

Council Reference: 31157E (D21/537180)

14/12/2021

Independent Pricing and Regulatory Tribunal (IPART) NSW
Level 16, 2-24 Rawson Place
SYDNEY NSW 2000

Dear Sir/Madam,

Staff Submission – IPART’s Review of the essential works list, nexus, efficient design and benchmark costs for local infrastructure.

The opportunity to provide comment on IPART’s review of the essential works list, nexus, efficient design and benchmark costs for local infrastructure is welcomed. The extended submission deadline to provide this staff submission is appreciated, however due to the short consultation timeframes and the timing of the consultation (during the Council caretakers’ period) the views in this submission have not at this point been endorsed by the Council.

An endorsed submission will be provided as early as possible in 2022, however, given the first meeting of most new councils will not be until at least February 2022, and there will be a number of other matters tabled for these initial meetings, we cannot guarantee that the submission will be endorsed prior to the March 2022 meeting.

Given the tight timeframes associated with the rollout of the reforms, it is hoped that these comments will be given due consideration and if appropriate, changes or adjustments are made to IPART’s Final Report.

General Comments

It is acknowledged that the IPART Draft Report informs all changes related to s7.11 plans in the proposed NSW Government Infrastructure Contributions Reform.

A response to a number of the ‘Seek Comment’ questions is provided below:

Essential Works List & Funding of Local Infrastructure



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?

It is considered that the IPART Review is fundamentally flawed, as the terms of reference set down by the NSW Government for the Review specifically prohibited the consideration of community infrastructure in the Essential Works List (EWL).

It is noted that the EWL is inconsistent with the Minister Stokes commitment to ensuring no Council is worse off following the reforms, as the application of the EWL will significantly and practically reduce the provision of new/upgraded community facilities and infrastructure to meet the demand of new development. Whilst the short term 3-year reprieve is appreciated, the NSW Government's announcement to delay the implementation of the EWL will potentially only create more uncertainty.

Whilst it is agreed that the circumstances of each community are different and a flexible approach is required to meet the diverse needs of communities, it is still unclear how reducing the income received via contributions will enable Councils to adequately meet the needs of communities. Councils will still be expected to deliver infrastructure to the existing or increasingly higher standard and will have to fund any shortfall to the base level costings through other means.

Councils' contributions plans will not only require substantial amendments, resulting in significant resource demands across organisations, but Councils will also need to reconsider their commitment to the delivery of certain infrastructure or find alternate funding sources. It is anticipated that Shoalhaven City Council may need to find approximately \$71.1 million to deliver or repay infrastructure that is expected to ultimately be deleted due to the implementation of the EWL. Council will need to consider a replacement funding source for the projects or project elements that will ultimately be deleted from the Contributions Plan. As many of these projects have already been delivered, grant funding cannot be considered, meaning a significant rate rise, special rate variation or reallocation of funds from other budgets as the only options. Each of these options would mean existing ratepayers paying for infrastructure that is often required solely as a result of new development.

IPART recognises that "infrastructure contributions are a key source of funding for councils," yet the implementation of the EWL will significantly reduce the available income for the provision of infrastructure and community facilities. It is concerning that there is less opportunity to collect for social infrastructure and there are limitations to what can be conditioned in development consents to offset this shortfall. Yet, communities' expectations around the provision and standard of infrastructure and community services are high.

It is acknowledged that the development industry may not support the inclusion of community facilities in the EWL and there is a general desire to keep infrastructure contributions low. However, community infrastructure that is development contingent should be contributed to by the relevant developments. It is difficult to understand why development should not pay towards community infrastructure when it is directly

(proportionally) resulting in the need for the additional service/s. Where, a direct nexus has been established, it is appropriate to levy relevant contributions directly on development and this opportunity should be retained.

The inclusion of borrowing costs for the forward funding of infrastructure in the EWL is strongly supported.

Funding of Local Infrastructure

The ability for Councils to borrow against future rates revenue to help fund community infrastructure is generally not supported. New development is increasing the demand on community infrastructure, and as such, should be appropriately contributing towards its provision. It is accepted that the future population of the new development would be paying towards the repayment of the facilities as part of future rates, but existing rate payers will also be contributing which is not considered equitable.

