

10 December 2021

Our Ref: 21/353879
Our Contact: [REDACTED]



Bayside Council

Serving Our Community

Ms Carmel Donnelly
Chair, Independent Pricing and Regulatory Tribunal
PO Box K35
HAYMARKET POST SHOP NSW 1240

Dear Ms Donnelly

Review of the essential works list, nexus, efficient design and benchmark costs for local infrastructure

I appreciate the opportunity to comment on these concurrent reviews by IPART and the Department of Planning, Industry and Environment (DPIE) and reiterate our willingness to be further engaged with the process of reforming the NSW contributions system. A submission is attached for your consideration.

Bayside Council has raised important questions through several submissions as part of the reform process and many of them are reiterated in the attached submission. One of the issues with the highest potential to impact our local community remains unresolved, being the exclusion of community facilities from the Essential Works List for s.7.11 plans. It is noted that the implementation of the EWL is proposed to be deferred, however, without certainty about the EWL, it is difficult for Council to estimate the full impact of the reforms.

We support the Productivity Commission's recommendation that site specific solutions are needed to accommodate the diverse needs of communities and that a principles-based approach is required to achieve a more flexible, simple, robust and transparent system. However, we believe that the draft report and the parameters of the review still require further adjustments to achieve that.

On 12/08/2021, Bayside Council made a submission with regard to the IPART review of the inclusion of population growth factor as part of the Local Government Rate Peg. The attached submission was approved at our Council meeting on 11 August 2021 and is submitted for your consideration.

If you require further information please do not hesitate to contact me on [REDACTED] or the Council Officer above.

Yours sincerely

[REDACTED]

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**Review of the essential
works list, nexus, efficient
design and benchmark costs
for local infrastructure
Draft Submission**

10 December 2021



Introduction

The context of Bayside

The Bayside Local Government Area (LGA) has seen consistent strong growth in residential development, employment activities related to the port and airport, and increasing freight activity through the vital road and rail corridors that are contained within the LGA with significant impact on adjoining residential areas.

Our urban renewal areas generally comprise large former industrial lots which have been rezoned to deliver high-yield development. Council faces challenges in this context to acquire appropriate land or negotiate appropriate infrastructure outcomes in a competitive developer market. Redevelopment may occur in unpredictable sequencing within renewal areas and take more than 20-30 years to be fully realised.

The delivery of facilities in our area involves high construction costs, and complexity associated with the removal of old infrastructure, constraints associated with the airport, historical land contamination, flooding, ageing and crowded infrastructure, difficult soil conditions, and the need for disruptive work to occur at night and on weekends. That is a very different scenario compared to greenfield and other brownfield areas in NSW.

As demonstrated in our previous submissions:

- the gap between actual infrastructure costs in Bayside and what can be charged per dwelling has grown significantly in a capped system that not been adjusted for over a decade;
- the rate peg reforms will barely cater for basic services (excluding infrastructure) for our rapidly growing population, even with the current partial special rate variation to assist with a significant backlog in renewals;
- suggested funding alternatives to fund gaps for the delivery of new infrastructure are either not suitable to the context of Bayside or will not be accepted by our community.

As such, Bayside Council will be significantly impacted by any loss of flexibility and additional prescriptive arrangements and constraints being brought by the reforms.

Structure of this submission and key matters of concern

Bayside Council supports reform of the contributions system and is willing to provide feedback based on our experience and knowledge of the unique context of our local government area. We have provided comments on the 'List of issues' as requested.

Key matters of concern are listed below and explored further in the submission:

- 1 The approach undertaken by the review**
- 2 The 'List of issues'**
- 3 Other information on benchmark costs**
- 4 The review process and integration with the process of the reforms**

1 The approach undertaken by the review

1.1 Assumptions and approach

Our review has identified that there is inconsistency in some of the assumptions underpinning the review.

1.2 The proposed approach is not a principles-based approach and may not result in more flexible outcomes

The NSW Productivity Commission recognised that infrastructure projects and community needs are diverse and that complex site/project-specific solutions are needed, and therefore recommended that a new 'principles-based' approach is required to achieve a more flexible, simple and transparent system.

By definition, a principles-based approach sets principles that specify an 'intention', rather than setting prescriptive rules about how the 'intention' must be realised. Such approaches are commonly applied and further encouraged across the NSW planning system to allow flexibility and ensure any different solutions to realise the 'intention' are not automatically excluded but consistently and fairly assessed on its merits.

The current and proposed approaches for assessing '*what infrastructure can be included in a contributions plan and at what cost*' are as follows:

Current	Proposed in current report
<ol style="list-style-type: none"><i>1. The public amenities and public services in the plan are on the essential works list as identified within this Practice Note</i><i>2. The proposed public amenities and public services are reasonable in terms of nexus (the connection between development and the demand created)</i><i>3. The proposed development contribution is based on a reasonable estimate of the cost of the proposed public amenities and public services</i><i>4. The proposed public amenities and public services can be provided within a reasonable timeframe</i><i>5. The proposed development contribution is based on a reasonable apportionment between: - existing demand and new demand for the public amenities and public services; and - different types of development that generate new demand for the public amenities and public services (e.g. between different types of residential development such as detached dwellings and multi-unit dwellings, and between different land uses such as residential, commercial and industrial)</i>	<ol style="list-style-type: none"><i>1. The items included in the contributions plan must be on the essential works list.</i><i>2. The items must be development contingent.</i><i>3. The costs in the plan must be based on the cost of base level infrastructure that meets efficient design and delivery principles.</i><i>4. If there is a relevant benchmark cost, that should be used unless it would not be reasonable to do so.</i><i>5. Where a benchmark is not used, the council should apply the costing approach outlined in our report.</i>

The five overarching requirements above are what ultimately define what the outcomes of this review will be in practice.

However IPART has retained a rule-based approach instead of adopting a principles-based approach. This means that the decision about levels of flexibility in the system will be made by DPIE. For example, as no principles are being provided by IPART for assessing what could qualify as essential works, the impact to councils will be determined solely by how DPIE decides to implement the Essential Works List – whereas it is our understanding that the purpose of this review was to have such contentious issues resolved by an independent body.

For example, with the approach proposed by IPART, even if it can be fully demonstrated that certain works (community facilities or any others):

- meet all the principles for nexus, efficient design, or development contingency and;
- would achieve all the objectives of a contributions plan, strategic plans and all other applicable objectives,

it will still not be possible for those works to be funded through that contributions plan.

This would not be considered an acceptable principles-based approach for any other components of the NSW planning framework. In the example, a principles-based approach would, as a minimum, define 'essential works principles' that allow any item to be assessed as being an essential work based on its merits. Generally, requiring compliance with fixed lists or numeric parameters or including the word 'must' – i.e. preventing alternatives from being appropriately assessed – would not qualify as principles-based.

