



Submission by Liverpool City Council to the NSW Government's Infrastructure Contributions Reforms

Independent Pricing and Regulatory Tribunal

December 2021

Introduction

The NSW Government has placed its contributions reform package which includes twenty-three individual documents prepared by the Independent Pricing and Regulatory Tribunal (IPART) and the Department of Planning, Industry and Environment (DPIE) on public exhibition. This represents a significant body of work which responds to the recommendations of the NSW Productivity Commission's review into the NSW infrastructure contributions system and is intended to support the *Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021* which has yet to be passed by Parliament.

In response to the Terms of Reference issued by the NSW Government, IPART has conducted a review of the local contributions system with a focus on the essential works list, nexus, efficient design, and benchmark costs for local infrastructure. From this review IPART have developed a principles-based approach to contributions plan preparation consistent with the NSW Productivity Commission's recommendations.

Liverpool City Council has prepared this submission which responds to the eighteen questions included in IPART's draft report and notes Council's ongoing concerns regard the exclusion of community facilities from the essential works list.

This submission forms Liverpool City Council's interim "officer-endorsed" submission to meet IPART's extended submission deadline, noting that the Local Government Elections held on 4 December 2021 and the preceding Council caretaker period precludes Liverpool City Council from submitting a Council-endorsed position at this time. We propose to report this submission to the newly-elected Council in February 2022 and, subject to endorsement, will submit a further copy of this submission at that time.

Response to IPART's 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 benchmark costs, provides enough certainty? Have we got the balance right between flexibility and certainty?*

Certainty vs flexibility

IPART's report states that keeping the EWL broadly defined provides opportunities for councils to put forward innovative and cost-effective solutions to the delivery of infrastructure to support growth. However, this is a marked change from the current EWL approach where the requirements are tightly defined and certain.

The proposed broad definition of the EWL, coupled with a lack of guidance on how future "essential works" included in contributions plans will be assessed and reviewed, will not provide adequate certainty for Liverpool City Council to embark on the preparation of new contributions plans if the reforms become operational in July 2022 as intended.

Flexibility is desirable where there is clear criteria against which a decision can be made. The consideration of flexibility vs certainty is complex as the DPIE's exhibited reforms intend to introduce the following three requirements:

- The planning proposal authority is to endeavour to ensure that a draft CP is prepared in sufficient time to enable the plan to be exhibited at the same time as the planning proposal,
- Planning proposals must demonstrate the efficient use of land proposed for public open space, drainage purposes or public facilities, and
- Proposed clause 271A in the EP&A Regulation which stipulates that development cannot be approved on land unless there is a contributions plan in place, or the developer has entered into a planning agreement, or 6 months has passed since the rezoning took effect.

The provision of additional flexibility regarding the EWL, whilst having merit in-principle, has the potential to delay the contributions plan preparation process for the following reasons:

- The proposed EWL (apart from the overarching group terms) is proposed to vary according to the characteristics of the area to which the contributions plan will apply, with the expectation that Council will need to demonstrate what is essential infrastructure on a case-by-case basis. It will no longer be adequate to include infrastructure in a contributions plan because it is included in the EWL. This additional step has timing and resourcing implications for the preparation of new contributions plans, and the process is unclear.
- The proposed rigorous efficient design and benchmark costs process is uncertain as there is no published guidance on how the process should be undertaken, the review process is not clear, and responsibility for the review process has not been assigned. Will this be DPIE, IPART, an accredited professional, or some other entity?

Delays in the plan preparation process could have significant financial implications for Council as a result of the proposed clause 271A in the EP&A Regulation, as the consent authority can no longer withhold granting development consent on the basis that a contributions plan has not been adopted or a planning agreement has not been entered into, once a period of six months has elapsed

following the gazettal of the planning proposal on the land. This could result in consent being granted without the imposition of a condition of consent requiring the payment of development contributions. Whilst it is acknowledged that proposed clause 271A is a matter under DPIE's proposed reforms and is not a direct IPART matter, the proposed IPART reforms have the potential to create or exacerbate delays in the contributions plan preparation process which could result in the six month period elapsing without an adopted plan in place.

It is recommended that IPART carefully considers the relationship between flexibility and justification and the additional time and resources required to prepare this information, along with corresponding delays in preparing contributions plans. It is further recommended that IPART prepares additional explanatory information to support the implementation of the proposed changes and provide clarity and certainty for key stakeholders including Liverpool City Council and DPIE officers.

