



10 December 2021

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

Submitted online: [www.ipart.nsw.gov.au](http://www.ipart.nsw.gov.au)

Dear Tribunal members

**Re: IPART Reviews of the Essential Works List, Nexus, Efficient Design and Benchmark Costs for Local Infrastructure**

Southern Sydney Regional Organisation of Councils Inc (SSROC) is an association of eleven local councils in the area south of Sydney Harbour, covering central, inner west, eastern and southern Sydney. SSROC provides a forum for the exchange of ideas between our member councils, and an interface between governments, other councils and key bodies on issues of common interest. Together, our member councils cover a population of about 1.7 million, one third of the population of Sydney, including Australia's most densely populated suburbs. SSROC seeks to advocate for the needs of our member councils and bring a regional perspective to the issues raised.

Thank you for the opportunity to provide feedback on the Reviews of the Essential Works List, Nexus, Efficient Design and Benchmark Costs for Local Infrastructure (the Review). SSROC recognises that there is scope to improve these areas, but has serious reservations about the recommendations of the review, and asks that the recommendations be reviewed in light of this feedback.

SSROC population and housing data<sup>1</sup>, in the period from 2011 to 2016, reveals a very diverse socio-economic area marked by rapidly rising numbers of dwellings and underlying growth in the number of households in the area. The estimated resident population increased by over 150,000 during this five-year census period. Although the urban growth of the SSROC area is unique, our region shares a number of issues and drivers with many other urban areas managing rapid population growth while enhancing livability and productivity.

The experience of strong growth and related development across highly urban as well as more suburban parts of Sydney has provided a number of valuable insights and has helped to shape our feedback on this IPART Review.

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<sup>1</sup> Source: Australian Bureau of Statistics, Census of population and Housing 2011 and 2016, compiled by id <https://profile.id.com.au/ssroc/>



This submission draws upon the Local Government NSW (LGNSW) submission findings for this Review as well as feedback from our member councils. SSROC is a current member of LGNSW.

It is most unfortunate that the timeline for delivery of the final report of the Review, 31 December 2021, conflicts with council elections. The move into the caretaker period from 5 November has severely restricted the opportunity for elected members to review the Draft Report and provide comment. The recommendations of the Draft Report have broad implications for councils, not the least being financial and the service standards to be delivered to communities. These are core responsibilities of the elected body of councils.

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

SSROC also notes that the Minister has recently advised LGNSW of a range of changes to the proposed infrastructure contributions reforms and that will also have bearing on IPART's draft decisions. Most notably, Minister Stokes has recently [written to LGNSW](#) advising that *"there will be no changes to the existing settings for the essential works list applying to section 7.11 plans. In three years we will review the settings against the Productivity Commissioner's recommendations and the implementation of the other components of the reform, in consultation with local government sector"*.<sup>2</sup> We understand this includes deferral of a key proposal to extend the application of the Essential Works List to plans that currently fall within the existing caps of \$30,000 in greenfield areas and \$20,000 in other areas.

SSROC's fundamental reservations in relation to recommendations are:

**Mismatched interests.** The Draft Report clearly preferences the needs of developers over the needs of communities. This reflects the Productivity Commissioner's Review and recommendations with an undue emphasis on the need to reduce costs to developers, enabling them to improve their profitability and return to shareholders. Many developers do not have a long-term commitment to the future of the areas they develop, and so have no inherent interest in future-proofing. Councils on the other hand are committed, long term place-makers for their communities.

**Residents will eventually pay.** There is pervasive emphasis on minimum costs and base-level standards for infrastructure and facilities, with councils required to find funding elsewhere if their communities expect a higher standard. Councils are concerned that this will lock them into second grade infrastructure, for which residents will ultimately pay either literally by funding building upgrades and paying higher rates, or in kind by accepting lower standards and inferior local infrastructure.

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<sup>2</sup> Available:

[https://lgnsw.org.au/Common/Uploaded%20files/Advocacy/Minister\\_Stokes\\_to\\_LGNSW\\_re\\_Infrastructure\\_Contributions\\_Reform\\_27\\_October\\_2021.pdf](https://lgnsw.org.au/Common/Uploaded%20files/Advocacy/Minister_Stokes_to_LGNSW_re_Infrastructure_Contributions_Reform_27_October_2021.pdf)

**Assurance of good practice.** More assurance is required that contributions will incorporate good practice approaches and respond to Government priorities, including:

- Whole of life costs
- Climate change mitigation and infrastructure resilience
- Changing standards including community expectations
- Council, State and Federal policies and policy objectives such as net zero and tree canopies to reduce heat.

