



9 December 2021

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

Contact: Leanne Petersen
Our Ref: DOC2021/189976
Your Ref:

Dear Sir/Madam

Submission to: IPART's Review of the essential works list, nexus, efficient design and benchmark costs for local infrastructure

This submission outlines Cessnock City Council's staff response to IPART's Draft Report on Improving the Development Contributions System (Review of the essential works list nexus efficiency design and benchmark costs for local infrastructure - October 2021).

Council staff have reviewed the abovementioned documents and provide the following feedback and comment on the List of Issues for Stakeholder Comment (shown in italics). Staff have also provided further comment on the exhibition material, outside the List of Issues for Stakeholder Comment.

- 1. Do you think our proposed principles-based approach to the EWL, as part of our broader framework incorporating efficient design and delivery and benchmarks costs, provides enough certainty? Have we got the balance right between flexibility and certainty?*

Council staff are generally supportive of the principles-based approach but need further clarification as to how the principles-based approach will work. There are a number of questions throughout this submission that Council staff would like further clarification on.

Council staff note that IPART's Terms of Reference initially explicitly excluded the consideration of community facilities as part of this review. Then, during the exhibition period, councils were advised that that this would change and that no council would be disadvantaged in regard to funding for community facilities, however we seek clarification as to which community facilities will be added back in to the Essential Works List (EWL) and Benchmark Costs.

The reasoning behind the NSW Productivity Commission's view that community facilities should not be included on the EWL is flawed. They consider that the costs of local infrastructure contributions are already too high. Their claim that community facilities are 'general costs' that are driven by population growth rather than development contingent is contradictory as new development is driven by population growth. Appropriate apportionment in a contributions plan addresses this issue and we don't understand the difference between the funding of community

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facilities vs funding other items of infrastructure in a contributions plan that are needed for the growing population. Social infrastructure is as important, if not more so, in creating liveable, connected and sustainable communities.

In the overview of draft findings and recommendations (Page 5), it is stated:

“In our view, a common set of principles should be applied to all circumstances including metropolitan and regional areas as well as infill and greenfield developments. This provides for councils to tailor infrastructure needs to each community and ensures that developers only pay for base level infrastructure associated with new development.”

This position overlooks the unique needs of regional communities and their access to community and cultural services. Regional communities do not have the level of choice that communities in metropolitan areas have, where the amount and diversity of accessible community and cultural services are much greater. Because of this, regional councils are often depended on to ‘fill the gaps’ to ensure their communities have adequate facilities and in turn direct service provision. Council’s community facilities often provide an affordable, stable space for community organisations and charities to deliver essential services to vulnerable and disadvantaged regional communities. Without accessible and affordable community facilities, non-government organisations are often unable to provide direct service to regional communities and therefore community members face substantial barriers to access these essential services out of area. Population growth is a major driver of community infrastructure and service costs for councils. Between 2021 and 2031, Cessnock City is forecasted to increase its development of new dwellings by over 26% (6,600 dwellings).

There would be foreseeable issues if the increase in rate revenue to assist in funding essential community facilities to meet the needs of a growing population was spread across both the existing and incoming ratepayers. Apart from being inequitable, this approach would ultimately prompt community division and an unwillingness from the existing community to support or accept new development.

Population growth increases council’s costs associated with the provision of infrastructure and services to support the increased population. This includes the cost of new community infrastructure that is not funded by infrastructure contributions, the expansion of existing infrastructure to deal with greater numbers, the ongoing maintenance costs and operational costs in the daily running of the infrastructure and the costs of expanding service delivery to support the increased population.

Council’s adopted Community Infrastructure Strategic Plan recommends a contemporary model for the delivery of community infrastructure that is multi-purpose in design, sustainable and financially viable, offering flexible spaces and accommodating a variety of activities to ensure they are well used within the community. By 2031, Council will need to provide four new multi-purpose community facilities and one new branch library to meet the needs of the growing population across the local government area.

Currently the ongoing maintenance and renewal of Council’s community facilities is funded using general rating income, however these costs are greater than what Council is able to collect. Council has been able to fund some essential facility upgrades and renewal works through the rationalisation of ageing, standalone community facilities and successfully obtaining government grants.

If the reforms exclude the construction of community facilities in the EWL, it is foreseeable that developer's willingness to include community facilities in future voluntary planning agreements will be greatly influenced, even when nexus is established. In turn, Council will be further reliant on government funding to construct community facilities to ensure the needs of their communities are met.

