulsby

26 November 2021

Independent Pricing
and Regulatory Tribunal
PO Box K35
Haymarket Post Shop NSW 1240s

Attention: Jessica Hanna

Dear Jessica,

Review of benchmark costs for local infrastructure

Background

Byron Shire Council is in the Northern Rivers of NSW, one the fastest growing regions in NSW. Byron Shire has a population of 35,773 as of the 30th June 2020 (ABS2020 erp). In 2020 Byron shire's population increased by 1.99% more than double change in NSW.

The popularity of Byron Shire as a tourist destination, along with its attractiveness as a sea change locality, has placed significant strains on the Shire's infrastructure and services and the ability to provide acceptable community levels of service. Our residents are understandably concerned about the imbalance.

Byron Shire is one of Australia's most well-loved tourist destinations and was the 4th most visited place in NSW and the 11th most visited in Australia amongst International visitors (Tourism Research Australia, 2018). As one of the most iconic tourist destinations in NSW, the standard of infrastructure provided in Byron Shire is critical to the contribution tourism makes to NSW GDP and, state regional and local economies. This equally applies to tourism destinations across NSW all of which contain infrastructure, that where there is growth occurring is, in part, provided through developer contributions.

In 2019 (prior to COVID-19), Byron Shire received 2.15 million visitors each year of which almost 900,000 were domestic day trippers (www.tra.gov.au/Regional/Local-Government-Area-Profiles/local-government-area-profiles).

The demand for Byron Shire as a holiday destination, and the resultant increasing impact on infrastructure in the Shire, is also demonstrated with Ballina Byron Gateway Airport catering to half a million passengers each year and over the last five years was the fastest-growing airport amongst Australia's top 20.



TRADITIONAL HOME OF
THE BUNDJALUNG PEOPLE

ALL COMMUNICATIONS TO BE
ADDRESSED TO THE GENERAL MANAGER
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Byron Shire Tourism Scale and Impact Analysis (November 2018)

Key findings:

- Byron had an average of 14,000 visitors in the LGA each day in 2017/18 with 11,100 being overnight visitors. This is higher than all locations in NSW's north coast.
- The cost of servicing this temporary population is estimated at \$23 million per year.
- Half of Byron's visitors stay overnight (domestic and international), compared to only 38% for NSW as a whole.
- Recent growth has outpaced the states. Between 2014 and 2018, total visitation was estimated to have grown by 49%, compared to 11% for NSW.
- Daytrippers increased by 74% over the last decade, and domestic overnight visitors grew by 57%
- If added to the resident population this would represent a 45% addition.

Byron Shire's infrastructure is also impacted by significant population growth in south east Queensland. The population of south east Queensland is 3,625,230 and it grew by 70,921 or 2% (ABS2020 erp). There is a significant level of cross border commuting for the workers and visitors that impact Byron Shire's infrastructure.

Byron Shire has prepared a Strategic Asset Management Plan (SAMP) in line with our Fit for the Future report and our application to IPART for a special rate variation. These documents demonstrate an existing asset backlog that is currently estimated at \$78 million. The SAMP identifies that even with the special rate variation there will be a gradual decline in levels of service for roads which will result in ongoing increases in operational and renewal costs. This situation requires continued monitoring as the costs associated with this work and the risks to the network are high.

The SAMP may be found here:

[Strategic Asset Management Plan 2016-2026 - Byron Shire Council \(nsw.gov.au\)](#) It is our submission that the issue of the essential works list and the review of the developer contributions system cannot be dealt with in isolation. It needs to be considered as part of the whole suite of funding mechanisms for local government. Many regional councils face a significant asset renewal backlog in the spend needed to bring their existing assets up to standard. It is acknowledged that developer contributions do not address this issue but a rate rise to address population growth above the existing cap would enable councils to maintain new assets created to cater for growth and to close the backlog on existing assets.

With the context of Byron Shire's population growth, tourism and asset management pressures established, we would like to address the issues with the proposed essential works list and how they will impact on Byron's ability to provide an appropriate level of public facilities for our community.

Issue 1: The terms of reference issued by the Minister are too narrow and prescriptive in their nature to enable a proper consideration of essential infrastructure for all development types.

