

8 December 2021

Independent Pricing and Regulatory Tribunal NSW
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Submitted via IPART website

Dear Sir/Madam

Review of the essential works list, nexus, efficiency and standardised benchmark costs

Thank you for the opportunity to comment on IPART's review of the Essential Works List and standardised benchmark costs.

Due to the timing of the exhibition period, at its meeting on 10 November 2021, Council delegated authority to the General Manager to make a submission on the IPART draft report. In accordance with this delegation, Council officers have prepared this response outlining Council's concerns and feedback on the draft report as provided below.

1. Application of an Essential Works List to all contributions plans

The justification for the recommendation from the NSW Productivity Commission to apply the EWL to all Section 7.11 contributions plans is not clear and the IPART review does not explore or explain the reason for the broadening of its application. If a contributions plan can be implemented below the relevant cap, it should remain up to the individual council what infrastructure is required to support growth and development, rather than imposing an EWL.

One of the main issues raised by the Hornsby community in community satisfaction surveys is resident concerns about the impacts of increased residential development and the need to augment community facilities, open space and public domain improvements to cater for growth. In direct contrast to what our community considers essential, the application of a restricted EWL reduces Council's capacity to deliver the extent of required and planned infrastructure to support population growth.

Plans should remain not subject to an EWL where contributions rates are below the cap threshold. This would not affect developers as they have the certainty that the contributions costs would not surpass the cap, but it would provide councils with the flexibility to deliver appropriate infrastructure in consultation with their community. This would also reduce the administrative burden on councils associated with having their contributions plans reviewed by IPART.

As is acknowledged in the IPART report, the appropriate infrastructure for a community differs between councils and should not be a blanket approach through the application of a restricted EWL to all plans. A flexible approach would be consistent with the collection of monies under the proposed Regional Infrastructure Contributions which it is understood would not be subject to the same project justification process or EWL costings. If a flexible approach is legislated for collection of contributions by the State Government, which is not even required to specify a project list, a similar process should be available to councils.

2. Infrastructure that is included on the Essential Works list

Notwithstanding the comments above, should the EWL be introduced to apply to all contributions plans, community facilities should be included as they are an essential component of planning for future population growth.

Concern is raised with the limited terms of reference for the IPART review which specify that the EWL must not expand beyond the current parameters and that community facilities works must not be included. This means that IPART has not been able to express an independent view of this matter or consider the wider interests of the community. No compelling case has been made for the proposed removal of community facilities, which are essential to our community and the inability to fund them through development contributions is a significant loss. The report notes that although developers support this position to reduce contribution costs, councils advised that community facilities are essential for their communities and should not be excluded. Any concerns from the development industry about the rate of contributions would be addressed by the cap threshold.

Within the Hornsby 7.11 Development Contributions Plan 2020 – 2030, community and indoor recreation facilities represent 36% of Council's works program costs. Removal of the ability to levy contributions for community and indoor recreation facilities would result in a potential loss of income for Council in the order of \$59 - \$90 million over the next 17 years (being the period from the proposed commencement of the changes in 2024 to 2041).

The essential works list also restricts the provision of public domain improvements which are essential components of creating liveable, connected and accessible communities. This is inconsistent with the draft State Government *Design and Place State Environmental Planning Policy* which includes design principles and controls aimed to facilitate the provision of a high quality and diverse public domain spaces including streets and open spaces in concert with new development. It is essential that the interface between the public and private domain be planned and funded as a component of the development process.

Consistent with the principles of the draft SEPP, within the Hornsby 7.11 Development Contributions Plan 2020 – 2030, public domain improvements with a direct nexus to high density development activity in housing precincts represent 8% of Council's works program costs. Removal of the ability to levy contributions for public domain improvements would result in a potential loss of income for Council in the order of \$13 million over the next 17 years.

Council's Contributions Plan is largely based on providing additional services to cater for forecast growth within areas rezoned for higher density residential development as part of Council's Housing Strategy to meet State Government obligations for housing provision. To cater for anticipated growth, the Plan includes an extensive works schedule of road, local open space, recreational and community facilities projects with total costs over \$340 million with \$157 million of those costs to be levied from development contributions. Such a significant reduction in the types of infrastructure which can be included in a contributions plan works schedule would reduce Council's capacity to deliver the extent of planned infrastructure to support population growth.

A restricted EWL would also de-incentivise planning agreement offers for works that can be offset from otherwise payable developer contributions. For example, developers can currently offer delivery of community facilities, benefiting the community through more efficient delivery of infrastructure and often allowing earlier delivery of works at lower disruption to the community.

3. Nexus

The infrastructure items contained within Council's Contributions Plan, despite not being included on an EWL, are all based on a demonstrable increase in the demand for public amenities and services (leading to the

requirement for those works or facilities). The strong nexus has always been a requirement of a Contributions Plan and a feature of Council's plans.

