



10 December 2021

Carmel Donnelly

Chair, Independent Pricing and Regulatory Tribunal

By email: ipart@ipart.nsw.gov.au

Dear Ms Donnelly

Subject: Staff submission – Review of the essential works list, nexus, efficient design and benchmark costs for local infrastructure – Draft Report October 2021

Thank you for the opportunity to provide a staff submission on the Review of the essential works list, nexus, efficient design and benchmark costs for local infrastructure – Draft Report October 2021.

The New South Wales Government proposes to implement a number of mechanisms to reduce the type, quantity, and cost of facilities to be included in local infrastructure contributions plans. The cumulative effect of all proposed changes is likely to significantly reduce the contributions collected for infrastructure needed for growth, and place increased financial pressure on Council, and / or result in infrastructure shortfalls.

It is imperative that the contributions system funds all development-contingent facilities required by growth, otherwise future communities will experience an infrastructure gap at a local level. Staff support an approach that does not specify a prescribed list of facilities that can be included in contributions plans, but rather, an approach that relies on the preparation of technical studies to identify development-contingent facilities required for growth. A detailed staff response is provided in Appendix A (over page).

Facilities required as a result of growth which are not funded through development contributions will be reliant upon general funds, special rate variations, and voluntary planning agreements (VPA). All of the alternate funding mechanisms are uncertain.

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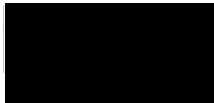
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Any additional rate revenue as a result of reforms to rate pegging will not benefit all councils. Based on the proposed reforms to rate pegging and Lake Macquarie's growth rate, Lake Macquarie City Council is not likely to gain any additional rates revenue. Further councils who do receive additional rates will likely find it absorbed with the additional operating, maintenance, and asset replacement of infrastructure associated with growth. Special rate variations are very difficult to achieve, and rely on approval by IPART which is outside the control of Council. Implementation of special rates will result in existing and new rate payers paying twice for community facilities, which is unreasonable and not an efficient and fair system. The funding of all development-contingent facilities within development contributions ensures existing and new rate payers only pay once.

Lake Macquarie City Council staff welcome further engagement on the matters raised in this submission.

Should you wish to discuss, or require further information, please contact Deborah Scott, Development Contributions Coordinator on [REDACTED] or at [REDACTED].

Yours faithfully,



Wes Hain
Manager Integrated Planning

Appendix A – Staff response to Review of the essential works list, nexus, efficient design and benchmark costs for local infrastructure – Draft Report October 2021

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

General

Council staff are generally supportive of the principle-based approach to the Essential Work list (EWL) and the efficient design and delivery framework and associated benchmarking costs. The proposed flexible approach will facilitate the delivery of essential, development-contingent infrastructure to meet the needs of growth.

Including strata space and borrowing costs in the EWL is supported.

Open Space and Recreation

It is important that the base level embellishments for open space is articulated enough to provide guidance without over-specifying and limiting Council's ability to respond to site specific characteristics and community change over time. The cost to develop a site and provide infrastructure can vary substantially. For example: additional costs may be associated with biodiversity; fill and levelling for sites that are not flat; contamination and remediation.

It appears the report's approach to open space EWL is less restrictive than the 2019 Practice Note EWL. The report's approach suggests that Council will need to articulate the need being met by the infrastructure within a contribution plan.

The open space example provided in the report states '*A council should identify a need for active open space (embellishments) for seniors rather than a need for exercise stations suitable for seniors.*' If this is being interpreted correctly, if Council's assessment of a new community is a high proportion of older adults is anticipated, the need for open space for older adults is articulated within the technical study, and works are included in a contributions plan which may include the provision of outdoor gym equipment and shared pathways through open space to service this need.

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If this interpretation is correct, then staff support defining the need or outcome delivered by the infrastructure. Similarly, if Council assessed a high proportion of youth and young families within a new community, then there would be a need to provide passive and active open space embellishment for youth and children. The work schedule may then include apportionment for sports fields, parks, playground, skate parks, BMX, and swimming pool upgrades. Based on this, the 2019 Practice Note would need to be updated allow for a broader scope of sport and recreation facilities, or perhaps remove identifying specific types of embellishments.

