THE HILLS
Sydney's Garden Shire
THE HILLS SHIRE COUNCIL
3 Columbia Court, Norwest NSW 2153
PO Box 7064, Norwest 2153
ABN 25 034 494 656 | DX 9966 Norwest

1 December 2023

Scott Chapman
Independent Pricing and Regulatory Tribunal
PO Box K35
HAYMARKET POST SHOP NSW 1240

Our Ref: FP216

Dear Mr Chapman,

SUBMISSION ON IPART'S DRAFT ASSESSMENT REPORT
DRAFT CONTRIBUTIONS PLAN NO.15 – BOX HILL PRECINCT (FP216)

Thank you for the opportunity to provide comments on IPART's draft Assessment Report for Contributions Plan No.15 – Box Hill Precinct. This submission is structured as follows:

- Covering letter: Summary of Key Responses;
- Attachment 1: Response to IPART's Recommendations (excluding Recommendations 5 and 6);
- Attachment 2: Response to IPART's Recommendations 5 and 6; and
- Attachment 3: Additional Matters and Requests.

Summary of Key Responses

Council officers raise strong objection to Recommendations 5 and 6. These recommendations would result in the arbitrary removal of $78.6m of future income from the plan which will prevent Council from completing the CP15 Works Program. It is concerning that IPART would recommend changes to a Plan that knowingly inhibit the funding of the Works Schedule or alternatively, that reduce rates for developers within the Precinct by relying on the general rate base of the LGA (or taxpayers in NSW more broadly) to directly subsidise the infrastructure required to support development in Box Hill.

These recommendations are considered tantamount to a new contributions "cap" within the Precinct and a clear shift in costs away from the development that generates the need for this infrastructure, contrary to the very principles of nexus and apportionment which underpin contributions planning system in NSW.

These issues are summarised in the following sections and further detailed within Attachment 2.

- ***Options to Fund the "Shortfall"***

The draft Report suggests options for how the $78.6m funding deficit could be funded (extract of IPART's draft report below):

- **Ratepayers** – either explicitly through higher annual rates, or implicitly through the council's reserves. This would mean that remaining developments do not pay excessive contributions, but ratepayers would pay for some of the infrastructure for the precinct. In some cases, a special rate may be applied only on households in a given area or precinct.
- **Reducing infrastructure –** including delaying or cancelling works or services that may be important to the households and businesses in the precinct.
- **Grants** – other avenues for paying for infrastructure such as government grants are often out of the council's control and are difficult to predict.

Preliminary comments on each of these options are provided below, with further detailed commentary provided in Attachment 2:

- **Ratepayers:** The first option suggested by IPART is that The Hills Shire ratepayers be required to offset the shortfall and fund the delivery of new local infrastructure to service development within the Box Hill Precinct. In short, funding the shortfall through reserves would mean that residents living within existing established areas of the Shire would carry the burden of subsidising development and servicing the future population within Box Hill, despite not creating any of the demand for this infrastructure themselves, and with minimal likelihood that they would ever benefit from its provision.

  This would be entirely inconsistent with the user pays principle which underpins the Section 7.11 contribution framework and the entire objective of preparing contributions plans. Section 7.11 Contributions Plans are a form of direct contribution which enable Council to fund local infrastructure and facilities that are required as a direct consequence of development and growth in demand within the precincts where they apply. To force residents elsewhere in the Shire, such as Wisemans Ferry or West Pennant Hills, to fund new infrastructure that they are never going to use would be completely unreasonable and would prevent Council from delivering other critical local infrastructure and services elsewhere in the Shire. It would be completely at odds with the principles of nexus, apportionment and fair and reasonable attribution of costs.

  Under the Local Government Act, a special rate variation can only be levied on properties that will benefit from the services and for a maximum of 7 years. Accordingly, Council has undertaken a high-level internal analysis to determine the impact of applying a special rate to Box Hill to cover IPART's estimated deficit of $78.6m. The analysis demonstrates that the impact would be significant resulting in a permanent rate increase of +172% p.a. over 7 years. If there is a need for Box Hill ratepayers to fund any CP15 deficit, IPART's final report should recommend that the Minister approve an appropriate permanent special rate variation over a 7-year period to fund the CP15 deficit without the need for Council to go through the standard approval process to seek the special rate variation and engage in community consultation processes.

- **Reducing Infrastructure:** IPART's second option is that Council could reduce the value of the CP15 Work Program by removing $78.6m of Infrastructure. It is noted that IPART's assessment concurrently concludes that there is adequate nexus (and reasonable costings) for all infrastructure listed within the Plan, so it is unclear which infrastructure IPART considers that Council should remove from the Plan. If IPART is to persist with this recommendation, it should more clearly identify which infrastructure it believes should be deleted from the Plan and this should be the subject of consultation with the Box Hill community as IPART's exhibited report is not transparent in this regard.