**Alternative funding.** The implicit assumption that councils have the capacity to provide alternative funding for higher standards of infrastructure is misplaced. This is surprising given IPART's close engagement in local government finances. IPART is no doubt well aware that most councils are under financial stress and generally do not have the capacity to provide alternative funding.

**Increasing infrastructure contributions system complexity.** The proposed framework appears to add to the complexity of the infrastructure contributions system, particularly where councils seek to justify variations from benchmarks, which is inconsistent with the intent of the reforms to simplify the system and make it easier to understand. This complexity is reflected in the internal conflict within the Draft Report, which presents the framework as flexible and principles-based, but at the same time is more prescriptive in terms of the Essential Works List as well as introducing a greater degree of rigidity with benchmarking.

## Essential Works List

### Community Facilities

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

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

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

It is incongruous that land for community facilities is considered development contingent, but the actual facilities are not included. The absence of contributions for the community facilities themselves is a clear omission for the list. IPART has proposed some minor improvements to the EWL but has not addressed the issue of community facilities. The proposed EWL is as follows (changes highlighted):

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

Councils aim to create healthy and thriving communities by funding local facilities such as community and neighbourhood centres, halls, libraries, youth and childcare facilities. To create healthy and liveable communities, it is important for infrastructure to be in place when residents move into areas. Moreover, contemporary community expectations are that these are essential services and facilities that will be in place when they move into an area.

With community facility buildings not included on the current EWL, local government faces significant funding shortfalls for providing them, causing the delivery of community facilities to lag behind population growth, often many years behind. “Essential” should not mean the bare minimum physically necessary infrastructure, but should include that which is essential for communities.

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

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

- SSROC opposes mandatory forward funding. Councils and their communities must determine borrowing policy considering the ability to service borrowings, associated risk, existing levels of debt and debt funding priorities (councils may have higher priority assets to invest in through borrowing such as infrastructure renewal backlogs).
- The provision should cover full actual borrowing costs. Council access to borrowing varies, as do the interest rates they can negotiate. For example, not all councils have access to TCorp rates and may need to borrow at commercial rates. (Section 4.1.3 p23). The proposed formula would not necessarily recover actual costs as it is not based on commercial borrowing rates.

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

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

### S7.11 Caps

SSROC strongly opposes this proposal. The Draft Report would extend the application of the EWL to contributions plans that fall under the current caps of \$30,000 in greenfield areas and \$20,000 in other areas, which would have the following effects:

- no councils could include funding for community facilities in s7.11 plans,
- exacerbate existing funding backlogs.
- impede the delivery of community facilities,
- unnecessarily add to the complexity of these contributions plans for councils,
- possibly result in IPART having to review more plans (Section 4.2 p24) to ensure that they do not provide for community facilities and
- potentially delay the finalisation of s7.11 contribution plans.

SSROC understands that this proposal is covered by the Minister's commitment "*there will be no changes to the existing settings for the essential works list applying to section 7.11*", but that will be subject to review in three years.

SSROC strongly recommends that this detrimental proposal be rejected in the Final Report to help ensure it does not remain on the table in three years' time.

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

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

SSROC recommends that:

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

## Nexus

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

SSROC supports the three overarching principles proposed in the Draft Report that:

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

## Efficient Design

SSROC member Councils object to the requirement that contributions be limited to the costs of minimum effective functionality infrastructure providing base level performance. Councils want and need to provide the infrastructure that is necessary for a resilient and healthy community, not a minimal base level performance.

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

While IPART agrees that councils should be able to choose to exceed the base level standard, councils would need to fund the gap from another source. This is not a viable option for many councils. Councils are already struggling with funding the maintenance and renewal backlogs for existing infrastructure and heavily reliant on infrastructure contributions to fund new infrastructure. This does not include the backlog of new infrastructure.

It is important to understand that the recent linkage of growth to the rate peg will not increase council capacity to fund new infrastructure. Any additional rate revenue raised in this way will be absorbed by the additional operating costs of delivering services to the new population along with operating and maintaining new infrastructure.

SSROC welcomes IPART’s recognition of the need for infrastructure that is resilient to climate change and that base level performance would include providing land and works that are resilient to climate change and such as bridges and access roads that are future proof (p. 39). However, it is unclear how this would operate given a severely limited EWL list and the base level funding requirement.

