

Draft LGNSW Submission to IPART Review of the Essential Works List, Nexus, Efficient Design and Benchmark Costs for Local Infrastructure

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1. Introduction

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

LGNSW welcomes the opportunity to comment on the IPART Draft Report on the Review of the Essential Works List, Nexus, Efficient Design and Benchmark Costs for Local Infrastructure (the Review).

This is a draft submission and is subject to review and approval of the LGNSW Board. Any changes will be advised at the earliest opportunity.

It is unfortunate that the timeline for delivery of the final report of the Review - 31 December, conflicts with council elections. The move into the caretaker period from 5 November has severely restricted the opportunity for elected members to review the Draft Report and provide comment. As a result, the comments provided in this and other submissions largely reflect technocratic and bureaucratic perspectives, without the full benefit of democratic review. The recommendations of the Draft Report have broad implications for councils, not the least being financial and the service standards to be delivered to communities. These are core responsibilities of the elected body of councils.

LGNSW strongly recommends that the review period be extended into 2022 so that the Draft Report may be fully considered by the new elected councils. This would be consistent with the time period granted to councils for submissions on the DPIE Infrastructure contributions reforms.

LGNSW also notes that the Minister has recently advised of a range of changes to the proposed infrastructure contributions reforms and that will also have bearing on IPART's draft decisions. Most notably, Minister Stokes has recently written to LGNSW advising that *"there will be no changes to the existing settings for the essential works list applying to section 7.11 plans. In three years we will review the settings against the Productivity Commissioner's recommendations and the implementation of the other components of the reform, in consultation with local government sector"*. [Letter from Minister Stokes - 27 October 2021 >>](#)

We understand this includes deferral of a key proposal to extend the application of the EWL to plans that currently fall within the existing caps of \$30,000 in greenfield areas and \$20,000 in other areas.

2. General Comments

The Draft Report demonstrates a notable bias towards developers, reflecting the Productivity Commissioner's Review and recommendations with undue emphasis on the need to reduce costs to developers.

This is borne out in the pervasive emphasis on minimum costs and base level standards for infrastructure and facilities, with councils required to find funding elsewhere if their communities expect a higher standard. Councils are concerned that this will lock them into second grade infrastructure. Further, more assurance will be required that contributions will incorporate:

- Whole of life costs
- Climate change mitigation and infrastructure resilience
- Changing standards including community expectations.

- Council, State and Federal policies and policy objectives such as net zero and tree canopies to reduce heat.

The implicit assumption that councils have the capacity to provide alternative funding for higher standards of infrastructure is severely misplaced and is surprising given IPART's close engagement in local government finances. IPART should be aware that most councils are under financial stress and generally do not have the capacity to provide alternative funding.

The proposed framework appears to add to the complexity of the infrastructure contributions system, particularly where councils seek to justify variations from benchmarks, which is inconsistent with the intent of the reforms to simplify the system and make it easier to understand.

There also appears to be internal conflict in the Draft Report. On one hand it presents the framework as flexible and principles based, whereas on the other, it is prescriptive in terms of the EWL and introduces a higher degree of rigidity with benchmarking.

3. Essential Works List

Community Facilities

The review has been hamstrung by the Terms of Reference set by the NSW Government which specifically exclude consideration of community facilities or any other potential additions to the Essential Works List (EWL). It was loud and clear in all of the local government consultation forums that funding for community facilities is the major issue facing councils in relation to infrastructure contributions. Councils maintain that a wider range of basic community facilities are contingent to development and should be placed on the EWL and this includes community facilities. This view is shared by the broader community who have high expectations of amenity.

The current EWL is limited to the very most basic infrastructure:

- Land and facilities for open spaces
- Land for community facilities
- Land and facilities for transport
- Land and facilities for stormwater management
- The costs of plan preparation and administration.