The removal of transport items would substantially reduce the level of service of the road network and result in a detrimental impact on the precinct. Additionally, the removal of open space and / or water management items would result in a poor planning outcome and impede the function and amenity of the precinct. Notwithstanding, some items which are yet to commence and which IPART or the Minister could consider for removal are listed below:

- Copenhagen Street Reserve (land and capital): $19.5m
- Hereford Street Reserve (land and capital): $22.36m
- Shetland Street Reserve & associated half width roads (land and capital): $10.1m
- Settlement Drive Reserve & associated half width roads (land and capital): $4.9m
- Sunnyhill Parkway Sports Complex (land and capital): $61.9m
- Anthony Skarratt Sports Complex (land and capital): $39m
- Boundary Road mid-blocks: $11.2m

A number of these facilities are within or adjoin the Hills of Carmel area, noting that a significant portion of this development was approved during the period when CP15 contributions rates were “capped”. However, it should also be noted that the removal of this infrastructure would serve to further aggrieve existing residents who have been disadvantaged by significant delays to infrastructure delivery (in particular open space due to with difficulties associated with negotiating acquisition of this land) and cashflow issues resulting from the capping of contribution rates.

- **Grant Funding:** IPART’s third option relates to grant funding. Council consistently seeks grant funding as opportunities arise. However, this form of funding is sporadic and uncertain. Unless a commitment is made from Government as part of this plan review process, it would be financially irresponsible for Council to simply rely on the future provision of grants to fund critical infrastructure identified as necessary to support development. It is likely that this option would ultimately lead to the removal of infrastructure from the Plan (IPART’s Option 2), which again, should be more transparently communicated for the community’s understanding in IPART’s report.

- ***Undermining the Contributions System***

IPART’s report on CP15 concludes that all of the infrastructure within the draft Plan has nexus (which is agreed) and is reasonably costed (which is also agreed) but then goes on to recommend that $78.6m of this infrastructure is unable to be funded by development within the Precinct. This entirely undermines the intent of the local contributions planning system in NSW, which is to enable income from development within a Precinct to fund the infrastructure required to support development within that Precinct.

IPART’s recommendation also undermines the practice of Councils periodically reviewing and updating contributions plans. The purpose of periodical review and update is to update the assumptions, actuals and estimates within a plan over time and then adjust the contribution rate (either up or down) to ensure the necessary infrastructure required to support development can be adequately funded by that development, and as a result, that the general rate-base is not burdened with the cost of providing infrastructure to service development precincts.

IPART’s justification within the draft Report with respect to the “shortfall” is misleading, as the changes to the cost of the Plan are primarily the result of escalating land and capital costs in comparison to the estimates in the current version of the plan. It should be noted that in many instances, Council had tried to include higher estimates in its *previous* reviews of the Plan, however was consistently required to include lower estimates in the current (and previous) version/s of the Plan as a result of IPART’s recommendations each time. These reduced costs mandated by IPART’s previous review have now clearly been proven to severely underestimate the true cost of infrastructure and are one of the key reasons why Council has not been able to levy sufficient contributions from development under the current and previous versions of the Plan. The community are now expected to accept the consequences of these inaccuracies which were imposed on Council, with seemingly no accountability or responsibility from IPART for its role in this situation.

Furthermore, IPART's approach for determining the "shortfall" involves the inconsistent treatment of Government gap funding (AIF and LIGS) from other CP15 contributions income. Gap funding from the Government represents the difference between the Government's "capped" contribution rates and the full contribution rates. IPART's approach essentially leads to a lower contribution rate and a larger "shortfall". This is explained in more detail later in this submission.

There are a range of complex reasons for the current financial position of CP15 and whilst no solution is "ideal", Council's approach of ensuring that the cost burden for providing infrastructure required to support development of Box Hill Precinct as a whole remains contained to development within the precinct provides the most reasonable and justifiable pathway forward, which is the most consistent with the principles of nexus and apportionment that underpin the preparation of Contributions Plans. IPART's recommendations and its alternative solutions would result in an outcome which is objectively unfair and entirely contrary to the user pays principle which underpins the contributions system in NSW.