Community facilities provide free and equitable opportunities to access information, connect with others, learn and receive essential services that improve health and wellbeing. These essential facilities and services are core infrastructure, expected by communities. They are generally free for individuals to access and ensure disadvantaged, vulnerable or socially isolated community members have an accessible way to receive assistance and participate in their communities. Community facilities play a vital role in the support and sustainability of communities.

The NSW Contributions Reforms propose that adjustment to rate pegs to cater for population growth will provide additional support to Councils to fund community facilities. We are concerned that the adjusted rate peg may not be sufficient to fund community facilities, leaving Council in a position where we would need to seek an alternative funding source, including a special rate variation or government grants in order to provide community facilities.

The inclusion of strata space for community facilities within the Essential Work List is generally supported by Council staff. However, it should be noted that for councils with major greenfield release areas such as Cessnock, the ability for councils to acquire strata space is quite limited. As this is the only mechanism to acquire floor space for community facilities, it is likely that regional councils like Cessnock would miss out on appropriate community facilities space. A more appropriate approach would be to facilitate the acquisition of both land and capital for community facilities in Urban Release Areas and encourage councils to provide community facilities for infill development strata buildings within city areas.

In regard to contingency, the requirement to update project costs to adjust the contingency throughout a project could be an issue for councils if these amended costs mean the Contributions Plan also must be updated in accordance with these updated project costs? This requires further clarification of how it will work in practice.

Council also seek clarification on whether the EWL also applies to s7.12 plans in addition to s7.11 plans.

2. *The proposed evidence to establish nexus for infrastructure in a contributions plan appropriate and reasonable? Is there any other guidance on nexus for local infrastructure that should be included in an updated practice note to assist councils, developers and other stakeholders in preparing and assessing contributions plans?*

Council staff are supportive in principle of the proposed evidence required to establish nexus within contributions plans, however, the evidence required within this section needs further clarification. On the one hand it states that Council's should demonstrate the proposed open space is consistent with statutory policies (the Design and Place SEPP) but then goes on to state Council should also establish nexus for open space with reference to technical studies, the council's own policies and standards (such as that provided above in our Recreation and Open Space Strategic Plan) and relevant benchmarks (which may include population based benchmarks). The evidence required as stated in the exhibition documents is substantial and conflicting.

These seem appropriate and reasonable, however the three pronged approach to nexus should be applicable. At present social nexus seems to be ignored and only causal and spatial nexus seem to be considered. The Social effect of the infrastructure on the community should be as important as the causal and spatial nexus.

Reference to technical studies establishing nexus is critical, however could the evidence around the level of open space required be demonstrated with meeting one approach as opposed to being required to meet each point? The terminology around Council "should" also needs to be clarified, i.e. is it a requirement or not?

Are the proposed nexus requirement applicable to new s7.11 Plans only or will they also apply to s7.12 Plans? This is not made clear in the provided documentation.

Development projections and the demographic profile of a new Urban Release Area are a key element to establishing nexus and ascertaining the appropriate infrastructure require to service the needs of the proposed population. As catchments used by councils do not generally correlate with Australian Statistical Geographical boundaries, Council staff are forced to undertake bespoke demographic analysis or engage expensive consultants to undertake this forecasting work in order to establish nexus. Further guidance should be provided in the appropriate methods to establish dwelling numbers, occupancy rates and other demographic as the methods used to obtain this information in the preparation of a contributions plan is currently not seen as being transparent, and is difficult for the development industry and members of the public to understand. In relation to nexus for roads and transport infrastructure, Council staff are generally supportive of the approach proposed in the reforms. In particular, the internal evidence based assessments is welcomed as it will alleviate the need to completely revise detailed technical studies where amendments are required.

Council staff are not supportive of the NSW Productivity Commission recommendation that will support the utilisation of land identified for stormwater management and passive recreation. The co-location of passive recreation facilities within stormwater management areas will have a significant increase in maintenance liabilities for councils. While it is recognised that in some instance the shared use of space may have merit, it should be regarded as the exception and not the norm.

3. What further guidance on base level, efficient local infrastructure should be included in an updated practice note to assist councils, developers and other stakeholders in preparing and assessing contributions plans? How definitively should the guidance in an updated practice note specify the standards expected of infrastructure (e.g. legislation and other industry standards)?