The obvious gap in the list is the absence of contributions for community facilities. IPART has proposed some minor improvements to the EWL but has not addressed the issue of community facilities. The proposed EWL is as follows (changes highlighted):

- Land and/or facilities for open spaces
- Land or strata space for community facilities
- Land and/ or facilities for transport
- Land and/or facilities for stormwater management
- The costs of plan preparation and administration.
- Borrowing costs to forward fund infrastructure.

Councils aim to create healthy and thriving communities by funding local facilities such as community and neighbourhood centres, halls, libraries, youth and childcare facilities. To create healthy and liveable communities, it is important for infrastructure to be in place when residents move into areas. Moreover, contemporary community expectations are that these essential services and facilities will be in place when they move into an area. When people are paying around \$1 million for a very basic home (Western and South Western Sydney median house price) they don't expect to find themselves in a cultural and community wasteland. As

community facility buildings are not included on the current EWL, local government faces significant funding shortfalls for providing community facilities causing the delivery of community facilities to lag behind population growth, often many years behind. The definition of “essential” should not be limited to what is physically necessary, it should include what is necessary for communities.

It is incongruous that land for community facilities is considered development contingent but the actual facilities are not included.

LGNSW welcomes the proposed inclusion of strata space as an alternative to land for community facilities. However, it does present an inconsistency. Strata space comes with major capital works complete (walls, floor, ceilings, services etc), it may just require a fit out to make it suitable for purpose. Community facilities are effectively being funded under the EWL in the case of strata space but cannot be funded if they are to be provided on vacant land. The solution is to simply include community facilities on the EWL.

LGNSW also welcomes the proposal to include borrowing costs on the EWL to encourage councils to forward fund infrastructure. However:

- LGNSW opposes mandating forward funding. Councils and their communities must determine borrowing policy taking into account ability to service borrowings, associated risk, existing levels of debt and debt funding priorities (councils may have higher priority assets to fund through borrowing such as infrastructure renewal backlogs).
- The provision should cover full actual borrowing costs. Council access to borrowing varies as do the interest rates they can negotiate. For example, not all councils have access to TCorp rates and may need to borrow at commercial rates. (section 4.1.3 p 23). The proposed formula would not necessarily recover actual costs as it is not based on commercial borrowing rates.

The Draft Report proposes to remove base level embellishment of open space from the EWL and would place it under nexus and efficiency assessments. This appears to be a welcome improvement as it would allow for context and local circumstances to be taken into account and provided for. The proposal is difficult to fully understand and requires further clarification.

It is noted that the final form and content of the list would be outlined in an updated Practice Note which has not been exhibited for public comment. It is therefore difficult to make definitive comment on the final form and content of the revised list. A draft of the updated Practice Note should be exhibited for review and comment before being finalised.

Councils consider it unfair that RICs, which may often exceed s7.11 plans, are not subject to the same rigour, constraints complexity and review requirements as the s7.11 plans. This is a major inconsistency and should be reconciled in IPART's final report.

S7.11 Caps

The Draft Report proposes to extend the application of the EWL to contributions plans that fall under the current caps of \$30,000 in greenfield areas and \$20,000 in other areas. This would mean that no councils would be able to include funding for community facilities in s7.11 plans exacerbating existing funding backlogs. Local government strongly opposes this proposal. Apart from the impact on the delivery of community facilities, it would unnecessarily add to the complexity of these contributions plans for councils and make the caps irrelevant. It may also result in IPART having to review more plans. (Section 4.2 p24) to ensure they do not provide for community facilities and potentially delay the finalisation of s7.11 contribution plans.

While LGNSW understands that this proposal is covered by the Minister's commitment "*there will be no changes to the existing settings for the essential works list applying to section 7.11*", it will be subject to review in three years. LGNSW requests that this ill-conceived proposal be rejected in the Final Report to help ensure it does not remain on the table in three years' time.