- ***<u>Consistency of IPART Review Process and Outcomes</u>***

IPART's 2023 assessment of the Schofields Contributions Plan includes consideration of similar issues to CP15, in particular higher infrastructure costs and limited remaining development from which to cover cost increases. As part of its assessment IPART concluded the following:

> *"[the] proposed costs in CP24 (2022) are reasonable and are necessary to service demand from the new development. While developers may be facing increasing costs in other areas, we consider it is critical that developers are given accurate signals about the cost of servicing new development. If developers do not pay for the true cost of infrastructure, councils will either underinvest in services or costs will be passed onto ratepayers, resulting in existing ratepayers paying more than their fair share."*

It is curious that IPART would make this statement in its review of Blacktown's Contributions Plan and then directly contradict this approach by way of its recommended approach for CP15 in The Hills Shire (which establishes a contribution rate that is around $35,000 per dwelling *<u>less</u>* than the rates endorsed by IPART for CP24). IPART's draft recommendations for CP15 will quite obviously mean that development in Box Hill Precinct overall will <u>not</u> be funding the true cost of infrastructure and will result in an under provision of services and / or passing on of costs to a wider rate base for which there is definitively no nexus. In the case of CP15, IPART seems willing to recommend that the rate be arbitrarily reduced such that it does not reflect the true cost of providing infrastructure to service development. This provides a mixed signal to the market on the cost of servicing development.

If IPART remains of the view that higher than expected costs should only be partially borne by remaining development in the Precinct, then this approach should be reflected throughout all reviews as a principle, regardless of the extent of the financial impact or the subsequent rate. It should also clearly identify the projected end of plan shortfall so this is known to the community, along with which infrastructure it believes should be removed from a Plan as a result.

Separately, based on the methodology proposed by IPART, Plan reviews moving forward would effectively need to ignore the actual income received or the future income required to deliver the remainder of the work program. In the case of CP15, the review of these factors and updates to the assumptions have resulted in an increase in the cost of infrastructure and resulting increase in the contribution rates. However, if this methodology was applied consistently, in instances where the cost estimates within the Plan reduced as part of the review, IPART would presumably also have no regard to the higher income received from earlier in the plan and would as a result knowingly recommend a higher rate than what is actually required (leading to a known end of plan surplus). This would be inappropriate, yet is what would eventuate from IPART's recommended methodology, if applied consistently.

It should also be noted that CP15 has now been reviewed by IPART on 5 separate occasions over the last 10 years. Each time, the same methodology has been applied by Council (which it believes to be the correct application of the NPV methodology as set out by IPART – discussed further below). However, it is only now, as part of its 5th review of the Plan, that this matter of apportionment to remaining population has arisen. IPART needs to apply its assessment process and criteria consistently and cannot simply recommend changes to fundamental elements a plan as part of its 5th review, part of the way through the life of a precinct, simply because of the perceived magnitude of the contribution rate increase, because IPART wants to send a positive signal to the market or because of objection from landowners and developers.

- ***<u>IPART's Modelling</u>***

IPART's modelling involves a significant departure from Council's current and longstanding application of the NPV methodology. It also differs to the methodology espoused in IPART's Technical Paper – Modelling Local Development Contributions in a Present Value Framework. Specifically, that *"anticipated expenditure is equal to the present value of anticipated revenue … to ensure that a Council collects sufficient revenue to cover its anticipated expenditure"* and the underlying formula set out by IPART that PV costs = PV revenue, thereby resulting in a $0 end of plan balance. Rather than utilising an accurate figure for "anticipated revenue / PV Revenue", IPART's recommendations for CP15 are that Council effectively ignore the realities of actual revenue collected and remaining revenue collection potential.

IPART's modelling allocates the plan's total cost over the total expected population, ignoring the reality of what development has occurred and what development remains, rather than allocating the total remaining cost of the Works Schedule over the total remaining development that can be levied. There are substantial flaws in this approach as it would undermine Council's fundamental understanding of the NPV methodology and ultimately result in an end of plan deficit to be covered by alternative sources such as the broader rate base which are not the end users of the infrastructure. If this is now IPART's intent of how NPV modelling should be completed, then IPART's current Technical Paper is now incorrect and misleading and should be updated accordingly, with appropriate consultation with stakeholders.

Despite Council's objections, if IPART is to persist with its recommendation to utilise a new alternative methodology for NPV modelling, Council has modelled a number of options (incorporating changes as discussed below) which should be addressed and incorporated into IPART's final modelling and report.

IPART's modelling includes $96.5m of AIF, LIGS and WIK income, essentially accounted for as grant funding over and above the contributions to be received from the 48,956 population. However, AIF and LIGS funding is intended to cover the gap funding between the capped contributions and full contributions associated with a portion of this population. Similarly, WIK contributions are contribution offsets applied in recognition of works delivered by a developer. This income is received in lieu of the monetary contributions and should be treated the same way as other CP15 contributions as they are similar in nature, being tied to development consents / associated population.