If the interpretation is correct that the draft report allows a much broader scope for open space embellishments than what is in the 2019 Practice Note, then it provides the flexibility needed for councils to best assess what base level embellishments are needed for incoming communities. To ensure certainty, this needs to be made clearer within the report and the 2019 Practice Note would need to be updated to reflect this.

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 colocation 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 by exception and deliver additional uses to achieve improved outcomes for a planning precinct and the wellbeing of the community; not to reduce the provision of facilities.

Community Facilities

Council staff note that IPART's Terms of Reference explicitly excludes the consideration of community facilities as part of this review.

The inclusion of strata space for community facilities within the Essential Work List is generally supported by Council staff, however, Lake Macquarie (LM) has a large amount of greenfield release area and the ability for Council to acquire strata space is often limited.

Community facilities are required to provide services for children (outside school hours care, vacation care and playgroups), youth, aged, culture, and library facilities. These facilities are development-contingent facilities, as additional facilities are not required in the absence of development. The EWL should include all community facilities capital works and not be limited to strata title. All community facilities required as a result of growth should be funded through development contributions.

The application of a service provisional level (e.g. one centre per 8,000 persons or an amount of floor area per 1,000 people) to development generates a need for additional community facilities.

Unless community facilities can be achieved via strata, the proposal does not achieve certainty that population growth will have access to base-line levels of community facilities. The proposal does not provide certainty of provision of community facilities

when provision is to be provide via expansion of existing facilities or land be levied under the contributions system. Their funding will be reliant upon general funds, special rate variations, and voluntary planning agreements (VPA), which are all uncertain. Alternate funding via VPAs is extremely unlikely. The development industry supports the removal of community centres from LICs, making an offer to fund via a VPA unlikely.

Any additional rate revenue as a result of reforms to rate pegging will be absorbed with the additional operating, maintenance, and asset replacement of infrastructure associated with growth. Special rate variations are very difficult to achieve, and rely on approval by IPART which is outside the control of Council. It is unreasonable to expect existing rate payers to pay twice, once for the current infrastructure and a second time for the additional facilities associated with growth (special rate). It is also unreasonable to expect the incoming resident to pay twice, once as their property acquisition price will not be adjusted downward to reflect the reduced development contribution, and a second time for the special rate. Including these costs within development contributions ensures existing and new rate payers only pay once.

The delivery of community centres and library facilities is extremely difficult to achieve when funding sources are uncertain.

Not delivering community facilities will not achieve a socially sustainable development, result in an under resourced community, and adversely impact core services to the community.

In its Final Report, the NSW Productivity Commission noted that the current EWL has unintended consequences in that councils are prevented from acquiring strata title property instead of land, even where strata acquisition is more cost-effective. The inclusion of strata title has the effect of funding a building. This same principle should also be applied to expansion of existing community facilities and new centres on land (which can be levied under development contributions). Only including strata prevents a council from expansion of existing community facilities which is a cost-efficient outcome for councils.

Traffic and Transportation

The proposed principles-based approach to the EWL in regards to land and/or facilities for transport is considered appropriate, however, further clarification regarding base level infrastructure is required to specify the implications on level of service (LoS), provision for all road users including pedestrians and cyclists and road safety.

2. *Is 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?*

General

The overall principles for nexus are appropriate and reasonable.

The requirement for technical studies and Council strategies to demonstrate nexus is supported, so long as, these costs can be fully recovered through the contributions system. The proposed allowances for administration costs for contributions plans will not be sufficient to fully fund both the required technical studies and other costs associated with the administration of contributions plans.

Staff support the approach that the EWL “*does not specifically include or exclude any items from a contributions plan based on a presumption regarding whether it constitutes base level infrastructure. Rather councils need to demonstrate that the infrastructure proposed is the minimum needed to meet the performance outcome based on its assessment of community needs*”. (Page 37 of the Report)

Open Space and Recreation

The provision of open space based on imposed benchmarks reflecting NSW Government policies and guidelines cannot be supported until Council has been afforded opportunity to review the detail of their content and impact.