The current caps are so low, that they do not warrant further restrictions or IPART reviews. Plans that sit within the current caps represent a minimum reasonable contribution to infrastructure, particularly as they have not been indexed since their implementation in 2010. In effect they have significantly declined in real terms. There is a strong case for increasing the caps as well as extending the EWL. This has also been also been excluded from consideration in the Draft Report and represents another deficiency in the review.

IPART is currently only required to assess all plans that exceed the caps. The Productivity Commissioner has recommended that IPART move to assessment of plans by exception. This would usually be triggered by objections from developers. This may prove problematic for plans below the threshold. (Section 2.4 p 18) if the EWL was extended to such plans, creating a large workload for IPART and delaying the completion of plans.

The proposals also beg the question of the purpose of the caps. If plans within the caps are to be subject to the same constrictions and IPART review requirements as those that exceed the caps what purpose will the caps be serving?

LGNSW Recommendation/Requests

- That IPART recommend a further review of funding for community infrastructure.
- That the proposal to extend the strict application of the EWL to plans that fall within the caps be removed.
- That IPART recommend that s7.11 caps be increased to reflect real cost increases over the past decade and the introduction of annual indexation to capture future costs movements.

4. Nexus

Councils have long been required to demonstrate the relationship between expected development and the infrastructure proposed in a contributions plan. The nexus principle is long established and accepted. However, demonstrating nexus appears unnecessarily complicated, particularly for plans that fall within the current caps. Under such low caps, nexus should be limited to establishing a reasonable link between population growth and the facilities required to cater for growth in simple terms.

LGNSW supports the three overarching principles proposed in the Draft Report:

- That the expected development creates a demonstrable increase in the demand for public amenities and services.
- That the types of public facilities proposed in the contributions plan are required to address that demand, having regard to the characteristics, needs and preferences of the new development/population.
- That the proposed facilities consider the extent to which existing facilities have capacity to meet that demand.

It is noteworthy that the second principle refers to having regard to the characteristics, needs and preferences of the new development/population. This challenges the lower order principle that the scope of any infrastructure item included in a contributions plan should be the minimum functionality needed to meet the desired performance outcome to avoid a scope that

may be considered over engineered. It is unlikely that the new population would prefer minimum functionality base level infrastructure. Further comment on this is provided in the next section.

5. Efficient Design

Councils object to the requirement that contributions be limited to the costs of minimum effective functionality infrastructure providing base level performance. Councils want to provide infrastructure that satisfies community expectations not base level performance.

The draft IPART report (p36) notes that councils argue that in practice, they need to deliver the level of service that their communities expect. Councils consider that restricting funding to base level does not adequately compensate them for the infrastructure costs imposed by the development.

The broad view of councils is well summarised in Ryde City Council's submission: *Councils should be left to determine what base level infrastructure its community requires, based upon its needs assessments, studies and community consultation. Under existing local government reporting requirements and practices, communities have significant oversight of the design and scheduling of community infrastructure delivery. If Council can establish a demand for a facility through rigorous community consultation and studies, arbitrary practice notes and legislation should not prevent Council from raising funds for such items via s7.11.*

LGNSW strongly supports this position.

It is disappointing that IPART has deferred to the developers objective of minimising the costs of contributions plans by restricting funding to base level. While IPART agrees that councils should be able to choose to exceed the base level standard, councils would need to fund the gap from another source. This is not a viable option for most councils. Councils are already struggling with funding the maintenance and renewal backlogs for existing infrastructure and heavily reliant on infrastructure contributions to fund new infrastructure. The Office of Local Government's Your Council website shows that nearly half the councils in NSW were running on Operating Deficit and that the combined infrastructure renewal backlog of \$3.7 billion (2019-20). This does not include the backlog of new infrastructure.

LGNSW is concerned that some may hold the mistaken belief that the recent linkage of growth to the rate peg will increase council capacity to fund new infrastructure. Any additional rate revenue raised in this way will be absorbed by the additional operating costs of delivering services to the new population along with operating and maintaining the new infrastructure.