To be clear, AIF, LIGS funding and WIK contributions are *<u>in satisfaction of some</u>* of the unreceived income associated with approved development within the Precinct, *<u>not in</u>*

addition to **the income projected from this population. Accordingly, accounting for AIF, LIGS and WIK as income in addition to a full income projection from the 48,956 population is erroneously double counting this income. Therefore, this submission recommends that LIGS, WIK and AIF be treated as CP15 contributions income. This is reflected in the updated model provided with this submission.**

Further, Council's NPV model as submitted to IPART does not index completed land acquisition costs. However, it has been identified that this is inconsistent with IPART's Information Paper: 'Contributions plan assessment: land costs' (2020) which states the following:

> Land costs represented around 42% of the assessed reasonable costs in the plans IPART assessed between October 2011 and July 2020. These costs can include:
>
> - The actual costs of land already acquired by a council, indexed by the CPI
> - The estimated costs of land yet to be acquired
> - Any just terms compensation that has been or is likely to be paid in association with land acquisition
> - Any conveyancing costs associated with the land acquisition.

Accordingly, this submission recommends that the final modelling be updated to index completed land costs in accordance with CPI to reflect IPART's published guidance.

- <u>Additional Matters and Requests</u>

This submission further requests that IPART's final report provide endorsement for a number of additional updates which would primarily reflect further design work and updated land acquisition extents identified since the plan was submitted to IPART for review. As these are simply refinements to reflect further design work, no change is required to the scope or cost of the associated capital items. The full list of additional requests is discussed further in Attachment 3.

<u>Options and Recommendations</u>

1. **Option 1 (preferred):** The <u>preferred</u> approach is to:

    - Accept IPART's recommendations 1-4;
    - Do not accept IPART's recommendations 5 and 6;
    - Treat AIF, LIGS and WIK as contribution income in the alternative NPV modelling;
    - Bring forward PPI indexation to the operational base year FY 2022/23;
    - Index completed acquisition costs in accordance with CPI consistent with IPART's Practice Note; and
    - Incorporate adjustments to reflect updates since the plan was submitted to IPART (Attachment 3).
    - Option includes 0% share of Deficit.

2. Option 2: The <u>second</u> preference is to:

    - Accept IPART's recommendations 1-4;
    - Accept IPART's recommendations 5 and 6 but with the following adjustments:

        - Treat AIF, LIGS and WIK as contribution income in the alternative NPV modelling;
        - Bring forward PPI indexation to the operational base year FY 2022/23;
        - Index completed acquisition costs in accordance with CPI consistent with IPART's Practice Note; and

- ➢ Adjustments to reflect updates since the plan was submitted to IPART (Attachment 3).
- ➢ Option includes 50% share of Deficit.

A summary of the financial implications of the above options is provided in the table below:

Options	Total Work Schedule Value	Dwelling Rate (KCP)	Non-Residential Rate (KCP)	Deficit Apportioned to CP15	Unfunded Deficit
Option 1 - Treat AIF&LIGS&WIK as Contributions with 0% Share Deficit	$1,058,142,085	$104,187	$172	$168,632,113	$0
Option 2 - Treat AIF&LIGS&WIK as Contributions with 50% Share Deficit	$1,058,142,085	$84,043	$165	$84,316,057	$84,316,057

3. If IPART's pursues its recommendation to partly apportion the deficit to alternative sources, both IPART and the State Government should be required to fully explain this decision and its implications to Council and the broader Box Hill community. IPART and the State Government should justify why infrastructure which was identified as necessary through the Government's precinct planning process is now no longer able to be funded or delivered through the local infrastructure contributions framework.

4. If IPART pursues its recommendation to partly apportion the deficit to alternative sources, then its final report should include a recommendation that enables Council to insert a notation in the plan explaining that the rates being levied will not be able to deliver the full work program and, unless alternative funding sources are identified, certain projects may not be able to be delivered.

5. If IPART pursues its recommended option that Council remove infrastructure from the plan in response to the funding deficit that would arise from IPART's recommendations, then IPART should be more transparent in its report by identifying which items from the Works Schedule (in order of importance) should be removed from the Plan and no longer delivered.

6. If IPART pursues its recommendation to partly apportion the deficit to ratepayers, its final report should recommend that the Minister approve a permanent special rate variation to Box Hill properties over a 7-year period to fund the CP15 deficit without the need for Council to go through the standard approval to seek the special rate variation and engage in community consultation processes.

7. IPART should urgently finalise its review of CP15 and submit its final recommendation report to the Minister before the end of 2023.