Differing types of development such as commercial and tourist development have demands for infrastructure above and beyond base level embellishment as set out in the terms of reference. The terms of reference appear to be driven from a Sydney-centric point of view and are completely focused on new release residential release areas in metropolitan Sydney. In its original form, the essential works list was derived to allow developer contributions to exceed the ministerial cap; this was relevant for new land release areas in Sydney but will exclude critical new public infrastructure in regional town centres.

Example: Infrastructure works for the Byron Bay Town Centre Masterplan

Council has adopted and has been progressively implementing the Byron Bay Town Centre Masterplan (BBTCMP). This plan had extensive community consultation and forms the basis of a series of major infrastructure upgrades in Byron Bay. These infrastructure upgrades are to provide public facilities for both the new residential population and for tourists visiting Byron Bay. The provision of public infrastructure in an iconic and internationally renowned tourist destination such as Byron Bay must be of the highest standard and well above base level embellishment.

Byron Shire currently has two contributions plans, a s7.11 plan that applies to residential development that generates new population and a s7.12 plan that applies to all non residential development. Both plans direct contributions towards works identified in the BBTCMP.

Works from the BBTCMP are funded from a number of sources and these include:

- s7.11 contributions; and
- s7.12 contributions; and
- grants; and
- Council's general fund (a specific reserve funded from paid parking income).

The developer contributions s7.11 and s7.12 are development dependant, and the paid parking revenue is a recurrent source of income that enables Council to program our 10 year capital works plan for the staged implementation of the BBTCMP. It is noted that paid parking revenue is not guaranteed and can be heavily impacted by outside influences such as the loss of interstate and intrastate day-trippers during COVID-19 and border lockdowns. There is also no certainty on grant income. If Council is only able to collect contributions on the essential works list for base level embellishment then this will result in reliance on a higher proportion of Council's general fund (paid parking reserve being directed to BBTCMP projects and higher reliance on grant, which causing delay in the delivery of the works.

The essential works list is inadequate in scope to provide the requisite public facilities in the Byron Bay town centre and the concept of base level embellishment would result in a still further below-standard urban environment in one of NSW's most iconic tourist destinations.

Issue 2: Excluding community facilities from the essential works list is not an impactor pays principle.

The NSW Productivity Commission assertion that the demand for community facilities is driven by population growth is correct, just as all demand for public facilities is driven by population growth. This is the founding principle of contributions planning. However excluding community facilities from the essential works list is a cost-shifting exercise from the developer to the ratepayer, allowing the developer to increase their profit margin at the cost of the community. Stating that councils can borrow against future rate revenue assumes that councils have spare borrowing capacity. If a council does not have borrowing capacity, then essential public facilities will not be provided in a timely and efficient manner, if they are provided at all

Example: Council has recently undertaken upgrades of community facilities at Broken Head Community Hall, Ocean Shores Community Centre, Mullumbimby Drill Hall, and Mullumbimby Civic Hall. All were part funded by a mix of developer contributions, grants and rates revenue. Developer contributions have funded the upgrades to these community facilities that would not have otherwise occurred due to Council not being able to provide the required grant co-contribution.

Issue 3: There is no guarantee that the increased rate revenue generated by an increase over the rate peg due to population growth will offset the reduced developer contributions resulting from excluding community facilities.

There are many activities of Council that need to be funded from rates and there will no guarantee that the highest priority for a community will be to allocate the over-the-rate-peg funds to community facilities.

Byron Shire has previously made a submission to IPART on Review of the Rate Peg to include Population Growth dated 3 May 2022. In that submission we stated:

"Council's cost of providing infrastructure, maintaining infrastructure and providing services to its community grow as its population grows. Council's rate income has to cover these costs in the absence of any other funding source including maintenance/enhancement of road, open space, community facilities, libraries, sporting facilities, cost of regulatory functions and environmental management are some examples traditionally funded from rates revenue. It is difficult to expressly determine how these costs increase specifically due to population growth except that they will due to demand but they can increase also for other reasons such as levels of service, policy decisions, cost of inputs ie labour/materials and visitation (tourism) to a Council area."

This demonstrates significant competing demands for any additional rate revenue. It is unreasonable to expect ratepayers to subsidise developers, when the developers are creating the demand for the new community facilities.

Issue 4: The increase above the rate peg does not address the impact on Council's assets created by population growth across the border.