An updated Practice Note should allow flexibility for specific design changes that take into account the topography of the land, the geographical location, the climate of the area, the ability to source materials locally etc. The Practice Note needs to be prescriptive enough to alleviate confusion and should be consistent with other industry standards documents that Councils are required to design in accordance with.

Council supports the suggestion of identifying the need by reference to the outcome, however, how does this overarching principle work in a Contributions Plan when Benchmark costs must be used. Referring to the example provided in your documentation, using a water crossing as a description, how is that costed until it is determined what type of bridge is required?

The inclusion of a framework that supports a whole life-cycle assessment of the costs of infrastructure, not just the up-front capital cost is welcomed and strongly supported. This will ensure that council's long term financial position is not undermined by providing infrastructure that is not fit for purpose, with high maintenance liabilities.

Definitions should be used in the Practice Note to assist councils.

4. Are there other items that we should consider benchmarking?

Heavy haulage benchmark rates for road maintenance for traffic generating development that have an impact on Council's local road network should be considered for inclusion. This is an issue for many regional Councils, especially those with quarries. Formulas for heavy haulage would be helpful, as would be some benchmarking and formulas for other traffic generating development that impact the road surface considerably, such as tourist events (where there is no rail network and therefore buses have a considerable impact on the local road network).

5. Do you agree with our approach to use adjustment factors so that the benchmarks are applicable to a broader

Council staff agree in principle.

6. What other factors increase the complexity of a project that could be used as an adjustment factor?

The ability to source materials, the inflated price of trades and labour, the locality and distance for materials being shipped.

7. We seek stakeholder views on the approach to project allowances, including the rates and their application

Council staff agree in principle.

8. We seek stakeholder views on alternative benchmarks for open space. Is there value in a per person benchmark. How would it work?

Council staff agree in principle.

9. Does 1.5% of the total value of works excluding land broadly reflect the actual cost councils face to administer a contributions plan? If not, what percentage would better reflect the actual cost councils face?

Cessnock City Council are currently using 1.5% of the value of the contributions plan as the percentage for administration. It is deemed appropriate but we don't agree with the exclusion of land value. Why has IPART excluded land value in the cost of admin?

Studies required to prepare a contributions plan should be additional to the 1.5% and should be able to be recouped through the cost of the plan. The administrative costs of the acquisition of land should also be able to be recouped through the plan.

10. What other types of information or data would provide a clear evidence base for the true costs of plan administration?

The full cost of staff salaries, full cost of consultant's studies required to provide technical data, and the full cost of administration costs of the acquisition of land should be included. If these are in excess of the 1.5% there should be the ability to recoup those through the plan.

11. We seek views on our proposed approach to annual escalations and 4 yearly reviews of benchmarks, including the choice of index and timeframe.

Council staff support 4 yearly reviews of benchmarks (which should align with a council's delivery program), choice of index and timeframe for indexation, however the annual escalations could be difficult to administer. How will this work in practicality? Will these only apply to new plans being developed or will adopted plans have to be updated and exhibited annually to use the updated benchmark costs? How will this work with DPIE tools? Changes to indexation should not come into force until the DPIE tools will handle the indexation of all contribution rates. Councils may not have the software available to cope with different forms of indexation without significant upgrades. Further clarification is required on how and when this will be implemented.

12. We seek views on an appropriate feedback or data collection mechanism to obtain reliable and consistent project information to refine the benchmarks over time.

Council staff suggest that IPART could survey councils or require councils to report on actual project costs. If this is to occur, a template should be provided to councils. IPART could also collate this information when conducting plan reviews.

13. Are the proposed principles and information requirements for councils using an alternative costing approach adequate? Should councils be required to provide any further information to justify deviations from the standard benchmark costs?

Council staff agree that in the absence of detailed design costs, benchmark costs should be used. This alleviates the need for councils to engage quantity surveyors, however there needs to be a stronger position on benchmarks for the provision of open space as opposed to "Our preliminary position is that, once in place, nexus would be established for open space in a contributions plan up to these (Proposed Design and Place SEPP) benchmarks". Without further clarification this will have implications on the preparation of strategic documents that will continue to utilise the provision standards individual Councils have adopted.

Cessnock City Council's Recreation and Open Space Strategic Plan outlines provision standards by hierarchy (a spatial standard of Ha per person) and also considers performance indicators for open space (e.g. local parks to be provided within 500m of residents, co-location of facilities etc). Establishing a benchmark based on a performance based approach alone (as discussed in the review), is more relevant for Greater Sydney Metro Council's with increasing densities and declining land supply.