An updated work schedule and NPV models in support of Council's preferred approach are attached to this submission. The modelling for Options 2 and 3 can be provided to IPART upon request.

Should you wish to discuss any of the matters raised within this letter, or if you would like to arrange a meeting with relevant Council officers, please contact Brent Woodhams, Principal Coordinator Forward Planning on [redacted].

Yours faithfully

[redacted]

Nicholas Carlton
MANAGER – FORWARD PLANNING

Attachments:

1. Response to IPART's Recommendations (Excluding Recommendations 5 and 6)
2. Response to IPART's Recommendations 5 and 6
3. Additional Matters and Requests
4. Breakdown of Cost Estimate – BHT22 (CONFIDENTIAL)
5. Updated Work Schedule (preferred recommendation) (CONFIDENTIAL)
6. Updated Residential NPV Model (preferred recommendation) (CONFIDENTIAL)
7. Updated Non-Residential NPV Model (preferred recommendation) (CONFIDENTIAL)

ATTACHMENT 1 – RESPONSE TO IPART'S RECOMMENDATIONS (EXCLUDING RECOMMENDATIONS 5 & 6)

Recommendation 1 – Remove the costs for the skate bowl / plaza and pump track / BMX track from open space embellishment costs (Item BHLP08 – Rainforest Street Reserve) as these are not on the Essential Works List. This will reduce the cost by $1.225 million.

Council Comment:

This recommendation would reduce the capital cost of Rainforest Street Reserve from $5,549,781 to $4,324,781 (-$1,225,000).

No objection is raised to this amendment as it is acknowledged these elements within the costing are not on the Essential Works list.

Recommendation 2 – The council update the plan for the income of $8.23 million to reflect the agreed Accelerated Infrastructure Funding for the transport item BRBRU.

Council Comment:

This recommendation would account for $8.23 million in income in recognition of AIF funding associated with the Boundary Road bridge. There would be no associated change to the item cost within the draft plan.

It is considered reasonable that the modelling be updated to reflect this AIF3 income, subject to receipt of these funds from the Department of Planning. Please note that Council is still waiting for the Department to provide an executed agreement and issue the funding. The Department has advised that the agreements are awaiting sign off from the Secretary.

Recommendation 3 – Update the cost of plan administration to be 1.5% of the revised total works cost.

Council Comment:

Recalculation of plan administration would reduce the administration cost of the plan from $8,404,772 to $8,277,019 (-$127,753).

It is considered reasonable that the cost of plan administration be recalculated to factor in the removal of open space embellishment costs as supported in Recommendation 1.

Recommendation 4 – The council update the apportionment of BOUNDARYRD, BOUNDARYRD2, BRBRU, BHT23, BHR06 and BHR07 to 70% to the plan.

Council Comment:

Reapportionment of the Boundary Road items to 70% within the draft plan would reduce the associated cost of the work program from $50,918,319 to $43,626,466 (-$7,291,853).

It is considered reasonable that the apportionment for Boundary Road items be reduced to 70% for CP15 in recognition of the findings to date of the Boundary Road Working Group. This agreement is contingent on the reduction in apportionment to CP15 being matched by a corresponding increase in apportionment of this item to the Vineyard CP as part of the next review of that Plan by Hawkesbury Council / IPART.

Recommendation 5 – The council remove $73.0 million of the estimated shortfall in NPV terms in setting the residential contribution rate for the plan.

Recommendation 6 – The council remove $5.6 million of the estimated shortfall in NPV terms in setting the non-residential contribution rate for the plan.

See Attachment 3.

Recommendation 7 – The council should review the method or index used to value land next time the plan is reviewed.

Council Comment:

It is acknowledged that the land acquisition indexation assumption within draft CP15 is based upon an average of the annual percentage change in the Australian Bureau of Statistics

Established House Price index for Sydney from December 2006 to December 2021, with December 2021 being the final publication of this index. Council will continue to monitor land costs and consider the most appropriate index as part of any future plan review.