1.3 Proposed approach may increase current deficit in contributions income and create new obstacles for infrastructure delivery

The proposal to require that "*any items included in the contributions plan must be on the essential works list*" will result in development contingent works that are not on the EWL to be excluded from contribution plans. This is a particularly concerning issue as currently this would mean that community facilities that are required to serve the new community cannot be funded.

By excluding items previously able to be included in S7.11 plans, Council will need to fund them through other sources. If community facilities were funded through a S7.12 levy, the funding shortfall would be increased by \$5000 per dwelling due to the S7.12 cap of \$15,000. If council cannot raise the funds, the new community will go without the facility. For example in the case of Bayside where our LSPS predicts population growth that will require more than 28,000 new dwellings, this shortfall of \$5,000 equates to a loss of \$140 million in funding over a 20 year period.

Our initial modelling, which we will refine post submission, suggests rates would need to increase by \$100 per rate payer per year to make up the shortfall. This estimate excludes escalation of construction costs, the costs associated with renewals, programs associated with community facilities or indexing. This is an enormous increase that our community will not tolerate when it is directly associated with subsidising new development. Not providing new facilities will impact existing facilities and increase maintenance and renewal costs.

Other components of the reforms will further create barriers and impede council's ability to deliver timely infrastructure such as: - permanently delaying the receipt of contributions from large developments until occupation, which disproportionately impacts councils such as Bayside; and - the additional costs, resources and time required by the additional plan making, reviewing, reporting and payment verification requirements. Increased administration cost consumes funds that would otherwise be spent on infrastructure.

The above issues will further increase the current gap and backlog between the actual cost of facilities and contributions income received by council resulting from a rigidly capped system that does not reflect the actual cost of delivering infrastructure in Bayside.

1.4 Impacts of the changes cannot be mitigated by existing and proposed alternative mechanisms

As discussed above, the proposed approach for consideration of items does not increase flexibility in comparison to the current approach. A conclusion should not be made that such approach is “*flexible enough to be applied to all contributions plans*” as it may exclude works that have merit to be funded through contributions, and council will be left with no other options to fund works through other mechanisms.

The assumption that funding for such works can “*be obtained through other mechanisms rather than developer contributions such as voluntary funding agreements, special rate variations*” needs to be revised. Special rate variations (SRV) will shift the cost from the profits of developments and the incoming community to the existing community. At Bayside a SRV is already applied to part of the LGA to help address the backlog of asset renewals, and attempts to expand the application of the SRV have not been successful.

Similarly, Council acknowledges the need for the rate peg reform and the revenue this will bring, however, modelling has shown that even with the proposed rate reforms it could take over two decades for the average rate per capita to be relative to the average operating costs per capita in relation to the existing population. This means there will still be a shortfall for years with no capacity to fund new infrastructure.

There is also an increasing gap between actual cost of facilities and contributions income. Using contributions funds to pay interest would have the effect of increasing the shortfall by increasing the total cost of infrastructure, and Councils’ ability to generate income is restricted by the caps proposed in s7.12.

2 The ‘List of issues’ for comment

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?

It is agreed that base level embellishment is context specific as different areas require various levels of investment to create what is appropriate for the particular community and the level of use anticipated. When referring to open space it is stated that the “framework needs to be flexible enough to cater for changing views about what is essential infrastructure over time.” This principle should apply to community facilities.

The building of and fit out of community facilities should be included. Not allowing for community facilities to be funded by contributions when there is a clear nexus reduces flexibility and certainty around the provision for the new community.

The inclusion of strata space for community facilities is supported.

The principles of “certainty, efficiency, simplify and certainty” are supported, however, we suggest the inclusion of equity as a principle. By equity we mean fairness to the existing population as well the incoming community and developers. The principle that existing populations should not pay for facilities demanded by the incoming population and that current rates of provision should be maintained and should be included in the principles that guide decisions on the EWL. Therefore, it should be mandatory to include construction and embellishment of community facilities.

2.1 *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?*

Council considers that establishing nexus for infrastructure in a contribution plan is appropriate and reasonable. Council has always demonstrated 'causal nexus' in selecting facilities to be provided and apportioning costs where there might be some sharing with the existing population.

Councils have a sound understanding of what the community demands as evidenced by the usage of the facilities provided, requests, complaints and evidence-based strategies. Council undertakes investigations using evidence based approaches to understand the needs of our communities. However, development contributions are insufficient to cover all demand, so the existing community will continue to subsidise the incoming population. Councils should be given discretion to ensure that facilities of highest need are prioritised and implemented to service the areas of greatest need rather than be subjected to overly prescriptive direction.

Apportionment is a significant barrier to councils' ability to deliver infrastructure, particularly in infill areas. In most cases in infill areas, the existing population has already contributed significantly by acquiring land or by building base infrastructure. This contribution by the existing community should be recognised when apportionment is considered. Land can be purchased using developer contribution funds and frequently is in greenfield areas. Taking land already purchased into account in the apportionment equation when considering embellishment projects to increase existing capacity is therefore not at odds with the current construct of contributions legislation.

The threshold for s7.11 for brownfields councils should equal that of greenfield councils due to reasons associated with the relatively higher cost to deliver infrastructure. In the case of Bayside these cost are higher due to factors including:

- Complex existing infrastructure, often built in the nineteenth century that is not suited for contemporary residential areas
- the impacts of adjacent major infrastructure associated with the port and airport which generate demand on our facilities but in the case of the port (a substantial landholding) are exempt from paying contributions
- Complex construction around old utilities, critical infrastructure, congestion of all types that require traffic management, night works, fast tracking, high water table, contamination, acid sulphate soils and heritage implications.

One reason why contributions in some greenfield areas are \$70,000 per dwelling compared to \$20,000 in Bayside is because they include the cost of acquiring land as well as embellishment. This is a further reason why land already purchased by the community should be taken into account in apportionment in infill areas.

2.2 *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)?*

Guidance on principles on how to assess what is not base level would be helpful to councils. The standard of base level has continued to expand and change with

technologies over time. Modern technologies may be considered above base level today so it is important to limit over prescription and encourage innovation.

The community's view of what is base level is also different across LGAs as a reflection of what is most useful to and valued by them. This is influenced by cultural background, age and other factors. Base level is also influenced by the intensity of use. What might be acceptable in a suburban park may not be suitable in a high density renewal area where the space is used by more people more frequently.