The move towards a performance based approach and away from spatial standards to determine the level of open space that can be sought within contribution plans will have an impact not only on the level of open space provided within regional areas but will significantly conflict with open space that has already been identified for new communities (and outlined within adopted strategic planning documents).

14. Are the proposed principles for reviewing plans and updating costs adequate? Are there any principles that should be removed from or added to this list?

Council staff seek clarification on whether the nexus requirements will apply to s7.12 as well as s7.11 and clarification as to whether it is planned for all new plans to be reviewed by IPART or only those above the cap.

15. Are the proposed information requirements for councils enough? Are there any other pieces of information that should be added to this list?

Council staff ask that further templates be provided in regard to reporting requirements.

16. Do you support our approach for a threshold to determine which plans must be reviewed?

Council staff would support this if the caps were indexed, however these thresholds are not supported in their current form. They have been at \$20k and \$30k cap for a number of years, when infrastructure costs have been escalating. Further, getting a new URA included in the \$30k cap, rather than the \$20k cap took Cessnock City Council a year from application to the Minister to Approval. This is far too long and if caps remain, this issue must be addressed and the timing for assessment of these applications from councils by the Minister's office should be no longer than three (3) months.

17. Do you support our proposal for a fixed 4 yearly review of contributions plans?

Council staff support this in principle, however it is unclear as to what assistance may be provided, if any, to councils who may have difficulty in recruiting the staff or engaging consultants to undertake this work.

18. Does the annual update and four-yearly review provide an appropriate balance between cost reflectivity and certainty?

Does the annual update mean that costs in all plans should be updated annually in line with IPART's release annual benchmark cost updates? Is so will this require re-exhibition? This matter requires further clarification.

Further comment provided on exhibition material (other than specific questions that have been provided for feedback):

What happens to different catchments? At present we have one URA that is subject to the \$30K cap. The process to get Ministerial approval to have this area included in the greenfield URA cap area took a year. What is planned to assist in making this process more streamlined? Further clarification is required on any proposed indexation of the caps? They have been capped at \$20k and \$30k for a number of years, when infrastructure costs have been escalating. Please explain why these have not been increased.

Overarching Principles to Guide Efficient Design and Delivery

Council must show that it has considered a range of options and identified the most cost effective means of providing assets to meet the development-contingent demand.

Are directions/actions identified within adopted Recreation Plans sufficient enough evidence to underpin future decisions in regards to open space developer contributions?

Example

A gap analysis of Council owned and managed open space was undertaken as part of the development of Council's Recreation and Open Space Strategic Plan 2019. This analysis looked at the existing demand and carrying capacity of council's open space areas with actions outlined in regards to deficit/surplus in open space. As a specific example, Council's ROSSP identifies there is a 10ha deficit of regional sports fields within the Kurri Kurri Planning Area. With existing fields at capacity and a sizeable residential development proposed within this Planning Area how much extra work is Council required to complete to confirm open space requirements (particularly in that work has already been done)? There are significant resource implications associated with re-doing calculations in regards to open space particularly in updating strategic planning documents.

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1. *That the infrastructure delivers a base level of performance having regard to any relevant government regulations or industry standards and community needs*

In regards to the above, would the Everyone Can Play Guidelines for example be an industry standard or best practice approach document that is required to be adhered to for Council's and Developers? The alignment with this guideline is also identified within Council's DIAP with the development and upgrade of Council's play spaces reflective of this.

Alignment with Everyone Can Play Guidelines has required Councils play spaces to be designed above base level (beyond how Council would normally develop a park) based on the design principles these spaces are required to meet and the subsequent level of park infrastructure.

Clarification is required whether it will be Council's responsibility to fund works required to enable play spaces to be accessible, the current definition of base level for parks indicates that this would be the case (which is unreasonable as it is not Council's choice or community preference).

Further clarification is required in regards to what constitutes base level. The definition of base level embellishment is vague and this needs to be clarified. Within the practice note for example:

- Basic park structures and equipment (park furniture, toilet facilities and change rooms, shade structures and play equipment) – There is no discussion here in regards to park

hierarchy and IPART's benchmarking costs refer to costs for a local park. Open Space hierarchies have been embedded in recreation planning for a significant period of time and access to local, district & regional parks for example is not Council's choice or community preference but essential in regards to recreation offerings/diversity and being able to access play opportunities that cater from 0 – teens (which a local park alone cannot provide). Clarification is also required in regards to what constitutes basic park furniture (i.e. are bubblers and bins included) and there is no mention of pathways which are considered a critical component in navigating parks.