Comments Sought – We are seeking comment from the council on how the public amenities and public services will be provided within a reasonable timeframe.
Council Comment: Council has been challenged by many factors which have contributed to delays in planning, designing, acquiring land and delivering the required infrastructure in Box Hill. Such factors include State Government initiated SEPP amendments, capping of contributions (resulting in a plan deficit), uncertainty regarding ultimate designs and funding availability, the rate of development and market conditions, COVID-19, difficulties in negotiating land acquisitions and out-of-sequence development. To date, Council has spent a significant portion of the contributions received on land acquisition which is an important first step as Council needs to own the land in order to finalise designs and seek regulatory approvals to commence any work. The historic capping of contributions by the State Government resulted in Council being unable to levy the full contribution rate from a significant amount of development within the Precinct. This capping resulted in an $89m shortfall in income being received by Council during this period. This is extremely relevant as this reduction in income early in the life of the Plan inhibited Council's capacity to acquire the necessary land. This in-turn contributed to the lag in the rollout of infrastructure. Given the rapid rate of approval of development that has been experienced within the Precinct (in particular the rate of approvals which occurred prior to the removal of the cap on contributions), and the extremely difficult cashflow position of Council due to the capping of contributions and the escalating land and capital costs, Council has been required to prioritise the rollout of the most critical infrastructure. When any planning authority experiences a doubling of the population living within an area, with development occurring at a rate twice as fast as previously planned, then this affects infrastructure delivery and prioritisation. It is also noted that while significant approval numbers have been issued (with the contributions payable now fixed in each consent), a large proportion of this approved development has not yet translated to completed development and the necessary income associated with these approvals has not been collected by Council (nor will it be, as the majority of these approvals have arbitrarily low / capped contribution rates). As such, it is misleading to make comparison between approved development and the proportion of the works schedule delivered, especially in the context of a Precinct which has a significant number of "banked" development consents. The proposed infrastructure scheduling has sought to be in-line with the rate, location and distribution of development. It is also based on the recent review of the status of each project, status of land acquisition, approved AIF funding and in response to community feedback. Reasonable assumptions regarding planning, approval and construction timeframes for infrastructure items have been made. It is acknowledged that the Department's Practice Note requires IPART to assess whether the proposed public amenities and services can be provided within a reasonable timeframe. However, it is very difficult for Council to deliver infrastructure within Box Hill (which was identified and rezoned by State Government) within a timely manner when the State Government makes funding decisions which limit Council's contribution income and ability to fund the works schedule. IPART's recommendations within the draft Report which reduce future income by $78.6m will further restrict and delay the acquisition of land and delivery of infrastructure within a timely manner, and will likely result in certain infrastructure being deleted. If there is truly concern from IPART and Government with respect to the delivery of infrastructure within a reasonable timeframe, then the first step should be to ensure that Council can collect sufficient contributions income to actually fund the land acquisition and works identified, not to knowingly create a significant funding deficit.

ATTACHMENT 2 – RESPONSE TO IPART'S RECOMMENDATION 5 & 6

The draft recommendations require Council to update the NPV models to remove $78.6m in future residential and non-residential income, to artificially reduce the contribution rate for future residential development by around $23k per dwelling and result in an end of Plan deficit of $78.6m.

Strong objection is raised with respect to Recommendations 5 and 6 on the grounds outlined below.

a) Purpose of a Contributions Plan Review

Under the *Environmental Planning and Assessment Act 1979*, councils are required to regularly review contributions plans to ensure that the contribution rate remains accurate and appropriate to fund the infrastructure necessary to service development within a precinct, thereby ensuring that cost burden does not extend to the broader rate base. This is the fundamental reason for undertaking a review and is indeed the reason for this review being required under the previous Ministerial Advice for CP15. IPART has accepted this practice and Council's application of the NPV methodology for ***all*** of Council's contributions plans (including 4 previous reviews of CP15), irrespective of whether the contributions outcome was increasing or decreasing contribution rates.

b) Practice Note

The 2019 Practice Note against which IPART is required to assess contributions plans opens with the following statement:

"A user-pays philosophy underlies the funding of local or community infrastructure required to satisfy service demand generated by development activity."

It is considered that IPART's recommendations are contrary to the user pays principle that underlies the current system. The draft recommendations will require ratepayers from elsewhere in the Shire to fund new infrastructure in Box Hill that they are never going to use.

Section 7.11 Contributions Plans are a form of direct contribution which enable councils to fund local infrastructure and facilities that are required as a direct consequence of development and growth in demand within the precinct where the Plans apply. To force residents elsewhere to fund new infrastructure that they are never going to use would be completely unreasonable and would prevent Council from delivering other critical local infrastructure elsewhere in the Shire.

The Practice Note also states:

"Transparency and accountability measures in the collection and expenditure of contributions and the provision of public facilities help underpin confidence in the system."

Recommendations 5 and 6 of the draft report do not represent a transparent or accountable approach to the delivery of infrastructure within Box Hill. The recommendations would most likely result in the shifting of costs to ratepayers that are entirely unaware of the changes, potentially making broader rate payers accountable for infrastructure provision for which there is definitively no nexus. Alternatively, the draft report suggests that the required infrastructure could either be deleted from the Plan or funded through the application of grants, completely removing any confidence in the system and certainty for Council, the community and industry. The notion that nearly $80 million of planned infrastructure may no longer be delivered has also not been communicated to the Box Hill community (current or future) by IPART, although this clearly would be one of the most likely outcomes of IPART's recommendations.