2.3 *Are there other items that we should consider benchmarking?*

The list of benchmarked items do not align with the type of projects we require in Bayside. We suggest adding the below items to the list:

Transport:

- On-street parking areas
- Median strips
- Traffic islands/chicanes
- Pedestrian refuges
- Fencing
- Guardrail
- Raised crossings
- Speedhumps
- Traffic calming
- General line marking and signposting
- Accessibility improvements (structures) ramps, stairs
- Bicycle facilities including end of trip facilities such as storage cages, racks etc

Stormwater:

- Backflow prevention

Open space:

- Fitness stations
- Non-turf court/field

Foreshore works:

- Beach access
- Wharves
- Jetties and pontoons
- Boat ramps & small craft launching facilities
- Accessibility improvements (structures)- ramps, stairs
- Sea walls/revetment

We have reviewed the benchmarks against recent projects and they appear to be closer for small scale projects but on larger scale projects the costs seem to be substantially below known actual project costs by more than 20%. The estimates also do not reflect the desired longer asset life for our projects and this will in turn increases the burden on existing communities when it comes to maintenance and renewal.

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

The allowances should also consider the long lead times involved in delivering facilities that require piecemeal acquisition of land. Contribution plans may have a life of 10 or more years, with some facilities only able to be delivered after all contributions have been received. Some allowance for price escalation is needed to reflect price rises associated with materials shortages or changes in manufacturing practices and other unknown factors.

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

In preparing benchmarking costs there needs to be consideration that construction in brown field areas is complex and expensive, as outlined under 2.1 above. This is different to the unexpected costs covered by contingencies. These are the expected additional costs of working in built-up areas that should be included in benchmarks, with contingencies in addition.

Materials shortages occasionally inflate prices. For example, shipping during covid, shortages due to limited manufacturing or world markets impacting steel, or environmental factors impacting timbers can unexpectedly increase the price of construction. It is also noted that Bayside is a coastal environment which, increases environmental sensitivities, considerations and costs resulting from needing to use more robust materials.

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

The recognition of project management costs, design and contingencies is welcomed and appear to be reasonable. Project allowances need to be generous to allow for change. Benchmark costs should ensure that the existing population is not obliged to fund cost over-runs.

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

A target for open space delivery would provide clarity and justification for acquisitions. The benchmark could also be applied to Planning Proposals with proponents asked to identify acquisitions to satisfy the demand their proposal creates.

Identifying parcels to be acquired in a contribution plan deprives council of the competitive tension needed to negotiate acquisitions. Flexibility is needed to acquire open space in today's market based on opportunities as they arise and timing of development.

Ideally the benchmark would reflect current rates of provision. The benchmark also needs to relate to the density of the local area. Areas with lots of high density development with little or no private open space need more public open space. A detached dwelling with a yard has room for pets, vegetable growing, DIY projects, social gatherings and the like. Apartment dwellers need more public open space, or alternatively open space of a higher standard or with more inclusions, and more community facilities to service these needs.

The per person benchmark is interesting and Bayside would be interested to understand more about this approach. Bayside has not investigated this methodology to estimate the cost of infrastructure but would be keen to test draft benchmarks.

2.8 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?

Bayside Council considers that administration costs will rise with the more frequent requirements for review, the introduction of reactive contribution plans associated with proponent led planning proposals and other changes. Council considers that 3% should be made the default rate before approval need to be sought from another body.

The proposed DPIE reforms will add extra administration costs, including:

- extra reporting and accounting.
- more frequent review of plans due to Planning Proposals.
- Potential for legal costs of enforcement associated with delaying payment to Occupation Certificate.

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

No suggestions at this stage.

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

Council supports the proposed approach. Reviewed benchmark costs annually will serve to monitor the actual cost of facilities provision and will be a valuable tool for council. The use of indexing carries forward any initial mistakes and has not kept up with the markets.

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

Councils could provide input to refine the benchmarks over time.

2.12 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?

Testing of the benchmark costs against delivered projects will identify shortfalls and it is important that the costs are well itemised and described to serve a range of projects. The ability to use the benchmarks with degrees of contingency in the early stages with the option to switch to fully costed estimates as they become available is useful. The success of the benchmarks will need to be tested but Bayside Council has extensive experience and is confident in its ability to estimate project costs with comments on concerns above.

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

Council supports the principles, however, this approach may be onerous to manage substantial contribution plans.

Principles should include equity between the incoming population and the existing population. Current rates of provision should be maintained without burdening the existing population and the contribution of the existing community, including land, should be recognised.

Council agrees that no development should overpay, however, a mechanism to ensure councils are not left with a gap from development underpaying is desirable. The current concept of apportionment is becoming less flexible and will create barriers for delivery where the existing community has already contributed their share.

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

Agree with evidence required.

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

Not supported. Bayside Council believes that the threshold should be increased from \$20k to at least \$30k for brownfield councils. The cap has not been increased for over a decade and has not kept pace with the cost of construction and project delivery. It is important that the thresholds are indexed to keep pace with the cost of delivering projects. We recommend that the caps/thresholds are indexed using PPI in alignment with the infrastructure to be delivered.

The requirement to exhibit a contribution plan with each planning proposal means that plans will be under regular review or we will have multiple plans in place making administration of these plans difficult. In our LGA we receive about 4 planning proposals per year, which will likely trigger the review of existing contribution plans to include the new impacts of planning proposals.

Mandatory Plan review should be by the published life of the contribution plan.

2.16 *Do you support our proposal for a fixed 4 yearly review of contributions plans?*

The suggested timing for review is prescriptive and numeric and does not take into consideration the requirements under the Local Government Act and the Environmental Planning and Assessment Act.

Ideally plan review should have alignment with important foundation documents such as the Community Strategic Plan and the Local Strategic Planning Statement rather than be prescribed as 4 years. A timeframe of 4 years to a maximum of 6 years to allow time to consider the release of new census data and to be aligned with the reviews of Council strategies such for housing, social infrastructure, employment and local transport that define the infrastructure needs beyond population growth is suggested as a more manageable timeframe. This timeframe is applied to other agencies such as energy and water authorities, and is more workable than 4 years as a maximum.

The regular reviews offer councils benefits such as a more reflective benchmark and the ability to include significant changes that may have occurred from planning proposals, however, providing a longer timeframe gives council flexibility to ensure strategic alignment. This review period may require an Administration Levy benchmark higher than 1.5% as more resource will be needed for plan revision.

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

The proposed methodology for updates and reviews is an appropriate balance but as previously noted Council would like flexibility on the timing of the formal review so that other factors such as alignment with strategies can be considered as part of the formal review process.

3 Other information on benchmark costs

Preliminary comments are provided below on the 'Typical scopes and benchmark costs of local infrastructure' made available later in the exhibition period. Feedback is being provided on the understanding that there will be further opportunities to comment.

1.01 - 1.05: New roads, various

- The baseline assumption of benchmark rates for new roads is that they are constructed in greenfield areas. Constraint factors apply for moderate and highly constrained sites.
- The benchmarking does not give any consideration to the following aspects that are likely with brownfield development:
 - Flood Risk Management Studies and Plans, influencing additional costs applicable for resolving complex flooding and /or overland flow requirements.
 - Cut and fill exceeding 500mm, influencing additional costs applicable for managing elevation change between the road and adjoining land, and introducing additional infrastructure such as retaining walls and other earth retaining structures.
 - Planning instruments that dictate specific finished road levels. Also, Flood Risk Management Studies and Plans may also require specific finished road level requirements.
 - Additional costs associated with traffic control.