The current pandemic has clearly demonstrated that the need for resilience is not limited to climate change. All SSROC member Councils are committed to Resilient Sydney, and understand the concept of resilience as the ability to withstand sudden shocks (such as floods and COVID) and stresses (such as housing affordability and poverty). The current base level minimum effective functionality does not address the shocks and stresses that our communities need to be able to withstand.

SSROC recommends that:

4. the requirement for resilience not be limited to resilience to climate change, but to the shocks and stresses communities with which communities need to be able to cope,
5. arbitrary base level minimum effective functionality costing be dropped and replaced with community determined standards,
6. IPART clarify how providing for climate change resilience and future proofing can be accommodated in the new framework given the severely restricted EWL and the imposition of base level funding,
7. IPART provide clarity and guidance on how councils reconcile achieving best value for the community (e.g., via using whole of life costs) with the requirement to provide base level performance costs.

## Benchmarking

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

Benchmarking or reference costing can be a useful tool, but needs to be applied with a high degree of flexibility to accommodate with vastly differing local circumstances.

The benchmarks provided by Cardno are inevitably too low, as they reflect base level minimum costs and fall far short of the actual costs that councils are experiencing. The Cardno benchmarks also appear to be based on greenfield developments and do not adequately reflect the costs of the type of complex infrastructure works required to support infill development. If this approach is pursued, that SSROC recommends that Cardno produce a separate set of benchmarks for infill development for review and comment.

Councils also advise that the benchmarking is missing a number of significant items and would need to be more extensive. The benchmarks do not reference all of the relevant standards, for example, the standards imposed by sporting bodies for sporting facilities.

The benchmark does not adequately deal with project variability, including terrain, geology, contamination and mining subsidence. While the provision of adjustments for complexity and project allowances are welcome, they do not appear to be adequate.

Further consultation with local government is needed on alternative benchmarks for open space, particularly on the suggestion to move to a per person basis rather than benchmarking individual items (Section 7.8 p 55). SSROC is unable to put forward a

viable per-person mechanism for determining benchmarks for open space, and considers this alternative unlikely to yield a solution.

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

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

SSROC recommends that:

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

## Conclusion

Thank you for the opportunity to comment on the Review of the Essential Works List, Nexus, Efficient Design and Benchmark Costs for Local Infrastructure.

SSROC cannot support the core findings and draft decisions of IPART's Draft Report. The SSROC submission reflects the serious concerns raised by local councils. From a local government perspective, the Draft Report provides little in the way of improvement to the operation of the s.7.11 contributions system.

The Draft Report presents a set of proposals that would:

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



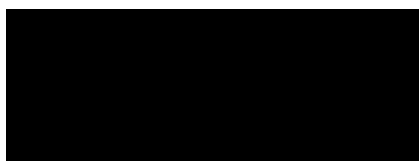


SSROC strongly recommends that the Draft Report be reviewed and revised to address the key concerns of local councils. A summary of the above recommendations is at Attachment 1, and detailed responses to the review are at Attachment 2.

This submission has been drawn up largely during the caretaker period, and is required to be made before the new councils have been declared and before the councils have appointed their Delegates to SSROC. While it has been developed in close consultation with council officers, it has neither been reviewed by Councils nor endorsed by the SSROC. I will contact you further if any issues arise as it is reviewed. If you have any queries, please do not hesitate to contact me or Mark Nutting, SSROC Strategic Planning Manager on [REDACTED] or [REDACTED].

Again, thank you for the opportunity to comment on the Review of the Essential Works List, Nexus, Efficient Design and Benchmark Costs for Local Infrastructure. SSROC looks forward to participating in any further consultations on this important area.

Yours faithfully



Helen Sloan  
**Chief Executive Officer**  
**Southern Sydney Regional Organisation of Councils**

### **Consultation**

SSROC strongly recommends that the review period be extended into 2022 so that the Draft Report may be fully considered by the new elected councils.

### **Essential Works List**

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

### **Efficient Design**

4. that the requirement for resilience not be limited to resilience to climate change, but to the shocks and stresses communities with which communities need to be able to cope,
5. that arbitrary base level minimum effective functionality costing be dropped and replaced with community determined standards,
6. that IPART clarify how providing for climate change resilience and future proofing can be accommodated in the new framework given the severely restricted EWL and the imposition of base level funding,
7. that IPART provide clarity and guidance on how councils reconcile achieving best value for the community (e.g., via using whole of life costs) with the requirement to provide base level performance costs.

### **Benchmarking**

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

Detailed responses to the review's recommendations are at Attachment 2.