Essential works list (EWL)

Rather than removing the criteria for essential works, it is considered that IPART has sufficient knowledge of infill, brownfield and greenfield development contexts to provide guidance on what is and is not essential works in each category. Whilst the limited Terms of Reference issued to IPART are acknowledged and IPART intends to move away from a definition of essential works, this approach creates uncertainty for a number of specific types of works including public domain works, recreation centres and carparking.

Definitions for the key terms in the proposed EWL would significantly assist Liverpool City Council when preparing works schedules and scopes. For example

- In the absence of definitions, there could be ambiguity regarding what are "community facilities" compared to "recreation facilities" – the latter in many cases would be provided on open space. Removing the description of base level embellishment from the EWL has made it unclear whether facilities such as indoor recreation facilities could be included in open space and how Council needs to deal with infrastructure items contained in its current contributions plans if/when it is required to review these plans within the timeframe established under the reforms (currently proposed to be July 2024 as per the exhibition material).
- Carparking facilities were previously excluded from the EWL but it is unclear whether these could be considered "transport works" under the new EWL if, for example, Council considered that it needed to provide a new carpark in its CBD to cater for new demand due to population growth. It would still satisfy the nexus principle in these circumstances and the works could be broadly categorised as "transport works" but it is unclear that it would qualify as essential works.
- Council currently includes "streetscape" and "public domain" works in some of its s7.11 contributions plans. These include facilities and amenities designed to reduce the priority of private vehicle movements and increase the appeal of the street environment as a place for "active transport" modes (such as walking and cycling). This includes footpath widening, street trees, street furniture, street closures creating civic squares and the like. The availability of high-quality, ground-level public spaces that are within walking distance of higher density developments (which have little private open space) is important to the quality of life of residents in locations which are undergoing urban renewal.

The proposed EWL includes "land and/or facilities for transport" and "land and/or facilities for open space", however, public domain works do not fit neatly in the proposed EWL. The uncertainty about public domain works has been around for many years concerning the EWL;

previously if there was a dual use with another category of works such as transport works, it could still be considered essential, but the paper does not provide any guidance on the infrastructure categories.

- Liverpool City Council has ongoing concerns regarding the exclusion of community infrastructure from the essential works list. Liverpool has experienced sustained growth over the last thirty years and is forecast to grow by a further 140,000 people by 2041¹ which creates new demand for community infrastructure. It is critical that Council can appropriately fund the delivery of community infrastructure to meet this demand and ensure that our future communities are not disadvantaged due to NSW Government infrastructure funding policy. Whilst it is noted that the Productivity Commission's review considered community facilities to be "general costs" which are driven by population growth rather than development contingent costs linked to growth, it is unrealistic to expect Council to borrow against rates income or seek other sources of funding for this infrastructure. We request that IPART, DPIE and the NSW Government reconsider this approach

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?*

Legislative requirements regarding nexus

Advice and guidance on establishing nexus must be consistent with and provide detail to the legislative scheme.

The need to establish nexus in a contributions plan is to show:

- the circumstances that would inform a consent authority as to whether a given development 'will or is likely to require the provision of or increase the demand for public amenities and public services' (cf. s7.11 (1) EP&A Act) and enable the consent authority to impose a local infrastructure contribution; and
- that contribution rates for particular developments that are included in the plan are reasonable (cf. s7.11 (2), (4)).

In summary, the legislation establishes that s7.11 contributions must fairly relate to, and be proportionate to the demand created by, the particular development being determined.

The EP&A Regulation requires that s7.11 contributions plans demonstrate this relationship or nexus – i.e. plans are to show the relationship between the expected types of development and the demand for additional public amenities and services to meet that development. (cf. clause 27 EP&A Regulation).

IPART's reforms around nexus

IPART's advice on establishing nexus for different categories of infrastructure is high level and does not provide sufficient advice or support in how to establish nexus and how to determine the fair and reasonable apportionment of costs in infill as distinct from greenfield development circumstances and contexts. As an example, how should the costs of traffic network upgrades be shared when new development results in intersection's level of service changing from satisfactory to unsatisfactory?