1.06: New road, rural

Not applicable to Bayside Council.

1.07 - 1.08: Upgrade roads, various

- The baseline assumption of benchmarks for road upgrades is unworkable in practice for any Council in urban areas.
- The set of assumptions are completely unrealistic. In addition to the issues raised with new roads, roads upgrades have these additional issues:
 - Managing the interface to existing property.

- The significant understatement of the risks associated with existing utilities. Whilst it may be feasible to relocate overhead services in brownfield developments, the costs are significant. In brownfield developments, the feasibility of relocating underground services is extremely low, or cost prohibitive. Road upgrade, and particularly road widening, in brownfield urban areas must adapt underground services into the design, which are costs that cannot be benchmarked.
- There is also no consideration given to the requirement for road widening in urban areas to obtain land acquisition for the purposes of road widening.

1.14: Roundabouts

- The baseline assumption of benchmark rates for roundabouts is greenfield only. Constraint factors apply for moderate and highly constrained sites.
- The benchmarking does not give any consideration to the following aspects that are likely with brownfield development:
 - The rate is for the installation of the roundabout, and does not provide for adjustments to the road and/or drainage.
 - Traffic control of existing traffic whilst the roundabout is under construction.
 - A recently constructed roundabout at an existing local intersection had a total project cost of \$84k, which is well above the factored cost.

1.16: Footpath

- The baseline assumption of benchmark rates for footpaths is greenfield only. Constraint factors apply for moderate and highly constrained sites.
- The benchmark rate appears reasonable in minimal or moderately constrained areas. However, the highly constrained location would not likely factor the following issues:
 - Managing the interface to existing business and services.
 - Utilities
 - Traffic control

1.19: Road bridge

- The baseline assumption of benchmarks rates for new road bridge is that they are constructed in greenfield areas. Constraint factors apply for moderate and highly constrained sites.
- The benchmarking does not give any consideration to the following aspects that are likely with brownfield development:
 - Flood Risk Management Studies and Plans, requiring specific finished road level requirements, or influencing additional costs applicable for resolving complex flooding and /or overland flow requirements.
 - Managing elevation change between the road and adjoining land, and introducing additional infrastructure such as retaining walls and other earth retaining structures.
 - Additional costs associated with traffic control.
 - Managing the interface to existing property.
 - The significant understatement of the risks associated with existing utilities.
 - There is also no consideration given to the requirement for land acquisition for the purposes of the bridge.

- Construction of foundations within an active waterway, including costs associated with waterway diversions

1.20: Cycleway / pedestrian bridge

- The baseline assumption of benchmark rates for new cycleway / pedestrian bridge is that they are constructed in greenfield areas. Constraint factors apply for moderate and highly constrained sites.
- The benchmarking does not give any consideration to the following aspects that are likely with brownfield development:
 - Flood Risk Management Studies and Plans, requiring specific finished bridge level requirements.
 - Raising bridges above the design flood level will reduce the scale and cost of the foundations, and reduce flood implication to adjoining property, however, will inversely increase the cost of the associated approach structures to achieve the design level.
 - Low level bridges below the design flood level will reduce the scale of associated approach structures, however these bridges may increase flood hazard (in existing urban environments) and/or inversely increase the costs of foundations required to withstand design loads from design flood velocity.
 - Additional costs associated with traffic control.
 - Managing the interface to existing property.
 - The significant understatement of the risks associated with existing utilities.
 - There is also no consideration given to the requirement for land acquisition for the purposes of the bridge.
 - Constraint factors are insufficient in benchmarking costs associated with the construction of foundations within an active waterway, including costs associated with waterway diversions, coffer dams, sheet piling etc.

1.23: Bus shelter

- The baseline assumption of benchmark rates for bus shelters is greenfield only. Constraint factors apply for moderate and highly constrained sites.
- The benchmark rate appears reasonable in minimal or moderate constrained areas. However the highly constrained location would not likely factor the following issues:
 - Managing the interface to existing business and services.
 - Utilities
 - Traffic control
- Bayside Council delivered projects of this nature in the range of \$53k - \$55k, however, these costs included demolition and disposal of a previous shelter.

2.01 - 2.17: Stormwater

- The baseline assumption of benchmark rates for stormwater is that they are constructed in greenfield areas. Constraint factors apply for moderate and highly constrained sites.
- The benchmarking is considered inappropriate for brownfield / urban environments, as it does not give any consideration to the following aspects that are likely with urban/ brownfield development:
 - Flood Risk Management Studies and Plans, influencing additional costs applicable for resolving complex flooding and /or overland flow requirements.

- The significant understatement of the risks associated with existing utilities. In urban /brownfield developments, the feasibility of relocating underground services is extremely low, or cost prohibitive. Stormwater in urban /brownfield areas must adapt underground services into the design, which are costs that cannot be benchmarked.
- Traffic control.
- Shoring of trenches, underpinning of nearby structures, managing groundwater; etc.
- Constrained stormwater easements and alignments not covered by easement, through privately owned property, as a result of historic land subdivision patterns. This is also reflected by strategic planning for realignment of urban stormwater drainage through private property that requires removal or redevelopment of private buildings to facilitate the realignment. In these cases, staging works are required for temporary periods, which may become redundant as the land redevelopment occurs, adding significant costs to the drainage.

4 The review process and integration with the process of the reforms

4.1 The process of this review

IPART has been specifically directed to not consider works for community facilities in this review and to not include those works in the EWL. The severity of the potential impacts to councils and the local communities of retaining this exclusion and having the EWL more prescriptively/widely applied has been consistently raised in multiple submissions. There has been no explanation provided as to why IPART has been instructed to exclude community facilities from its review and therefore the exclusion cannot be justified. That creates issues of transparency which contradicts the objectives of the reforms.

We reiterate the importance of community facilities in high growth, high density areas and the nexus between development and need. There is no reason why community facilities for a new population derived from development should not be paid for by the development itself. Before the reforms progress, Bayside would like to see an independent review by IPART that:

- considers the expansion of the EWL beyond the current parameters;
- provides a principles-based approach to allow inclusion of items that could potentially satisfy the agreed principles on merits.

We consider that it is mandatory to include the provision and embellishment of community facilities in the EWL.

IPART is a recognised and respected expert body. It is difficult to reconcile while certain elements were excluded from the brief to IPART. It is also difficult to understand why particular aspects have been put to IPART for advice, but other significant components of the framework have not – such as the arbitrary \$15,000 and \$20,000 caps, the Regional Infrastructure Contribution amounts, the complete absence of a plan, EWL or any indication of how RIC funds will be spend, which is in stark contrast with the expectations imposed on councils.