It is understood that a key concern of IPART relates to apportionment. The 2019 Practice Note sets out the matters that IPART will consider with respect to apportionment and a response to each of these matters, demonstrating how Council has appropriately and reasonably addressed apportionment, is provided below.

- *"Are the public amenities and public services only required to meet the need of the new development or will it also serve the existing community?"*

It is noted that the Department's Practice Note makes reference to existing and future population when considering apportionment. Importantly, this is in the context of preparing a new plan, rather than reviewing the assumptions and actuals within an existing plan which is the sole purpose of the current review, having been required by the Minister for Planning and Public Spaces as part of its previous advice. In this context, it is reasonable to interpret the term "existing community" as the population that lived within the Box Hill Precinct prior to its rezoning as an urban release area.

The demand for all infrastructure within the Plan is directly linked to the urbanisation of the Box Hill Precinct (48,956 additional people and 1,147,120m^2 additional non-residential GFA).

The draft Plan sets out how the cost of different infrastructure items have been apportioned (where required) between the different development types expected within the Precinct (between residential and non-residential development). Where demand is shared between development in an adjoining Precinct, the cost burden has been apportioned with other precincts, based on rationale which has also been set out within the relevant sections of the Plan.

- *"How is the existing community accounted for in the apportionment of costs?"*

The appropriate time to account for 'existing' population is at the outset of preparing a new contributions plan. The development that has occurred since this time, along with development yet to occur, is considered 'additional' or 'new' development for the purpose of projecting demand and apportioning infrastructure costs.

Apportioning 50% of the cost increase to remaining 'new' development has no justifiable basis and is not consistent with how contribution plans are prepared and reviewed. When preparing (or reviewing) a contributions plan an assessment of nexus is undertaken. An assessment of demand is then undertaken to determine what percentage of the demand/cost should be apportioned to development <u>within a Precinct holistically</u> and what percentage should be funded by alternative sources. A further apportionment exercise is undertaken to apportion costs between residential and non-residential development.

- *"How are costs apportioned between different types of land use (e.g. residential, industrial and commercial land uses?"*

The work schedule and NPV models underpinning CP15 clearly sets out how the costs of infrastructure have been apportioned between different land uses, based on the level of demand created by them.

Whilst the written plan includes some commentary to explain how items have been apportioned between residential and non-residential development, it is acknowledged that the specific apportionment for each item is not abundantly clear within the plan. Accordingly, as further discussed within Section c) of Attachment 3, it is requested that IPART's final report include a further recommendation that the plan be updated to specify the apportionment between residential and non-residential development of each specific item within the work schedule.

c) <u>NPV Methodology</u>

The *Environmental Planning and Assessment Act 1979*, the Environmental Planning and Assessment Regulation 2021 and all relevant guidance including papers released by IPART provide that NPV methodology is acceptable in the calculation of Contributions Plans. Council's use of NPV to adjust forecasted costs, and to recoup any losses incurred as a result of factors such as refinement of base costings is entirely reasonable and there is nothing in the legislation or relevant case law which prohibits councils from building existing surplus or deficit in funds on hand into the modelling. Previous financial and legal advice on Council's modelling concluded this is best practice NPV methodology.

When setting the contribution rates it is entirely reasonable for Council to account for existing funds on hand (surplus or deficit). If in the event the cost of infrastructure reduces or infrastructure is removed from the Plan, Council has an obligation to account for the higher income received when setting the new contribution rates to ensure that there will not be an end of plan surplus. The methodology that is proposed within the draft Report, would mean that Council would be unable to have regard to higher income received from earlier in the plan and would knowingly set a higher contribution rate than what is required to deliver the work program. Clearly this methodology is unreasonable.

d) Artificially "Back Solving" the Contribution Rate

It is considered that changes in the value of contribution rates over the lifecycle of a development area is inevitable, as a result of the requirement for Councils to periodically review Contributions Plans and ensure they reflect the most accurate and up to date assumptions, cost estimates, development projects and actual costs. This means that the contribution rate payable for development can change over time and as a result, different development may be levied a higher or lower contribution rate based on the version of the contribution plan which applies at the time consent is issued for that development. In the context of a contributions plan which has established nexus between new infrastructure and the development of an area, it is considered that unavoidable fluctuations in the contribution rate payable for different developments in a Precinct over a 20-40 year period does not represent a lack of nexus and apportionment between the development and the infrastructure. It should also be noted that over this same time, there has been a significant increases in the value of land, housing lots and dwellings for sale which would likely be greater in value than the increase in the contribution rate per dwelling now being proposed.