Staff support the principle that nexus for facilities can be established for open space outside of a development precinct, and this is particularly important when it is not feasible to locate facilities within immediate proximity to development areas.

In relation to establishing nexus for open space, within Section 5.2.3 Open Space Infrastructure, the NSW Productivity Commission recommends a move towards performance-based benchmarks for open space planning, rather than the traditional 2.83 hectares for every 1,000 people. In principle Council supports this, as this is also in line with the NSW Urban Green Infrastructure Policy and the NSW Greener Places Design Guide.

The draft report does not discuss how the performance-based benchmarks will work. Experience to date is that the development industry advocates for reduction of land dedicated to parks and playing facilities and seeks to dedicate non-developable and constrained land as open space. Minimum quantitative open space guidelines are still required with clear performance-based standards to ensure full performance outcomes can be delivered.

Furthermore, the footnote within the report provides an example for greenfield areas that states ‘passive recreation areas could be on land that is also part of the stormwater management system’. This is not supported. Provision of parkland should not be encumbered

with stormwater management systems or any other uses that take away from its functionality as a park for the passive enjoyment by the community. It must be fit for purpose and not constrained land.

It is not possible to pass comment on the impact on the provision of open space land in new developments without having access to the proposed Design and Place SEPP, as it is suggested that nexus would be established for open space in a contribution plan up to these benchmarks. There will need to be further discussion and consultation in the development of this SEPP. It is suggested that representation for open space and recreation planners from Councils be included in a working group in the development of this.

Community Facilities

No details have been provided in relation to identifying a nexus for community facilities. As land for the provision of community facilities is proposed to be included in the EWL, further information or principles should be articulated as to how this nexus is to be established in order to enable Councils to include these facilities in contributions plans.

Traffic and Transportation

The approach for establishing nexus for transport infrastructure is supported. Box 5.2 notes that Council should demonstrate that each road classification is consistent with the hierarchy in the development control plan. It is considered that Council's Asset Management system and pavement management system would be more appropriate to demonstrate consistency.

- 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)?*

General

The provision and funding of facilities through development contributions should be bespoke to each council area and based on an evaluation of all of the following four indicators, rather than only a specified standard (for example: legislation or industry standard)

- **Normative** need which considers the socio-demographic profile of the area, relative social disadvantage and resultant social issues;
- **Comparative** need which considers need based on service equity and provision across the LGA, between LGAs and based on planning standards;
- **Identified** need which is based on the outcomes of consultation with residents and key stakeholders;
- **Best practice** need which considers service issues (as identified in Section 6), industry standards and new service models.

This approach will provide councils with the flexibility to consider other factors that are important in the planning for efficient infrastructure, such as the expected age demographics of the future population, the socio-economic circumstances of the population, as well as any local geographical constraints that may impact on service provision.

If the resultant level of infrastructure results in reduced contributions this reduction will not be passed on to purchasers. The cost of infrastructure above the base-level will be shifted to both the existing and new residents. Funding facilities by a special rate shifts part of the cost burden to existing residents which amounts to double dipping, as such residents have already paid for the existing facilities. Retaining these costs as part of LIC ensures that each sector of the community only pays once, because development contributions are not ultimately borne by developers, but passed on to the end purchaser.

Open Space and Recreation

The base level embellishment of open space lists a number of items that are considered necessary to bring land to a level where the site is secure and suitable for passive and active recreation. However, the benchmark cost for individual items do not appear to consider the costs associated with the base earthworks that may be required on individual sites to provide an appropriate gradient or deal with contamination issues or other limitations to then commence the benchmarked costed works. For example: land identified for sportsground development in a greenfield site may require significant land clearing, fill and earthworks to make it suitable for the intended outcome, however, the benchmark costs for a double sports field do not reflect this additional cost. Is it suggested that this will be addressed by Site Constraint adjustment factors of moderate or highly constrained. Will the rates identified in the local road worked example of 20-30% (moderate) and 30-40% (high) be used for open space embellishments?