There is significant population growth occurring across the border and South East Queensland's regional plan ([ShapingSEQ](#)) estimated an extra 1.5million people are expected to call SEQ home by 2041. The results in non-resident workers and visitors impacting on Council's assets. Significant use of roads and public facilities by a non-resident population imposes a higher asset maintenance burden upon Council than otherwise would be the case and despite record investment through grants and Council revenue, the Shire's infrastructure backlog still stands at \$78 million. The pressures on Council's asset maintenance constrains Council's ability to redirect general rate revenue to the construction of new assets identified in the contributions plan. This is relevant to the existing apportionment shortfall within Council's existing contributions plan that is currently filled by grants. The proposed use of base-level embellishment will require Council to redirect further rate revenue to construct new assets to meet community expectations which is unsustainable in the long term.

In Council's submission to IPART on the review of the rate peg Council stated: *"Additionally a Council area with a high degree of visitor population but not counted as part of the static population can also create the need for a Council to provide heightened levels of service that would not normally be required without the increased demand."* This statement equally applies to the impacts of population growth in south-east Queensland that increase the demand for new assets in our town centres.

Issue 5: The use of the essential works list and base level embellishment will result in the inefficient delivery of infrastructure where a developer opts to provide works in kind as an alternative to payment of the monetary contribution.

The obligation on the developer will be to construct only to the base level embellishment as set out in the contributions plan. Such base level embellishment, particularly in open space facilities, will not meet community needs or expectations. It is inefficient from an infrastructure project delivery perspective for Council to have to come back and rework or add to base level embellishment. Council may not have a funding source available to bridge the gap between the base level embellishment and the standard required by our community.

Example: Byron Shire has been working with the developer of the Tallowood Estate in Mullumbimby to provide high quality open space. This has come in the form of land dedication and embellishment. The land dedications and works-in-kind have been offset against developer contributions. Given the constraints on Byron Shire's finances these facilities would have never been upgraded beyond base level embellishment if the developer only had to provide them at base level embellishment standard.

Issue 6: The essential works list does not meet the expectations of the Byron Shire community for the provision of infrastructure.

Byron Shire has consulted extensively with our community on their infrastructure needs. The following strategic plans and surveys demonstrate how Byron Shire has engaged with our community to establish the standards of infrastructure required to meet the needs of our community:

- Community Strategic Plan; and
- Community Solutions Panel; and
- Byron Bay Town Centre Masterplan; and
- Bangalow Village Plan; and
- Our Mullumbimby Masterplan; and
- Byron Developer Contributions Plan; and
- Consultation for Special Rate Variation; and
- Biennial Community surveys.

These plans and surveys are available on Council's website.

The position that IPART has taken with respect to provision of infrastructure above the base level embellishment is that if the community desires a standard higher than base level then Council should pay for it from the rate rise granted above the rate peg. This is not impactor-pays, it is a subsidisation of the development industry by all ratepayers in the local government area. Ratepayers should not have to accept a lower standard of infrastructure nor should they be expected to subsidise developers to obtain the standard of infrastructure that is expected. For regional councils the increase above the rate-peg due to population growth will be needed to address existing infrastructure backlogs and local government industry has for a long time identified the need for this revenue for meet other pre-existing needs, such as funding existing infrastructure backlogs and infrastructure maintenance funding shortfalls. To theoretically re-assign this funding which has been sought for other purposes, to cover the proposed reduction in developer contribution funding is unreasonable and impractical.

Conclusion:

1. The essential works list should not be applied to contributions plans with rates per dwelling that are currently under the Ministerial cap.
2. The essential works list does not meet the expectations of the Byron Shire community for the provision of infrastructure.
3. The implementation of the essential works list and the use of base level infrastructure will result in the subsidisation of developers' profit margins by the Byron Shire community from ratepayer funds and that is, in our view, unequitable and contrary to the statutory guiding principles of the Local Government Act to consider social justice principles, including the principle of intergenerational equity.

4. The implementation of 'base level embellishment' as the standard of infrastructure will not meet community expectations and is an inefficient way to provide infrastructure.
5. It is also our submission that the existing cap on developer contributions should be indexed in accordance with the consumer price index. The indexation should be backdated to the imposition of the cap.

We would welcome the opportunity to make further representations to IPART on this matter before any determination is made. Please do not hesitate to contact Council should you have any questions about our submission.

Yours sincerely



Mark Arnold
General Manager