IPART comments that “While this [the rate peg] should take some pressure off councils with growing communities, for some the additional revenue from the adjusted rate peg may not be sufficient to fund community facilities. These councils would need to seek a special variation that would increase rates for the existing population or obtain funding via voluntary agreements with developers or government grants”

IPART, pg. 25

The additional revenue from the upcoming adjusted rate peg will not be sufficient to fund community facilities. Furthermore, Councils that may be reluctant to increase rates, may not be successful in obtaining grants (not all Councils have the resourcing available to consistently apply for grants) or may not be able to get additional funding via **voluntary** planning agreements. This may ultimately mean that communities do not get the level of community services that they require as a direct result of the change to the EWL and this is not an acceptable outcome.

Based on an initial review, any additional rate increase in Shoalhaven will generate approximately \$400,000 – \$560,000 per annum (that is, if Council resolves to increase rates). Using an example of a library which generally costs in the vicinity \$15-\$20 million, Council would need to save funds generated from the rate increase for 40 years, which is a long time for a community to wait for much needed essential infrastructure. Importantly, these additional funds are supposed to fund all other infrastructure needs that will no longer be provided through the contributions plan, which is clearly not achievable. This concept will result in an extremely poor outcome for the Shoalhaven community, and as such is not supported.

In this regard it has also been previously noted by councils, “that where communities see the need for infrastructure being driven by new development, raising their rates to pay for this infrastructure will make communities less willing to accept development in their local area.”

IPART, pg. 25

Base Level Infrastructure



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)?

It is appreciated that what is considered 'base level' can differ between communities and is likely to change over time. However, whilst IPART notes defining 'base level' is considered too prescriptive, the lack of definition does not provide certainty for Councils, the development industry, or the community. As such, further guidance is required in order to remove or replace ambiguity and opportunities for objection to what is considered base level.

It is understood that Councils can fund above base level embellishment through additional means, such as grants and general revenue, however general revenue should not be used to provide infrastructure that is required solely related to new development. It is appreciated that the notion of 'base level' has regard for relevant government regulations, industry standards and community needs, and that the 'most cost effective' does not necessarily mean the lowest upfront cost.

Furthermore, including the provision of land and works that are resilient to climate change, (bridges and flood access roads) and reduce natural hazards associated with climate change in the base level of performance of infrastructure is strongly supported. This is especially important within areas such as Shoalhaven, following the bushfires and floods experienced over the past two years.

Benchmark Costings



4. Are there other items that we should consider benchmarking?
5. Do you agree with our approach to use adjustment factors so that the benchmarks are applicable to a broader range of projects?
6. What other factors increase the complexity of a project that could be used as an adjustment factor?

Generally, the use of adjustment factors is supported so that the benchmark costings are applicable to a broader range of projects. Additionally, the acknowledgement that costs may be different in regional areas as well as for different types of development is welcomed. However, it is disappointing that environmental factors, such as the protection of threatened species or similar, has not been considered in the adjustment factors. Additionally, traffic management and accessibility costs can differ significantly and as such should be considered as an adjustment factor.

The inclusion of "on-costs" in contributions plans, including the funding of specialist investigations, insurances, and compliance costs as a percentage of total construction costs is supported. However, where the supporting information and documentation for deviating from the benchmark costs is to be retained, and whether this will be required

to be documented on the Planning Portal or Council's website, or both; needs clarification and certainty.

Benchmark Costings for Open Space



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

The intent of an alternative benchmark to be used for open space is supported, although concern is raised regarding the execution of a per person benchmark for open space.

Further consultation on a benchmark cost for open space is requested.

Project Allowances – Contingency



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

The proposed contingency rates for the planning and design project stages is generally supported; acknowledging that contingency is an allowance that accounts for the level of uncertainty within a project and should be included within the contribution plan. However, it is noted that in the table on page 54 of the Review, there is no consideration or inclusion of contingency for the construction phase of the project. During the construction phase, contingency may be required for bad weather or unforeseen circumstances etc., as such it is requested that a contingency rate be included for the construction stage.

We request further consideration and consultation on the inclusion of a contingency allowance for the construction phase of a project.

Benchmark Costs for Plan Administration – Proposed 1.5%



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?