However, the DPIE Contributions Reform Package includes the introduction of Regional Infrastructure Contributions (RICs) that will not be nexus based. As discussed above, if the RICs will not have a nexus requirement, the same principle should be applied to local contributions and the nexus should be relaxed to allow more flexibility for councils in line with the flexibility of the RIC.

4. Efficient design and delivery

The draft report recommends that only cost-effective infrastructure that provides the minimum (or base level) of performance or service can be included in a contributions plan. This aims to ensure developers only pay for the efficient cost of infrastructure. However, such an approach does not take into consideration the reasonable expectations of the local community for the quality of infrastructure provided.

The quality of infrastructure would vary between local government areas and the composition and age of the population. It should be the responsibility of the council to determine the design quality of infrastructure in consultation with the local community. The report appropriately acknowledges that it is difficult to define base level embellishment of open space without considering the circumstances and context in which it is being delivered. What is base level can differ between communities and their specific characteristics and needs, which change over time.

Mandating that only base-level infrastructure can be funded through contributions is likely to disadvantage communities as the facilities may either be overlooked and/or underused due to lack of innovation and quality or there may be a delay in their provision due to the gap-funding required to provide the facility at a level which meets community expectations.

5. Standardised benchmark costs

It is understood that the aim of setting benchmark costs for particular items is to simplify the process of contributions plan preparation. Similar to the comments above, if these standardised benchmarks are set at base level, councils will have difficulty in gap-funding the true costs of facilities over and above the costs set for standardised items.

Flexibility to allow councils to identify cases when benchmarks are not likely to provide a reasonable cost estimate is needed and supported. For instance, Council's experience in the development of open space at Westleigh for sports ovals and regional open space at Hornsby Quarry has identified significant additional costs beyond standard benchmarks. These costs are in the tens of millions of dollars and include addressing issues of contaminated lands, access and geotechnical issues such as landfilling and stabilisation.

In addition, the benchmark costs for open space do not acknowledge that these spaces are often designed and constructed for multi-purpose use. Flexibility is required to encourage consideration of best practice design in the delivery of open space which is increasingly required to cater for high use for a range of activities. Standard costs do not account for the need for open space to meet the demands of various users.

Further, the draft IPART report references requirements for more climate resilient infrastructure but does not appear to acknowledge that higher standards (and therefore costs) are likely to be required for infrastructure to withstand the climate extremes expected over their determined life cycle. Plans should not be subject to the benchmark costs or review where the contributions are below an agreed threshold amount.

The draft report notes that there is often a mismatch between when infrastructure is needed and when it is provided by councils. The report appropriately acknowledges that this is partly because infrastructure contributions are paid by developers late in the development process and councils wait to receive the money

before spending it. The recommendation to include benchmark borrowing costs to forward fund infrastructure delivery is simply a cost shifting process. Any saving to developers by the delayed payment of contributions would be offset by inclusion of the costs in a developer contributions plan. Accordingly, in acknowledgement of the cost to councils by delaying payment of development contributions, the report should recommend the continued practice of most councils to require payment of contributions prior to the issue of a construction certificate.

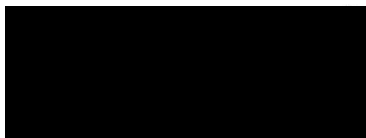
6. Process for updating the benchmark costs over time

The proposal to undertake frequent updates and reviews to maintain the currency of benchmark costings is supported should they be pursued. At a minimum, costs should be reviewed annually as current experience demonstrates that costs are escalating rapidly given restrictions in terms of supply chain and demand on resources (both human and materials) during a stimulus driven recovery. This is having a disproportionate impact on costs. Recent tenders by Hornsby Council for construction works such as the refurbishment of Galston Aquatic centre have experienced significant costs increases beyond QS estimates within a very short period and cost forecasting on scheduled works is growing rapidly beyond normal cost increases. It is also essential that any cost increases be reflected in contributions that may be levied under a contributions plan otherwise the gap between contributions and the cost of the provision of planned infrastructure will continue to increase as a financial burden on councils.

In summary, it is unclear what more certainty developers need around infrastructure contributions than the cap threshold which they are able to factor into their development costs. The draft recommendations in the IPART report appear only to reduce the flexibility available to councils who are already restrained by the cap. Councils would be unable to provide the appropriate types of infrastructure at the appropriate levels of service to cater for forecast growth within areas rezoned for higher density residential development as part of Housing Strategies to meet State Government obligations for housing provision.

I trust these comments are of assistance. Council would appreciate the opportunity for more discussions with IPART in conjunction with DPIE and its corresponding Contributions Reform Package. Should you require any clarification in relation to any of the matters raised, please do not hesitate to contact me on [REDACTED].

Yours faithfully



Steven Head
General Manager

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