LGNSW is pleased that IPART has recognised the need for infrastructure that is resilient to climate change and that base level performance would include providing land and works that are resilient to climate change and such as bridges and access roads that are future proof (p. 39). However, it is unclear how this will work given a severely limited EWL list and the base level costing requirement.

For example, future proofing communities in some areas may involve the provision of new facilities or expanded facilities that could house evacuation and/or recovery centres. These would be designated as community facilities and are specifically excluded in the EWL. Other communities may need protection from coastal erosion in the form of sea walls or other defensive works which are also absent from the EWL and benchmarks.

Another problem is that Australian/NSW building standards typically lag the need for action. So even if councils were to factor in future proofing infrastructure it is likely to be challenged by developers on the grounds that it exceeds current base standards. Developers do not have a

long-term commitment in the future of the areas they develop so have no inherent interest in future proofing.

The draft Report is ambiguous in relation to whole of life (WoL) costs for infrastructure. On one hand the Report states that councils should not include infrastructure that has higher upfront costs even if it has lower WoL costs thereby providing better value. The reasoning being that the developer would be paying the costs of lowering a council's future maintenance costs. On the other hand it says that councils should not be compelled to use the cheapest up-front cost. LGNSW maintains that responsible councils should be seeking to achieve best value for their communities and that involves consideration of WoL costs.

LGNSW Recommendation/Requests

- That arbitrary base level minimum effective functionality costing be dropped and replaced with community determined standards.
- That IPART clarify how providing for climate change resilience and future proofing can be accommodated in the new framework given the severely restricted EWL and the imposition of base level funding.
- That IPART provide clarity and guidance on how councils reconcile achieving best value for the community (e.g. via using WoL costs) with the requirement to provide base level performance costs.

6. Benchmarking

LGNSW acknowledges that benchmarking or reference costing can be a useful tool in principle. However, they need to be applied with a high degree of flexibility to accommodate with vastly differing local circumstances. Reference should be the operative term, with benchmarks being indicative costs used only for guidance, not rigidly application. There needs to be considerable latitude to deviate from the benchmark.

Councils have expressed serious and wide-ranging concerns about the benchmarking proposals. The concerns include the Cardno standard benchmarks and the alternative process of using a site-specific costing approach where benchmarks do not provide the most accurate cost estimates.

An underlying thread of concern relates to the imposition of base level costing and the definition of base level assets, as has been discussed throughout in this submission. From a local government perspective, the benchmarks provided by Cardno are inevitably too low, as they reflect base level minimum costs. This conclusion is supported by the comments of many councils that have found that the Cardno benchmark costs fall far short of the actual costs councils are experiencing. In some instances, the actual costs being up to 2 to 3 times the Cardno benchmark cost. Comparative analysis by Ryde City council indicates that the Cardno benchmark items fall below council estimates by 8% to 86%, with an average of 40%. The analysis also found that the Cardo benchmark cost of \$2,300 per metre for a standard two lane road falls well below councils estimate of \$4,130 per metre.

Related to this is a view that the Cardno benchmarks appear to be based on greenfield developments and do not adequately reflect the costs of the type of complex infrastructure works required to support infill development. It is suggested that Cardno be requested to produce a separate set of benchmarks for infill development for review and comment.

Councils also advise that the benchmarking is missing a number of significant items and would need to be more extensive, among these items are sea and retaining walls. Other comments point out that the benchmarks do not reference all of the relevant standards, for example, the standards imposed by sporting bodies for sporting facilities.

Councils have widely responded that the benchmark does not adequately deal with project variability, citing a long list of potential variables, including terrain, geology, contamination and mining subsidence to name a few. While the provision of adjustments for complexity and project allowances are welcome, they do not appear to be adequate.

The issue of benchmarking for open space remains a subject of debate. There needs to be further consultation with local government on alternative benchmarks for open space, particularly on the suggestion to move to a per person basis rather than benchmarking individual items. (section 7.8)

LGNSW agrees that if benchmarks are to be applied it will be essential that they are updated annually to ensure price movements are captured.