IPART Draft Decision	SSROC Position
<p>1. Costs included in a section 7.11 contributions plan should relate to provision of local infrastructure in one or more of the following categories:</p> <ul style="list-style-type: none"> <li>– land and/or facilities for open spaces</li> <li>– land or strata space for community facilities</li> <li>– land and/or facilities for transport</li> <li>– land and/or facilities for stormwater management</li> <li>– costs of plan preparation and administration</li> <li>– borrowing costs to forward fund infrastructure</li> </ul>	<p>Not supported</p> <p>SSROC does not accept that s7.11 contributions should be limited to these categories.</p> <p>At a minimum the EWL should be extended to include community facilities.</p>
<p>2. Costs included in a section 7.11 contributions plan should relate to provision of development contingent local infrastructure. Proposed items will be development contingent where:</p> <ul style="list-style-type: none"> <li>– The expected development creates a demonstrable increase in the demand for public amenities and services.</li> <li>– The types of public facilities proposed in the contributions plan are required to address that demand.</li> <li>– The proposed facilities consider the extent to which existing facilities have capacity to meet that demand.</li> </ul>	<p>Accepted</p> <p>The concept of nexus is long established.</p> <p>The onus of proof requirements is considered excessive, particularly for small plans where contributions remain within the caps.</p>
<p>3. Costs included in a section 7.11 contributions plan should reflect the base level, efficient local infrastructure required to meet the identified demand. Proposed items will satisfy these requirements if:</p>	<p>Not supported.</p> <p>Local governments are opposed to the imposition of base level minimum performance costing.</p> <p>The arbitrary base level minimum effective functionality costing proposal</p>

<p>– They deliver the minimum level of performance required to meet the identified need and comply with government regulations or guidelines and industry standards.</p> <p>– They provide value for money compared with the different options available for meeting the identified need, with costs and benefits considered over the life of the assets proposed.</p>	<p>should be dropped and replaced with community determined standards.</p>
<p>4. We will establish cost standardised benchmark scopes and base costs for the items listed in Table 7.1. Our approach will incorporate variation in the appropriate costs using base costs and adjustment factors.</p>	<p>Not supported.</p> <p>Councils are opposed to the imposition of rigid standardised benchmark costs.</p> <p>Councils have reported that the benchmarks provided by Cardno do not reflect actual costs experienced by councils.</p>
<p>5. We recommend project allowances to applied to base costs at the rates proposed under Table 7.3 and Table 7.4. p54.</p>	<p>Supported in principle.</p> <p>If benchmark costs are imposed, it is essential that allowances be included. The proposed rates require further consultation with local government.</p>
<p>6. The benchmark cost for plan administration should be set at 1.5% of the total value of works to be funded by local infrastructure contributions. This should cover the total costs of plan preparation, management, and administration.</p>	<p>Noted.</p> <p>This proposal maintains the current rate. However, provision should be made to allow councils to charge a higher rate where this is supported by circumstances</p>
<p>7. IPART should annually update the benchmarks to account for cost escalations using the ABS Producer Price Indexes for construction in Table 8.1 and publish the escalated benchmarks on its website.</p>	<p>Supported.</p> <p>If benchmarks are imposed, it is essential that benchmarks be updated annually.</p>
<p>8. IPART should review the set of benchmarks no less frequently than every 4 years and should carefully monitor the use of benchmarks in</p>	<p>Supported</p>

<p>contributions plans to determine if an earlier review is required.</p>	<p>If benchmarks are imposed, it is important that the set of benchmarks be updated regularly.</p>
<p>9. IPART should work with DPIE and councils to establish a mechanism for obtaining actual project costs to refine the benchmarks.</p>	<p>Supported</p> <p>This may help provide benchmarks that more accurately reflect actual costs.</p>
<p>10. We recommend that councils provide appropriate justification, consistent with the principles described in chapter 9, when using cost estimates instead of benchmarks.</p>	<p>Not supported.</p> <p>The level of evidence required to justify the use of cost estimated is considered excessively onerous in the current form.</p>
<p>11. We recommend that councils use either a top down or bottom-up approach to estimating costs that uses the most accurate information consistent with the methods described in chapter 9.</p>	<p>Noted</p>
<p>12. We recommend all contributions plans above the threshold amounts (\$20,000 /\$30,000 per lot infill / greenfield) be reviewed every 4 years consistent with the principles outlined in <b>Table 10.1</b>, with appropriate evidence to support the reviews as described above.</p>	<p>Noted</p>