In many instances, developers identify land that is less than suitable for open space development as they identify their high value flat land for residential development. Based on this, if the adjustment factors for constrained sites (detailed above) is not available to be applied then councils will incur the cost to make this land suitable for open space embellishments through such action such as earthworks, vegetation removal, contamination rectifications drainage improvements etc. In addition, due to the variables associated with bringing open space land to a level that is suitable for the embellishment for open space facilities, it is not believed that a generic benchmark regardless of a 20-40% constrained land adjustment factor will be suitable in all given scenarios.

Perhaps a better way to address this issue in the instance of land dedications or acquisitions from developers, is have clear performance standards that developers will need to adhere to prior to dedicating land to or acquiring by councils for open space. For example: land should be provided that is cleared of vegetation, level, free of contaminations, supply of services to property boundaries etc. This would remove the uncertainty and unknown costs associated with open space embellishment.

The requirement for suitable open space land that is appropriate for open space embellishment be provided (as described above) is essential. In regards to the open space embellishments, we believe that this should not be specific at all, as this would require the

practice note to have minimum standards for all sports and infrastructure, and types of park embellishments. It would also require constant update of the practice note to changes that occur to legislation and industry standards.

Traffic and Transportation

Further guidance would be beneficial to clarify the standard of base level infrastructure. Reference could be made to industry standards such as Austroads, Aust Standards, TfNSW technical directions and supplements, Road Safety for example: safe systems road safety auditing. Clarification is also required on aspects of transport infrastructure that do not have definitive minimum standards, for example, existing problems being exacerbated by increased usage such as crashes and level of service (LoS) required for an intersection. In terms of LOS would base level infrastructure indicate that an intersection or road operates at a satisfactory level of service? For example: LoS D from implementation or would it indicate that the LoS should be higher for a period of time prior to being at a satisfactory or minimum level e.g. LoS B at time of implementation with modelling showing that after a ten-year period the intersection would then be a LoS D or lower. Community expectations are generally higher than satisfactory as notable congestion would occur at this level. Additionally, a satisfactory level creates a situation in which the time before failure is significantly lower.

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

Open Space and Recreation

Water capture and harvesting, subsoil drainage, and other technological improvements cannot be captured using a standards approach due to the significant variability in sites, soil profiles, and the similar.

It is noted that irrigation is an excluded item in the benchmark costs for sports fields. Irrigation it is considered base level embellishment for new sportsgrounds and the costs should be included in contributions plans.

To ensure the long-term performance outcomes of a turfed sports field and to meet water sustainability targets, irrigation should be part of the minimum requirements in the development of a local sports field. Irrigation is considered one of the four essential major requirements alongside drainage, irrigation, floodlighting, and amenities building when building a new sports field.

Perimeter fencing could be included, but would require options for different fencing heights dependant on sports to be played at the location and other site-specific requirements.

What specific infrastructure does road safety relate to? Pedestrian crossing is too generic, as the facility could be a refuge, kerb extensions, crossing or signals. Various factors such as drainage, crossing distance and road width make it difficult to benchmark the cost of these items.

Given the State Government has net zero carbon emissions goal, when implementing this goal at a local level, it would be preferable to have allowances that enable sustainable design features within infrastructure that contribute to achieving this goal. This may require the provision of more expensive, or durable materials, higher construction standards, or the provision of carbon offsets.

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

Open Space and Recreation

The approach is supported with consideration to the need to ensure issues to deal with topography, contamination, and other constraint factors are available to be used for open space embellishments of 20-30% for moderately constrained sites and 30-40% for highly constrained sites. This would need to be complemented with clear performance standards that developers will need to adhere to prior to dedicating land to Councils for open space. For example: cleared of vegetation, level, free of contaminations, supply of services to property boundaries etc. This would assist with the use of the adjustment factors

Traffic

The use of adjustment factors is supported.

Some consideration should also be given to the durability of the asset (ie how long it will last), and whether there need to be performance standards and adjustment factors that enable appropriate design life for the various types of infrastructure that are subject to contributions.