4.2 The process of the reforms

We had previously raised concerns that the reforms and associated consultation processes were progressed without coordination of the multiple aspects of the reforms, and without sufficient detail for councils, the community and independent reviewers to understand the compounding implications of the different changes being considered in parallel.

Importantly, the above was acknowledged by the Parliamentary Inquiry into the Infrastructure Contributions Bill which recommended that implementation of the reforms be halted until the benchmarking costs, the essential works list and the broader framework that will implement the changes are reviewed.

However, given IPART's restricted terms of reference (issues pointed in section 4.1) and the material being exhibited concurrently by IPART and DPIE, it is clear that IPART has not been enabled to:

- Understand the package being exhibited by DPIE – fundamental for evaluating the actual implications of its decisions
- Make decisions based on broader considerations instead of relying solely on their experience in assessing contributions plans prepared under the current system – which is being completely reformed.
- Understand the context of the Parliamentary Inquiry – as a minimum, it is reasonable to expect that the EWL would be reviewed considering broader parameters and considering how it will be implemented within the new system so that the recommendations of the Inquiry can be fulfilled.

A further complication is that The Minister for Planning has made public announcements about further changes during the exhibition period, some of which resulted in amendments to material during the exhibition period and some of which appear to be verbal undertakings. This makes responding to proposed changes more difficult.

The above has significant implications. As detailed in 4.1, the terms of reference have constrained IPART to retain a rule-based approach instead of adopting a principles-based approach for the most contentious issues such as inclusions in the EWL.

This means the decision about what is the appropriate level of flexibility in the system will be solely made by DPIE – whereas the purpose of this review was to have contentious issues between DPIE and councils determined by an independent body. It is also clear that the current material being exhibited by DPIE, which will effectively implement the changes, was prepared and put on exhibition without consideration of IPART's yet to be provided advice.

In addition, the deadline for IPART to conclude this review has been extended to February 2022, while DPIE seeks implementation by July 2022. It is of great concern that a fundamental issues may remain unaddressed, and Bayside and our local community will not be given an opportunity to fully understand the impacts of the changes before they are implemented.

12 August 2021

Our Ref: 21/224863

Contact: [REDACTED]

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

Submission to the Draft Report June 2021 – Review of the Rate Peg to include Population Growth

Bayside Council (Council) would like to thank IPART for the opportunity to respond to its review and draft report on the inclusion of population growth into the Rate Peg. While Council is supportive of the review of the rate peg currently being undertaken by IPART it does not believe that the current review will address the long-term financial issues relating to the restriction of rate revenue growth since 1977. The draft report also highlights that the inclusion of a growth factor adjustment is forward looking and will not include potential catchup of past growth.

The review also outlines other revenue options for councils however fails to recognise that several of our core services also have statutory set fees and charges which are well below the cost of providing these services, placing further pressures on the rate revenue base. While developer contributions provide a source for capital investment in new assets, they do not provide a source of funds for increased maintenance, operating, depreciation and ultimate renewal of these assets in the future. There are also limitations of how these funds can be expended and often require a co- contribution from existing revenue base to deliver the required works.

Council also considers that being a major employment hub relating to Sydney Airport and Port Botany, plus associated supporting service industries that significantly increases the number of people in the LGA, that by applying the growth factor to residential population only it will miss council will miss out on revenue growth on its business rates. As highlighted in Council's business case submission to IPART, Bayside also has a non-resident population of 72,770 and as a result during September 2020, Council's classification was upgraded to a "Metropolitan Large Council" based on the increased in its combined resident and non-resident working population. Due to the changing and emerging patterns of employment combined with improvements to existing public transportation and Bayside's proximity to the Sydney CBD and major ports of entry is expected to result in significant growth in the resident population as well as workers and visitors to the area.

Due to the nature of the rating structure adopted by Council as part of its Rates Harmonisation process, rate revenue collection has been realigned and council has in place a minimum rates structure. Council also has identified in its previous submission and

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the case study submitted to IPART, issues with the current value of the statutory minimum rate. The existence of a lower minimum rate together with the distribution of rating burden being based on “unimproved land values” has resulted in the dilution of the average rates collected per capita over time. This is because new growth in dwellings through infill development (i.e. apartment units) almost always pay the minimum rates due to the pro-rata of the unimproved land values.

Apart from the dilution of the average rate per capita and loss of future growth in rates revenue, a lower minimum rate will shift the rate burden from those ratepayers on the minimum to those on the ad valorem (i.e. rate payers with higher land value will be paying more).

Another inherent problem of the “unimproved land value” methodology is that additional development to existing properties (e.g. granny flats) does not bring in any additional rate revenue.

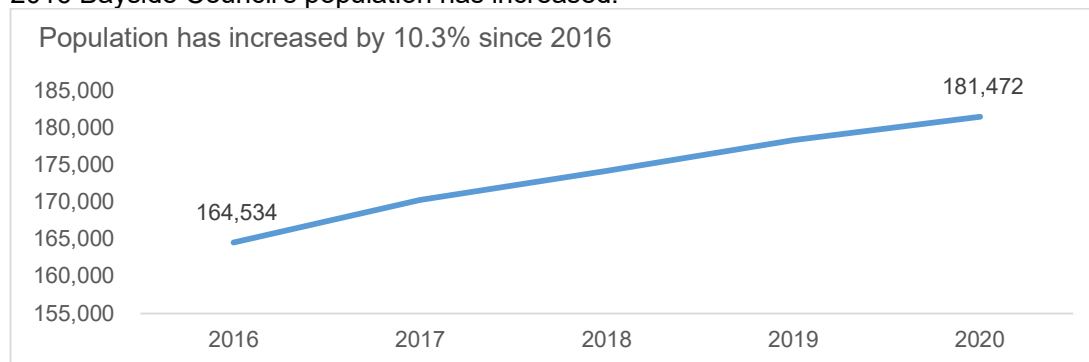
Should our methodology be re-based after the Census every five years to reflect the actual growth?

Council agrees with IPART that the proposed system should provide outcomes that:

- maintains total per capita general income over time;
- reflects a linear relationship between population growth and council costs;
- is based on the change in residential population for each council, and
- applies to all councils, including those experiencing low growth.

Council supports the requirement for a methodology to re-base after each census period, which also needs to include a real catch-up component that includes the cumulative difference over the 5 year period.

When looking at the ABS Estimated Residential Population published data for 2020 since 2016 Bayside Council's population has increased:



The ABS Estimated Residential Population Data also shows that some years reflect correction in the data contained in previous years published data and any methodology implemented would have to account for this. These variations could impact a council negatively in the future when the next year rate peg growth factor is updated for example the previous year rate peg growth was 0.75% and then due to a correction in the ABS Estimated Population is adjusted and supplementary rates recognised during previous year under the formula proposed this would result in a nil adjustment to the rate peg for growth despite cost of servicing population increase would be spread over existing rate base.