Councils advise the alternative process of using a site-specific costing approach where benchmarks do not provide the most accurate cost estimates, is excessively onerous and resource intensive. It will not be a viable option for many councils and may have the unintended consequence of forcing councils to under recover infrastructure costs adding to funding shortfalls. This is not a desirable outcome for councils and communities.

The Hills Shire Council submission summarises the broader view of councils in saying that there is increased uncertainty around the time required for preparation and implementation of contribution plans, as well as the amount of administration costs involved over the life of contribution plans given the amount of technical studies, options/detailed trade-off analyses, lifecycle costs impact, expected performance outcome report, staging/timing plan, value-for-money proofs and detailed justification for any cost variances which is required. Given Councils are asked to explain even minor variations to initial costs or benchmark rates in substantial detail, Councils would likely need to front-load more studies and analyses at the start of a plan to minimise risks of cost increases over time and avoid challenges in explaining cost differences as roll-out of an infrastructure schedule progresses.

LGNSW Recommendation/Requests
<ul style="list-style-type: none"> • That IPART undertake further of consultation on benchmarking with councils. The consultation should give additional consideration to: <ul style="list-style-type: none"> ○ project variability and project allowances ○ items included in the benchmarking ○ applicable standards • That Cardno be requested to produce separate sets of benchmarks for greenfield and infill developments to inform the consultation. • That the Cardno benchmarks be tested by an independent third party. • That IPART revise the alternative process of using site specific costing with a view to reducing the complexity and evidence burden.

7. LGNSW Response to IPART Draft Recommendations

IPART Draft Decision	LGNSW Position
1. Costs included in a section 7.11 contributions plan should relate to provision of local infrastructure in one or more of the following categories: <ul style="list-style-type: none"> – land and/or facilities for open spaces – land or strata space for community facilities – land and/or facilities for transport 	<p>Not supported</p> <p>LGNSW does not accept that s7.11 contributions should be limited to these categories.</p> <p>At a minimum the EWL should be extended to include community facilities.</p>

<ul style="list-style-type: none"> – land and/or facilities for stormwater management – costs of plan preparation and administration – borrowing costs to forward fund infrastructure 	
<p>2. Costs included in a section 7.11 contributions plan should relate to provision of development contingent local infrastructure. Proposed items will be development contingent where:</p> <ul style="list-style-type: none"> – The expected development creates a demonstrable increase in the demand for public amenities and services. – The types of public facilities proposed in the contributions plan are required to address that demand. – The proposed facilities consider the extent to which existing facilities have capacity to meet that demand. 	<p>Accepted</p> <p>The concept of nexus is long established.</p> <p>However, the onus of proof requirements are considered excessive, particularly for small plans where contributions remain within the caps.</p>
<p>3. Costs included in a section 7.11 contributions plan should reflect the base level, efficient local infrastructure required to meet the identified demand. Proposed items will satisfy these requirements if:</p> <ul style="list-style-type: none"> – They deliver the minimum level of performance required to meet the identified need and comply with government regulations or guidelines and industry standards. – They provide value for money compared with the different options available for meeting the identified need, with costs and benefits considered over the life of the assets proposed. 	<p>Not supported.</p> <p>Local government is strongly opposed to the imposition of base level minimum performance costing.</p> <p>The arbitrary base level minimum effective functionality costing proposal should be dropped and replaced with community determined standards.</p>
<p>4. We will establish cost standardised benchmark scopes and base costs for the items listed in Table 7.1. Our approach will incorporate variation in the appropriate costs using base costs and adjustment factors.</p>	<p>Not supported.</p> <p>Councils are opposed to the imposition of rigid standardised benchmark costs. Councils have reported that the benchmarks provided by Cardno do not reflect actual costs experienced by councils.</p>
<p>5. We recommend project allowances to applied to base costs at the rates proposed under Table 7.3 and Table 7.4.</p>	<p>Supported in principle.</p> <p>If benchmark costs are imposed, it is essential that allowances be included. The proposed rates require further consultation with local government.</p>
<p>6. The benchmark cost for plan administration should be set at 1.5%</p>	<p>Noted.</p>