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

Open Space and Recreation

Other factors could include:

- Quality of land,
- water and flooding,

- vegetation, and
- flora and fauna constraints.

Traffic

Other factors could include:

- Service constraints – for example relocation of power poles for upgrade works, and
- Unexpected contamination – for example Black slag

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

No comment provided

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

Open Space and Recreation

We do not have alternative approach for benchmarks for open space, but do agree that infill development may require a higher level of embellishment due to lack of available open space land to accommodate increased population intensification that has resulted from historical planning decisions and legislation restrictions. Consideration could be given to having a separate benchmark cost that could be applied in these specific situations, particularly with park developments, playground provision.

There is insufficient research evidence to identify a per person rate.

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?*

The costs to prepare the technical studies to evidence nexus and apportionment of works required to be funded, and the general administration costs of the contributions system is not linked to the value of the works proposed in a contributions plan. The majority of costs associated with the administration of contributions plans are fixed costs (technical studies and staff costs) regardless of the value of works in a contributions plan. If a percentage is applied and reforms to contributions result in a reduction of works included in contributions this will result in council's being required to fund a portion of the administration costs.

The reforms to contributions are not complete and the likely value of works to be included in contributions plans is uncertain, making a full assessment of the financial shortfall difficult.

The proposed contribution reforms will have a significant resourcing and system implications for councils, which include:

- Increased reporting requirements;
- Increased frequency of plan reviews including annual updates for actual costs incurred;
- Variations in indexation methodologies;
- Increase requirements to demonstrate nexus;
- Multicriteria option analysis for the selection of infrastructure; and
- Value for money and lifecycle assessments of proposed works.

The proposed 1.5% of the total value of works will not be sufficient to fund Council's actual costs. It is not appropriate for a percentage to be imposed, but rather for councils to include nominated costs with appropriate apportionment.

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

Staff are supportive of the proposed approach to escalations and the four yearly reviews of benchmarks, subject to revision of the proposed administration levy.

Council staff are of the position that the proposed approach to borrowing overcomplicates the issue of debt costs. Each Council will negotiate a rate for their borrowings, and this should form basis of the cost included in contributions plans rather than hypothetically calculated rates based on variables that may not apply to individual councils.

Council staff are not supportive of the proposed annual indexation of the benchmark costs. As the Producer Price Index is updated on a quarterly basis, Council staff strongly recommend that indexation occurs shortly following the release of the dataset. This will minimise cost escalations for Councils, especially during times of rapid price escalation for capital works as has been experienced over the last twelve months.

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.

General

Template feedback reports could be developed for reporting on individual contributions projects delivered, that include relevant fields required to allow an effective review and an efficient reporting process. This could assist in identifying differences across different regions in New South Wales, that may assist with adjustment factors.

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?

General

The proposed requirements are considered adequate to justify an alternate costing approach. In light of the increased administration burden of the reforms, the inclusion of administration costs, as discussed in response to question 9 of this submission would provide further certainty for councils and ensure that sufficient resources are allocated to the review of contribution plans.

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?

General

The principles are considered adequate, and principle six highlights the importance of ensuring accurate costs are identified initially.

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

General

The information requirements are considered appropriate.

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

General

Staff do not support the approach of setting a monetary threshold to determine which plans must be reviewed. If contributions plans have been prepared in accordance with a highly regulated process the resultant contributions rates should be considered acceptable. Further review of plans is resource intensive. Further the monetary amounts have not been indexed since 2010 and use of these amounts is not reasonable, nor reflective of increases in works costs and land costs since this time.

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

General

Staff support fixed 4 yearly reviews of contributions plans on the basis of all costs incurred for this process being fully recoverable, and plans continue to operate until their next review and are not deemed to be not operational if they are not reviewed within 4 years.

Councils should be exempted from undertaking a comprehensive review of plans once a certain percent of the plans has been completed, noting that annual updates will be required to update actual costs incurred.

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

General

Annual update and four-yearly review provide an appropriate balance between cost reflectivity and certainty.