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

Currently Council determines the contributions plan administration cost, by calculating the cost of administering the plan each year multiplied by the estimated lifespan of the plan (20 years). The total administration cost is divided by the estimated Equivalent Tenements (ETs) for the lifespan of the plan, based on residential and non-residential projections, and the administration contribution rate is conditioned per development consent based on the applicable ETs. How the proposed 1.5% administration cost total is determined is understood, but it is questioned whether applying the same methodology to levy administration costs would be appropriate? Additionally, Council currently has a preference to cap the administration fees that can be charged per

development consent, to not exceed 10% of the total cost of contribution infrastructure projects levied in the consent. How would this be able to be considered in the proposal?

Further guidance around the methodology for levying administration costs is requested.

It is noted that a “one size fits all” approach does not work. The proposed benchmark cost for plan administration (1.5% of the total value of works to be funded by local infrastructure contributions) may be reasonable for Councils with larger contributions plans, however for Shoalhaven, 1.5% will not be sufficient. It is acknowledged that there is an option to justify an administration cost higher than 1.5%, however, it is considered that it would be more appropriate to have a higher administration percentage allocated for regional Councils (and other Councils) with smaller value of infrastructure contributions, but more complex contributions plans.

Currently, Council allocates 5% of the contributions plan income towards plan administration, including the funding of staff salaries (for dedicated work on the contributions plan) and its ongoing administration, website maintenance and legal costs. Reducing this to 1.5% would have significant impacts on resourcing. Based on an initial review, the implementation of the benchmark cost for plan administration to be set at 1.5% would result in an annual shortfall for Council’s current plan administration costs of \$217,193 or \$4,343,866 over the duration of the plan. This is inconsistent with the Minister’s commitment that no Council will be worse off as a result of these reforms.

Is it suggested that a plan administration value of up to 5% of total value of works for administration costs would be more appropriate for regional Councils. This would provide greater flexibility to Councils and allow appropriate variation, depending on the size of the plan, without having to provide a detailed bottom-up calculation as justification.

It is strongly requested that this aspect be reconsidered following feedback received from councils, especially those Councils with lower value plans. Council would welcome the opportunity for further discussions about the detail of this aspect.

IPART’s Four-Yearly Review of Benchmarks



11. We seek views on our proposed approach to annual escalations and 4 yearly reviews of benchmarks, including the choice of index and timeframe.
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 annually updating benchmarks to account for cost escalations, and its intended approach to have a review of benchmarks at least every four years is generally supported. It is noted that plans will not be required be updated annually to reflect the updated benchmarks, rather the applicable benchmark costings can be updated during the four-yearly review process. Additionally, cost escalations only being applied to base costs of infrastructure, and that adjustment factors, on-costs, contingencies plan

management and borrowing costs will be increased proportionally, in relation to construction costs is also generally supported.

In this regard it may be more appropriate for IPART to use ABS Consumer Price Index (CPI) when annually updating the benchmarks, as opposed to ABS Producer Price Index (PPI), as this is more relevant to purchases and construction.

Relationship to Other Planning Reforms

IPART notes they “anticipate that the Design and Place SEPP will contain updated benchmarks for the provision of open space in new developments, including the consideration of active versus passive open space requirements.”

IPART, pg. 32

It is acknowledged that this may be the case, however why the proposed reforms are being undertaken prior to the Design and Place SEPP being notified is questioned. There is currently too much movement in the planning reform space to have any certainty or a clear idea of where we are heading. Thus, and also considering the three-year deferral of the EWL, there would be merit in IPART reviewing its paper again once the new revised NSW Government Policy setting is largely known.

Conclusion

All other recommendations are generally supported, including the calculation of the interest rate, pooling of funds and opportunity to use alternative estimate methods where benchmark costs may not be suitable. These recommendations simplify the process and reviewing the benchmark costs at least every four years and will ensure they are relevant and reflect cost escalations.

However, concern over the negative impacts that the implementation of the 1.5% administration benchmark and EWL will have on income and the provision of community services and infrastructure for public benefit is reiterated. This is also not consistent with the Minister’s commitment that no Council will be worse off from these reforms.

Thank you again for the opportunity to provide feedback on this very important matter. Given the relevance of this matter to Shoalhaven, and NSW Councils broadly, it is important that there is additional consultation and engagement with the local government sector to ensure that the final reforms are appropriate, can function as intended and the impacts are balanced.

If you need further information about this matter, please contact Emma Kell, City Futures on [REDACTED]. Please quote Council’s reference 31157E (D21/537180).

Yours faithfully

[REDACTED]
Gordon Clark
Director City Futures