¹ forecast.id - December 2021

Should the development pay for the full cost of the upgrade, as if the development did not occur and there was no increase in traffic generation, no upgrade would be required?

The exhibition material advises that the draft Design and Place State Environmental Planning Policy (SEPP) standards would most likely meet the nexus requirements for open space. However, given that the draft SEPP has yet to be released, it is not possible to substantiate this claim.

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)?*

The term "base level" is not intuitive across infrastructure categories and can be interpreted a number of different ways. For example, social infrastructure studies often recommend that multipurpose indoor recreation centres and aquatic centres be provided for a certain number of residents and it is unclear as to whether or not this will meet the definition of "base level" open space or community land requirements.

It will be useful to provide further examples of those items which IPART might consider as meeting "base level" requirements, are "borderline", or will definitely not meet the requirements regardless of the circumstances.

"Base level" will become a highly contested and unclear term now that "value for money" is also a consideration in preparing s7.11 contributions plans. Who will be the judge of what constitutes value for money essential works? For instance:

- Would the purchase and embellishment of open space (which in urban settings will be very expensive) be better value because it exists in perpetuity thus having an enduring benefit, compared to providing facilities with extra carrying capacity in existing open space?
- There are likely to be situations where providing "base level" infrastructure and value for money infrastructure is seen as competing rather than complimentary objectives. Optimising value for money over the infrastructure life cycle will in some cases mean choosing infrastructure components that are more expensive than what might be interpreted as "base level".

The following is also recommended:

- Advice as to how a council / proponent would prepare a life cycle costs assessment.
- All benchmark costs items should identify what standard the specification is based on.

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

- Single playing fields
- Synthetic fields
- Picnic shelters
- Water bubblers
- Garbage bins
- Multi-purpose outdoor courts / half courts
- Skate facility / ramp
- Larger amenities building for sports fields (100 square metres is insufficient)
- Fitness stations

- Base level water play

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

The application of adjustment factors to generate benchmarks which can be utilised for a broader range of projects may be reasonable in certain circumstances, however it would need to be appropriately justified via a supporting rationale and data.

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

Fragmented land ownership and development can add significant costs to infrastructure provision when the infrastructure is provided in a more piecemeal, ad-hoc fashion. For example, half-road construction is common in fragmented development areas, and a new road or intersection may need to be provided in stages to reflect gradually changing traffic conditions, or where temporary works are required before council has finalised the design for those works. These temporary works will need to be demolished and disposed of before site preparation can commence which reflects an additional cost that is not reflected in the initial specification of the works at the contributions plan preparation stage.

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

We have reviewed the proposed project allowances and advise that they are generally consistent with Liverpool City Council's current practices and experience.

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

Per person benchmarks can work effectively in greenfield release areas where there is no existing open space provision, therefore the rezoning and supporting contributions plan needs to provide a base level of open space provision for the future residents and community.

The difficulty with a per person open space benchmark in a local infrastructure context in existing urban areas (particularly where higher residential densities are found) is that purchasing additional land is very expensive, so councils often need to make strategic decisions for the population's open space needs which maximise the utility of existing open space areas and ensure that facilities can be provided in an affordable and sustainable manner. There can be significant variation in land availability, cost and scarcity from one local government area to the next.

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?*

Although setting the administration cost benchmark as a percentage allowance has the benefit of simplicity (1.5% of works costs), it may not be reflective of actual costs incurred by all councils. Councils incur significant costs when it comes to administering contributions plans, including negotiating land acquisitions, managing annual land valuations, negotiating Works in Kind agreements and planning agreements that include land, and updating and reviewing the contributions plans.

Whilst we do not propose an alternative percentage, we recommend that flexibility be provided to allow councils to undertake a bottom-up, evidence-based costing approach for calculating the administration costs to be included in large, complex contributions plans.

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

Examples of other types of information could include:

- Costs associated with land acquisition – Some councils need to complete initial and annual land valuations and update LVIs,
- Costs associated with negotiating, preparing and executing works in kind and planning agreements that deliver infrastructure contained in a contributions plan, and
- Reporting requirements – councils will also have to dedicate a significant amount of time and resources to meet additional annual reporting required under the contributions system.
- IPART requires councils to provide significant amounts of information when amending a contributions plan, particularly where costs are being updated. The time taken and resources required to meet these requirements is yet to be seen but is anticipated that it will add significant expense to a plan’s administration costs

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

The proposed indices for benchmark costs item escalation are inconsistent with the draft EP&A Regulation which proposes that all works costs in contributions plans be adjusted annually with the Producer Price Index Road and Bridge Construction index only.