In the absence of a true-up, should we impose a materiality threshold to trigger whether an adjustment is needed on a case-by-case basis to reflect actual growth?

Council supports in principle the applying of a 'true-up' adjustment on a case by case basis to correct any material differences.

The complication with this is the use of a single source of the base data and the determination of the Materiality and what level this would be set at. The implementation of a materiality threshold may also have a long term cumulative impact on the rate revenue where adjustments not made due to being under the materiality threshold in a year would not be included in any adjustments and several years combined together in this scenario maybe material when reviewed on a cumulative basis.

Do you have any other comments on our draft methodology or other aspects of this draft report?

Methodology

Council believes that growth and costs to council extend beyond 'residential population'. Costs are also linked to business and employment growth, especially considering state government designation of employment hub priorities across our local government area and visitors using Sydney Airport and our foreshore areas.

Council also notes that one of the aims of the IPART proposal in the draft report is for councils to *"maintain per capita general income over time as their populations grow"* however the failure to consider catch up for past growth in the current review limits council to the time consuming and costly current Special Rate Variation (SRV) process. Considering this council believes that IPART should review and implement a streamlined SRV process for the purpose of enabling Council to bring rates revenue up to the required level.

Rate Peg Regime

While not part of the IPART review and specifically not included in reference terms for any rate review in NSW, Council believes that the Rate Peg Regime should cease in NSW. Council should be able to set their rate revenue based on the requirements to deliver under the Integrated Planning Reporting (IPR), which require council to consult extensively with its community on the priorities and associated costs of delivering these.

Basis of valuation

Council recommends that to achieve fairness and equity in the rating base that there needs to be a detailed review and change to the base of calculation being Capital Improved Valuation (CIV) as an option for Council, that this be reviewed by IPART and the NSW State Government in the future.

Maximum Statutory Minimum / Base Rate

The current Statutory Minimum Rate under section 548(3) of the local government act is \$565 and this is currently set at too low a level. This needs to be reviewed and reset at a higher level and the current amount has only increased by the rate peg each year. As noted above the operation of a low minimum rate and the existence of a 50% cap to "Base Rate" will result in a continuation of the dilution of the average rate per capita and will result in the continuation in the future of funding gap between revenue capacity and cost of services.

Rating Exemptions (Residential Usage)

Any review of Rates needs to also consider the impact of the changes to the makeup of residential housing that may be exempt from rates, including in particular the shift in public housing from Housing NSW (Rateable) to Community Housing Providers (who often are non-rateable) and this also is seen in aged care facilities operated by Public Benevolent Institutions. This needs immediate review and that these types of properties should

become rateable to ensure that the organisation benefiting from council services contribute towards them.

Pensioner Rebate

The current pensioner rebate of a maximum of \$250 has been at the same level since the mid 1980's when it was last reviewed. This is jointly funded by State Government and Council's. The burden of funding council's component is funded by other rate payers.

Stormwater Management Charge

Since its implementation there has been no general uplift and minimal changes to the Stormwater Management Charge and this requires further review and analysis. While there is an annual movement in the Rate Peg there has been no such movement in the Stormwater Manager Charge.

Emergency Service Levy

Council also recommends that a review of the way of the Emergency Service Levy be completed with the aim of removing the requirements for Council to fund 11.7% of the cost of the emergency service levy, which is directly funded from its rates revenue. This levy was some \$2.9m in 2020/21 and is likely to increase in the future. These funds are therefore not available to fund services for its community. This change would provide a significant source of funds for Council that could minimise/reduce the level of any future SRV. The recovery of the Emergency Services should be by direct levy on relevant properties by the NSW State Government via Revenue NSW.

Other IPART Reviews – Domestic Waste Service

There is also a review of Domestic Waste Service currently being completed by IPART which may also impact on a future rate peg adjustment and the current rate review does not consider this being focused on the growth adjustment, however this may impact council in the future and consideration of both reviews needs to be factored in by IPART.

Cost Shifting / Legislation Changes

Council continues to be impacted by decisions by State Government to shift costs, eliminate or redirect revenue with minimal engagement and consideration of impacts, A recent example being the Environmental Planning and Assessment Amendment (Compliance Fees) Regulation 2021 (EPA Act 1979) which will prohibit council from charging fees, yet will still have costs as it has engaged staff to deliver this service. While this will take effect from 1 January 2022 it has direct budget impact.

Previous Submission / Case Study

Council provided a detailed case study as part of its working with IPART in the development of the draft report and this provides an overview of the impact of the rate peg regime, low minimum rates and the cost increase per capita over time. This is provided as an attachment to this submission.

If you require any further information in relation to Council's submission please contact Council's Chief Financial Officer, [REDACTED] or by email at [REDACTED].

Yours sincerely

[REDACTED]

IPART Case Study - Bayside Council

Bayside Council Local Government Area (LGA) is located in Sydney's Southern and South-Eastern suburbs, between 7 and 12 kilometers of the Sydney CBD.

Bayside boasts a cultural mix of communities from Australia and all over the world in a diverse landscape of urban sprawl, medium density, and high-rise development, along with the foreshores of Botany Bay, parklands, and natural wetlands. Central to the area are the state significant international transportation hubs of Kingsford Smith International Airport and Port Botany.

Increasing urbanization of the area has resulted in a growing number of medium and high-density housing. There are approximately 62,036 dwellings with an average household size of 3 (rounded). The future of housing growth in Bayside is expected to be mainly in the form of infill development (a process of developing vacant or under-used parcels within existing urban areas that are already largely developed).

Changing and emerging patterns of employment combined with improvements to existing public transportation and Bayside's proximity to the Sydney CBD and major ports of entry is expected result in significant population growth in the resident population as well as workers and visitors to the area.

Bayside's estimated resident population for the financial year ended 2019/20 was approximately 178,351 with a population density of 36.35 persons per hectare. Compared to the previous year, the population has grown by 2.4% and by 34% since 2006 with the year-on-year growth averaging 2.3%.

Bayside also has a non-resident working population of 72,770, resulting in a combined total of 251,166. As a result, during September 2020, Bayside Council was upgraded to a "Metropolitan Large Council" based on the increase in its combined resident and non-resident working population.

The 2019 Population Projections published by DPIE indicate that the population of Bayside is estimated to increase by 70,050 people between 2016 and 2041, from 164,550 to 234,600.

The NSW, Federal and local governments are delivering the following infrastructure and capital works that may change future population patterns and growth beyond what is shown in the projections.

- The upcoming upgrade to Bexley North Station to improve public transport options.
- Investing in major motorway infrastructure that connects people with jobs and cultural opportunities as well as linking the Central and Harbour Cities. For example, Westconnex
- \$3m to help revamp Arncliffe town centre as part of the Bayside West Precincts 2036 Plan.
- The new \$165m Qantas Flight Training Centre will ensure Mascot is the home to the best flight training facilities as well as a new 14-storey carpark.