of the total value of works to be funded by local infrastructure contributions. This should cover the total costs of plan preparation, management, and administration.	This proposal maintains the current rate. However, provision should be made to allow councils to charge a higher rate where this is supported by circumstances.
7. IPART should annually update the benchmarks to account for cost escalations using the ABS Producer Price Indexes for construction in Table 8.1 and publish the escalated benchmarks on its website.	Supported If benchmarks are imposed, it is essential that benchmarks be updated annually.
8. IPART should review the set of benchmarks no less frequently than every 4 years and should carefully monitor the use of benchmarks in contributions plans to determine if an earlier review is required.	Supported If benchmarks are imposed, it is important that the set of benchmarks be updated regularly.
9. IPART should work with DPIE and councils to establish a mechanism for obtaining actual project costs to refine the benchmarks.	Supported This may help provide benchmarks that more accurately reflect actual costs.
10. We recommend that councils provide appropriate justification, consistent with the principles described in chapter 9, when using cost estimates instead of benchmarks.	Not supported. The level of evidence required to justify the use of cost estimated is considered excessively onerous in the current form.
11. We recommend that councils use either a top down or bottom up approach to estimating costs that uses the most accurate information consistent with the methods described in chapter 9.	Noted
12. We recommend all contributions plans above the threshold amounts (\$20,000 /\$30,000 per lot infill / greenfield) be reviewed every 4 years consistent with the principles outlined in Table 10.1 , with appropriate evidence to support the reviews as described above.	Noted

8. Summary of LGNSW Recommendations

Summary of LGNSW Recommendation/Requests
<p>Essential Works List</p> <ul style="list-style-type: none"> • That IPART recommend a further review of funding for community infrastructure. • That that the proposal to extend the strict application of the EWL to plans that fall within the caps be removed. • That IPART recommend that s7.11 caps be increased to reflect real cost increases over the past decade and the introduction of annual indexation to capture future costs movements. <p>Efficient Design</p> <ul style="list-style-type: none"> • That arbitrary base level minimum effective functionality costing be dropped and replaced with community determined standards.

- That IPART clarify how providing for climate change resilience and future proofing can be accommodated in the new framework given the severely restricted EWL and the imposition of base level funding.
- That IPART provide clarity and guidance on how councils reconcile achieving best value for the community (e.g. via using WoL costs) with the requirement to provide base level performance costs.

Benchmarking

- That IPART undertake further of consultation on benchmarking with councils. The consultation should give additional consideration to:
 - project variability and project allowances
 - items included in the benchmarking
 - applicable standards
- That Cardno be requested to produce separate sets of benchmarks for greenfield and infill developments to inform the consultation.
- That the Cardno benchmarks be tested by an independent third party.
- That IPART revise the alternative process of using site specific costing with a view to reducing the complexity and evidence burden.

9. Conclusion

It is regrettable that LGNSW is not in a position to support the core findings and draft decisions of IPART's Draft Report as it stands. The LGNSW submission reflects the serious concerns raised by councils. From a local government perspective, the Draft Report provides little in the way of improvement to the operation of the s.7.11 contributions system.

Instead, it presents a set of proposals that would:

- further restrict s7.11 contributions
- increase complexity
- reduce flexibility
- retain the core deficiencies in the current system
- ultimately lead to increased infrastructure funding shortfalls and under delivery of infrastructure.

LGNSW is of the view that the Draft Report needs to be comprehensively revised to address the key concerns of councils.

For further information on this submission, please contact Shaun McBride, Chief Economist, on [REDACTED] or email [REDACTED]