Liverpool City Council’s experience has been that cost escalation in capital projects undertaken has been greater than the Road and Bridge PPI. Councils usually index costs in accordance with the CPI in accordance with traditional practice. A move to index all costs to the Road and Bridge PPI represents only a minor improvement in the indexation rate when compared to the 5- and 10-year average annual movement in Sydney CPI, as shown in the following table.

Table 1 – changes in indexation rates over a 5 to 10 year period

Average annual movement in index	3020 Non-residential building construction NSW	3101 Road and bridge construction NSW	Sydney (All Groups) CPI comparison
Last 5 years	2.53%	1.87%	1.71%
Last 10 years	2.10%	2.31%	1.91%

Source: Australian Bureau of Statistics

We also note that the Road and Bridge PPI has moved at a lower rate than the PPI Non-Residential Building Construction Index over the last 5 years, which Cardno has recommended be applied to open space benchmark costs. Open space and recreation works often make up a significant portion of total works costs in Liverpool City Council’s current s7.11 plans.

A single PPI (Road and Bridge) as recommended by the Productivity Commission has the benefit of simplicity, which will be an important consideration if land costs are already to be indexed by a separate index in a plan.

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.

IPART should conduct annual targeted consultations with developers and councils about the performance and relevance of the benchmark costs and seek documentary evidence of these costs.

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?

The complex requirements proposed by IPART will require councils to employ in-house staff and/or engage consultants with experience in cost planning of engineering works.

The requirement for all s7.11 contributions plans to justify the basis for any variation to the scope and cost of works included in the benchmark cost list through documented evidence such as an options analysis, supporting investigation reports, and to provide evidence that the estimate has been reviewed (if initially prepared internally), or prepared by, a proficient independent third party² will be highly resource intensive for arguably little gain.

DPIE's proposed best practice approach to the preparation of contributions plans is to have plans prepared and exhibited at the same time as the planning proposal or soon after. The governance arrangements / information requirements for councils using alternative costing approaches are considered excessive and will add a significant amount of time to the preparation of contributions plans and will potentially impact a council's ability to exhibit a draft plan alongside a planning proposal.

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?

The use of the word "material" to describe a change which may then require certain actions to be undertaken is considered too ambiguous. As an example, in Table 10.1. Principle 3 of IPART's report, an explanation or context should be provided to clarify what IPART considers to be a "material impact", whether a percentage increase, or meeting certain criteria.

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

The following information requirement on page 70 is poorly worded and difficult to understand:

2. How the components of their cost estimates and actual costs relate to the components of benchmark costs that were originally used (e.g., direct costs, share of overheads, any contingencies), ensuring that delivery of non-base level infrastructure, or inefficient procurement or delivery has not been included in actual costs used for updates

² Cardno (NSW/ACT) Pty Ltd (2021) Draft Benchmarking Items and Costing Methodology - Benchmark Costs for Local Infrastructure, prepared for IPART 27 October 2021, page 16

The information requirements 1-6 supporting the plan review principles are considered excessive if these are intended to apply to every review of a s7.11 contributions plan. It will add further detail to an already lengthy document.

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

The requirement that plans which exceed a \$20,000/lot infill and \$30,000/lot greenfield threshold be reviewed every 4 years is considered reasonable, as this means that councils with low-value contributions plans do not necessarily need to review their plans as regularly as higher-value plans.

This approach could benefit rural and regional councils who often have smaller value contributions plans and limited resources to undertake reviews each four years.

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

The proposed 4 year review period is generally considered reasonable, however flexibility should be provided to allow councils to review plans more regularly as local circumstances dictate.

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

Yes, where it is required. As previously mentioned, it may be difficult or unnecessary for councils with plans covering low growth areas to conduct comprehensive reviews of these contributions plans every 4 years.

Review of IPART's benchmark costs

The inclusion of accurate works costs in a contributions plan is essential to ensuring that:

- The works schedules are robust and the council levies appropriate contributions on development,
- Liverpool City Council will collect enough contributions across the life of the plan to deliver the works, and
- If developers deliver infrastructure identified in the plan via works in kind or planning agreements, the credit provided for delivering the works are generally reflective of the actual costs of delivering the works.