Challenges of a growing population

a. Marginal cost of service

Bayside Council's key revenue is in the form of "rates and annual charges" which accounts for approximately 60% of total revenue, excluding capital grants.

The current average ordinary rate per head of population amounts to approximately \$450 per capita and the average expenditure head of population amounts to approximately \$840 per capita (before capital) and \$1,100 per capita (after capital). The averages show that there is a huge disconnect between the rates collected per capita compared to the per capita cost of services. This gap can be primarily attributed to the impact of historical rate peg on general revenue. It shows that while expenditure has grown exponentially overtime due to the increasing marginal costs driven through inflation and volume, rates revenue has been held back due to the inherent limitations of the rate peg system.

While this gap between general revenue and expenditure is currently being balanced by other revenue sources, financial modelling has shown that without significant reform to general revenue, the problem will continue to worsen over time, eventually resulting in the need for severely scaling back service provisions.

b. Need for new infrastructure including the maintenance and renewal of existing assets.

The historical data and future projections have shown that Bayside will experience growth mainly through infill development.

The characteristics of infill growth brings with it, increased demand for community assets such as parks, open spaces, libraries, sports fields, public pools, and other communal space. Due to the smaller size of apartment units and green space limitations, there is a need for new infrastructure and community assets as well as increasing the service capacity of existing assets.

This increased demand not only requires provision of new or enhanced facilities but also subjects assets to substantially higher wear and tear due to the increased utilization levels of a highly dense population.

A good example of this is Bayside Council's planned \$31m upgrade to Barton Park, which is being funded through a mix of developer contributions, general revenue, and external borrowings. The upgrade to Barton Park will provide enhanced and accessible recreational facilities for the growing populations of Arncliffe, Banksia and Wolli Creek, all of which have experienced population growth through medium and high-density housing.

In the last 3 financial years, Bayside Council has delivered on average \$45m worth of capital works per annum across the LGA in the form of new and renewed assets and has budgeted to deliver approx. \$50m worth of capital works for the 2021/22 financial year.

The general infrastructure assets across the LGA are aging, and replacements associated with more modern and sustainable design elements are more costly.

It is projected that over the next 10 years Bayside needs to spend around \$302 million on asset renewal. In total, asset renewal funding over the next 10 years is projected to be around \$218 million, which leaves a net funding gap of \$84 million over that same time frame (i.e. \$8.4m annually).

Additionally, Council's current asset maintenance ratio equals 69% for FY2021/22 and long-term asset maintenance funding shortfall of \$40m is projected over the next 10 years (i.e. \$4m annually).

If these long-term asset renewal and maintenance funding gap is not addressed, it will progressively impact the quality of Council's assets and the community's ability to properly utilise and access those assets into the future.

In addition to the above-mentioned long-term asset renewal and maintenance funding gap, there is approx. \$250m in the unfunded component of section 7.11 plans (i.e. the portion of new infrastructure spend that is to be funded from general revenue). Planned infrastructure works may also be required to be brought forward as result of increasing Federal and State Government pressure to utilize s7.11 developer contributions. Without sufficient general revenue to fund the unfunded component of planned s7.11 works, external loans will be required to fund these projects which will then add a further burden of servicing the debt on Council's finances.

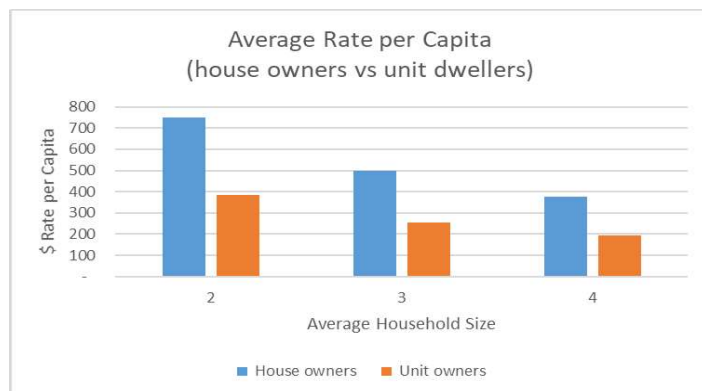
Minimum Rates, Unimproved Land Value, and Infill Development

The existence of a lower minimum rate together with the distribution of rating burden being based on "unimproved land values" has resulted in the dilution of the average rates collected per capita over time. This is because new growth in dwellings through infill development (i.e. apartment units) almost always pay the minimum rates due to the pro-rata of the unimproved land values.

Apart from the dilution of the average rate per capita and loss of future growth in rates revenue, a lower minimum rate will shift the rate burden from those ratepayers on the minimum to those on the ad valorem (i.e. rate payers with higher land value will be paying more).

Another inherent problem of the "unimproved land value" methodology is that additional development to existing properties (e.g. granny flats) does not bring in any additional rate revenue.

To illustrate this, the bar graph on the right shows a comparison of the average rate per capita for a house vs a unit block on a similar parcel of land (i.e. the same unimproved land value) across various household sizes (ranging from 2 -4).



The residents of medium and high-rise developments, while paying a significantly lower ordinary rate per capita, probably consume community services and facilities to a greater extent compared to singular house dwellers.

For example, compared to singular house dwellings, most medium and high-rise developments only come with a single off-street parking spot and where families residing in these units have more than one vehicle, the second vehicle is normally parked on-street thus preventing other residents from utilising those facilities.

Similarly, due to the lack of communal space in medium and high-rise development, there is increased utilisation and demand for Councils parks, sporting facilities and open spaces.

A higher minimum rate which is closer to the Council average combined with a revised methodology for distributing the rating burden based on "capital improved value" may aid in resolving this disparity and inequity in the rating system and assist councils like Bayside in collecting rates fairly from its residents.

Summary

The issues that have contributed to the general revenue shortfall can be attributed to three key factors below:

1. Historical rate peg not accounting for population growth;
2. Existence of a lower-than-average minimum rate; and
3. Distribution of the rating burden based on "unimproved land value".

A proposed way forward needs to account for the correction of the existing shortfall created by the factors noted above as well as ensuring that Council can raise adequate general revenue from future residents.

The series of graphs on the following pages shows the extent of Bayside's general revenue shortfall as well as the impact of the new population.