- The provision of drainage and irrigation within Council's sports fields is not a Council choice but a necessity to sustain our sporting fields. Further confirmation is required in regards to base level requirements for sporting fields.

The practice note states base level facilities include *'sports fields, tennis courts, netball courts, basketball courts (outdoor only), but does not include skate parks, BMX tracks and the like'*

The current definition for base level embellishment is focused upon structured/mainstream sports which is not reflective of sports participation in Cessnock or NSW. Unstructured informal sport such as wheeled sports (skateboarding, BMX, scooter, rollerblading etc.) should also be considered as base level infrastructure. Justification needs to be provided as to why only structured sports such as football, rugby league, netball and tennis for example are to be provided by developers with Council expected to provide this recreation opportunity for current as well anticipated residents (resulting from new developments).

When looking at trends in skateboarding, the profile of this sport has increased at a national and international level with Australian skaters currently in the top 100 Olympic World Ranking and skateboarding being introduced as an event at the Tokyo 2020 Olympic Games (with a gold medal being won by an Australian Skateboarder). There is also the establishment and continuation of several high profile skateboarding and BMX competitions such as the X-Games. Scooter riding is also aiming to be included in future Olympics, as evidenced by the formation of the Australasian Scooter Association and the Australasian Scooter Championships that were held in Sydney in April 2018. BMX Australia is the second largest national BMX organisation in the world behind the United States, with clubs located in every state, in both rural and metropolitan regions.

Although participation statistics at a national level from the Australian Bureau Statistics are dated being from 2012 (these surveys are no longer being completed), the last data provided demonstrated that less organised unstructured wheeled sports have a higher participation rate than the top organised sports and at the time of the survey this is continuing to increase. Surely demand is required to be a contributing factor when determining base level infrastructure.

Participation in skate/bmx is a regular sport activity for the community just as rugby league or netball is. Wheeled sports are also acknowledged on the world stage with international events, the provision of BMX and skate facilities should be considered base infrastructure.

Implications and other queries

The terminology utilised to define base infrastructure 'and the like' is too vague, off leash areas for example & access to trails are considered essential by Cessnock City Council and there has been no reference to these facilities within the review documents.

The development of strategic planning documents at Cessnock including the Recreation and Open Space Strategic Plan, Skate and BMX Facility, Trails Strategy and Off leash Area Plan have been developed and considered on the basis of new Urban Release Areas and required infrastructure within these. Skateparks and BMX facilities have been included within URAs on the basis of the proposed development creating the need for the infrastructure.

There will be financial implications in Council reviewing each of its strategic documents should facilities be removed from base open space requirements. The development of Strategies and proposed infrastructure in new development areas is not only based on demand (but also were developed on the basis that they were development contingent costs). A resourcing plan has not been completed for Council's ability to fund this infrastructure and this would need to be completed for the following Council Strategies:


- Recreation and Open Space Strategic Plan
- Off Leash Dog Exercise Area Plan
- Skate and BMX Strategy

Is there financial assistance proposed to Councils to assist with amending strategic documents should the position on base infrastructure remain the same?

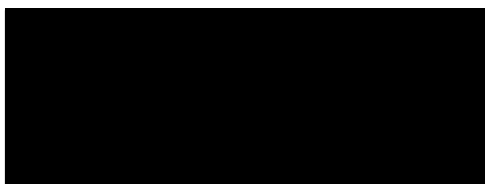
Summary

Council staff support the Benchmark Costs in principle but the exclusion of community facilities, BMX tracks, skate parks, swimming pools etc. from the Essential Works List is concerning. Although Councils have been notified that there has been a change to the stance on community facilities, we have not been advised as to what types of community facilities will be included. Therefore, we seek further clarification on this matter prior to preparing a formal Council submission in the February 2022.

Besides community facilities, there are a number of concerns noted in our submission. It would appear to Council that the definition of base level embellishment needs to be clarified. We ask that you take our comments and requests for further clarification into consideration and look forward to providing feedback from our newly elected Council in the New Year.

If you require any further information, please do not hesitate to contact me on telephone 

Yours faithfully



Leanne Petersen
Senior Infrastructure Contributions Planner