It is therefore essential that IPART's proposed benchmark costs are accurate and reflect real-world costs of delivering infrastructure.

Liverpool City Council has undertaken a high-level review of IPART's document titled *Draft Benchmarking Items and Costing Methodology - Benchmark Costs for Local Infrastructure* which was prepared by Cardno (NSW/ACT) Pty Ltd on behalf of IPART and the outcomes are summarised in Table 2 below. The review has compared the proposed IPART benchmark costs to recent examples of infrastructure delivered by Council or where Council has received pricing information for work delivered by developers in the Liverpool LGA.

We have identified that the majority of IPART's proposed benchmark costs are within an acceptable range of variance from Liverpool City Council's rates. However, we highlight the following infrastructure items where the variation is significant enough that Council would be unable to use the benchmark rates as the contributions plan might otherwise collect insufficient funds to deliver the infrastructure:

- Council's gross pollutant trap costs are consistently above the proposed benchmark cost range of \$35,000 to \$150,000
- Council's double playing fields have cost \$800,000 each compared to the proposed benchmark cost of \$550,000
- Playgrounds have cost over \$50,000 each compared to the proposed benchmark cost of \$20,000 to \$25,000
- Combined basin and raingarden facilities have cost \$460/m² compared to the proposed benchmark cost of \$270/m²

It is understood that under the proposed reforms, Liverpool City Council can seek to deviate from the IPART benchmark costs by providing sufficient justification and demonstrating how Council has addressed key elements of the proposed reforms which include efficient design, justification of the proposed "base level" embellishment, and life cycle costs. However, as outlined in this submission, there is a lack of certainty about how these processes will occur, the resourcing required (both financial and staff) to undertake this work, and the additional time that this work will add to the contributions plan preparation process. It is therefore important that the benchmark costs are as accurate as possible.

Liverpool City Council officers would welcome the opportunity to discuss our findings with IPART.

Table 2 – comparison of IPART benchmark costs and Council costs

Items	IPART Benchmark cost	Available Council Rates	Comments
Concrete Shared Path	\$150/sqm.	\$120/sqm	Ok
Bus Shelter	\$30K/each	\$25K to \$30K/each	Ok
Street lighting	\$12K	\$15K to \$20K	Council's replacement rate is higher in built up areas but this is ok as Greenfield situation.
Stormwater pipes			Different pipes sizes unit rates are in consistent with Council rates.
Gross pollutant trap	\$35K to \$150K	>\$150K	Council rates are higher
Amenity block	\$2,500/sqm	\$2,000 to \$3,000	Ok
BBQ	\$12k to \$15K	\$10K to \$15K	Ok
Boundary Fencing	\$200/m	average \$168/m	Ok
Carpark	\$278/m ²	\$125/m ²	Ok
Practice Cricket nets (3-bay)	\$79K/Each	\$45K/each	Ok
Double playing fields	\$550K/each	\$800K/each	Ref: Council's Cirillo Reserve
Double playing lighting 100 Lux	\$165K/each	\$155K/each	Ref: Council's Cirillo Reserve
Planting; mature tree (100ltr)	\$300/each	\$360/each	Ref: Council's Cirillo Reserve
Paved area/m ²			IPART rates are comparable with Council existing rates.
Fixed table	\$5K/each	average \$3K/each	
Playground	\$20 to 25K	>\$50K	Although it depends on Playground design/model, but rate seems low, softfall unit rate is comparable.
Shade sail	\$350/sqm	\$480/sqm	Ref: Council's Cirillo Reserve
GPT Unit	\$35K to \$150K	>\$150K	\$205K/unit for Basin 6 tender.
Combined basin and raingarden facility	\$270/m ²	\$ 460/m ²	Ref: Basin 6 tender.
Single raingarden facility	\$5,200 each	\$125/m ²	Ref: Basin 6 tender.
Bio retention basin	\$220/m ²	\$235/m ²	Ref: Basin 6 tender (includes retaining walls).
Wetland basin	\$130/m ²	\$155/m ²	Ref: Basin 6 tender (includes retaining walls).

Source – Liverpool City Council