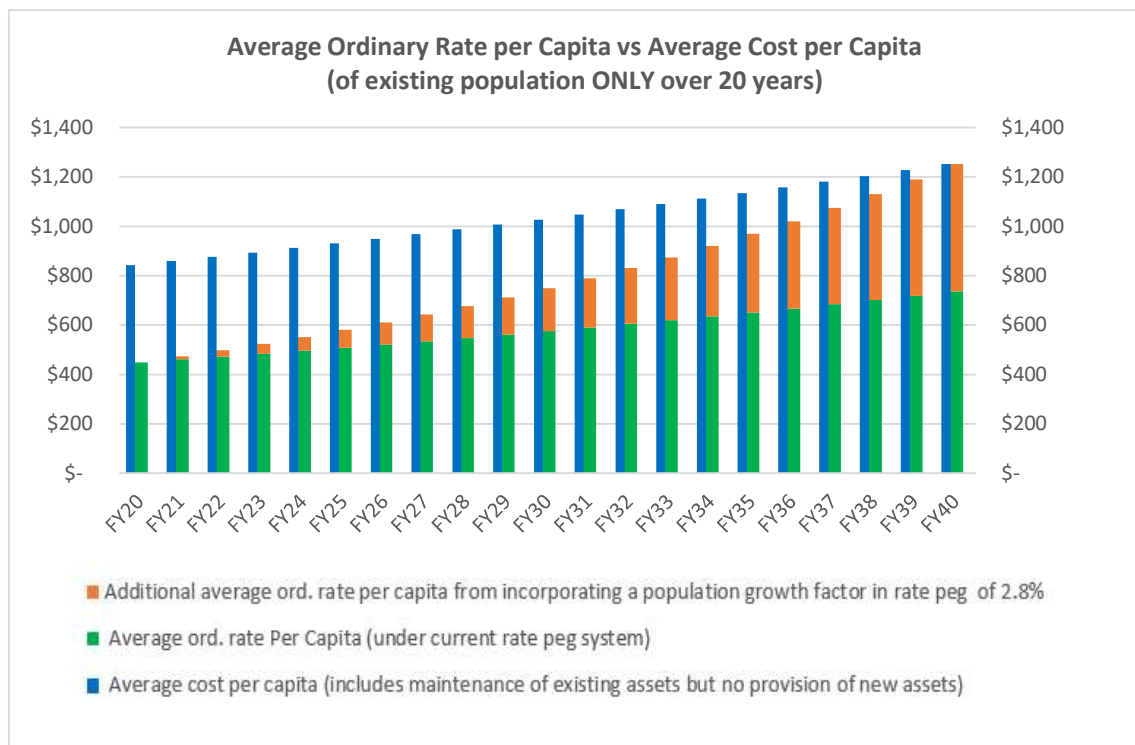
Graph 1 – The bar graph below shows the current gap between the average ordinary rate per capita (green bar) compared to the current average expenditure per capita (blue bar) over a 20-year period assuming no population movement.

It is important to note that this diagram does not include new population or the associated costs and additional rate income of the new population.

The purpose of this diagram is to show how long it will take for general revenue per capita to catch up to operating expense per capita of the current population only over the next 20 Years.

The orange bars show that an additional 2.8% needs to be added onto the current assumed rate peg of 2.5% so that over 20 years, the average ord. rate per capita (of the current population) catches up to the average cost per capita.

The average cost per capita is assumed to grow at a steady rate of 2% (CPI) and does not account for new population or the associated costs of the new population.



Graph 2 – This Graph shows the cumulative ordinary rates and associated cumulative expenditure associated with the new population in isolation (i.e. it does not include the existing expenditure or existing general revenue of the current population shown in Graph 1).

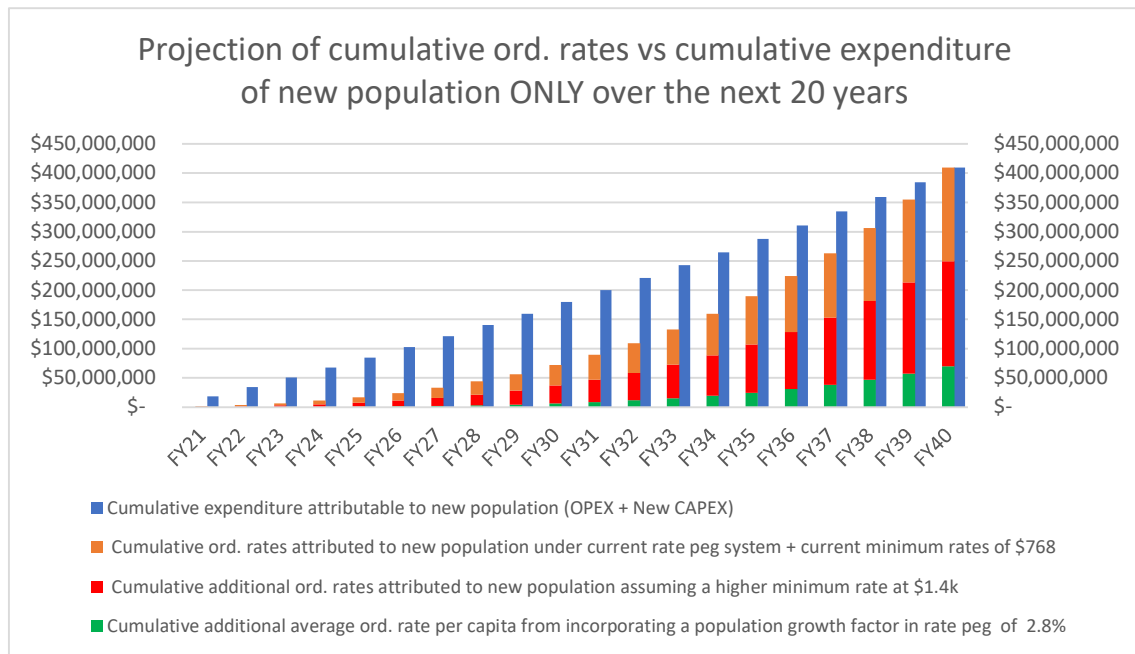
The blue bar depicts the cumulative expenditure attributable to the new population which comprises operational expenses, cost of new and enhanced infrastructure assets and the related maintenance costs of the new infrastructure assets.

The green bar shows the cumulative ordinary rates that will be collected from the new population under the current rate peg system and current minimum rates. It is assumed that for Bayside, approx. 90% of growth in dwellings will be in the form of infill development thus new residents will be paying the minimum rates only.

The red bar shows the additional cumulative ordinary rates that would be collected from the new population if there was a higher minimum rate of approx. \$1,400 (i.e. closer to the current Bayside average).

The orange bar shows the additional cumulative ordinary rate that would be collected from the new population if an additional 2.8% was added onto the current assumed rate peg of 2.5%.

Overall, it shows that over a 20-year period, the min. rates need to be approx. \$1,400 and rate peg needs to be at least 5.3% so that the ordinary rates from the new population fully covers the additional expenditure attributable to the population growth.



Graph 3 – This graph shows the overall council picture when bringing together the 2 scenarios in graph 1 and graph 2.

It shows that even with a higher rate peg of 5.3% per annum and higher minimum rates of \$1,400 in year 1 (plus rate peg), general revenue will still not match expenditure.

The red bars show the annual shortfall in general revenue that will need to be subsidised by other revenue streams, grants, borrowings and or Special Rate Variations (SRVs).