Setting an arbitrary contribution rate that is significantly lower than what has been demonstrated as necessary to deliver the work program will send the wrong signal to the market. The correct signal should be an accurate contribution rate that will enable the work program to be delivered. Developers within the Precinct are subdividing land and selling lots to new owners on the assumption that the Precinct will be serviced with sufficient local infrastructure (as specified within CP15). However, the contribution rate by IPART will not result in those outcomes being delivered and as such, the market would be acting on incorrect information.

For IPART to conclude that all of the infrastructure within the draft Plan has nexus (which is agreed), yet that at the same time impose an arbitrary lower rate that will result in an $78.6m end of Plan shortfall is ludicrous. What IPART is essentially recommending is the re-capping of the contribution rates within Box Hill, without any real justification and to the detriment of the future community. IPART has also seemingly approached this recommendation by first determining what it feels is a "reasonable" contribution rate and then back-solving and adjusting the subsequent recommendations to try and achieve this. The contribution rate is the outcome of the equation, not a target which IPART's independent assessment should be geared towards achieving.

e) Financial Analysis

IPART's alternative analysis and modelling recommends a contribution rate of $72,061. This rate is derived through a two-step process being the calculation of an Alternative Rate component ($53,299) and calculation of the Deficit Share component ($18,762) which represents 50% of the anticipated deficit. The total deficit under this Methodology is $156m, with 50% of this ($78m) apportioned to CP15 via the Deficit Share component and 50% ($78m) unfunded, requiring an alternative source.

Step 1: Calculation of the Alternative Rate Component

The Alternative Rate model starts with the same total cost as Council's model, however the model includes $96.5m in income received from AIF, LIGS and contribution offsets associated with WIK. The inclusion of this $96.5m income has the effect of reducing the total cost that is being allocated across the *total* population of 48,956.

However, unlike Council's model, *actual* contributions associated with the approved population (i.e., contributions at pre-determined rates, both received or yet to be received) are ignored in determining the Alternative Rate. The reduced total cost is allocated across total population equally, irrespective of approval status or the reality of the projected income Council is actually likely to receive.

Argyle's financial modelling notes identifies that the Alternative Rate derived is "counterfactual" as "The already approved developments paid a difference rate (sometimes capped). The developments yet to be approved until the new rate comes into effect…will also be facing the old level of contribution rates…". This leads to their recommendation of Step 2 of the Alternative Methodology which is detailed later in this section.

With regard to Step 1, the modelling implies that $96.5m of LIGS, AIF and WIK is income over and above the contributions to be received from the 48,956 population. However, AIF and LIGS funding is intended to cover the gap funding between the capped contributions and full contributions and WIK contributions are contribution offsets applied in recognition of works delivered. All of this income should be treated the same way as other CP15 contributions as they are similar in nature and were intended to be *in satisfaction of* unreceived income from this 48,956 population (as a result of the capping of contributions), rather than in addition to collecting full income from this 48,956 population.

An example extract of an executed LIGS funding agreement is included below which demonstrates the purpose for which LIGS funding is required to be used. The funding agreement requires that LIGS funding be applied as Section 7.11 contributions income, receipted against the plan's ledger accounts:

> 3. Immediately upon receipt of the Funding Amount, Council must deposit the Funding Amount in the Council's general account and receipt the Funding Amount against the individual ledger accounts for Section 94 Contributions Plan No. 15 – Box Hill Precinct (10 December 2019), Section 94 Contributions Plan No. 13 – North Kellyville Precinct (February 2010) and Section 94 Contributions Plan No. 12 – Balmoral Road Release Area (September 2006), respectively, in the amounts set out in the table in Item 3 of this Attachment 1.

Accordingly, if IPART's modelling is to be used it is considered more reasonable to allocate the Total Cost, not the Total "net" Cost (reduced by $96.5m income) across the total Population.

Step 2: Calculation of the Deficit Share Component

As mentioned above, the Alternative Rate component does not consider actual revenues to be received. Step 2 of the Alternative Methodology involves comparing total cost to total revenues, having regard to the actual rates that the approved population are paying, and the Alternative Rate derived from Step 1 that the remaining yet to approve population would be paying. Under this calculation based on an Alternative Rate of $53,299, the total plan deficit is projected to be **$156m**.

IPART recommends a 50% apportionment of this plan deficit to CP15, i.e., $78m, and the remaining 50% be funded by other funding sources, e.g. a Special Rate Variation (SRV). The model then back-solves the additional rate (the Deficit Share component) required to cover the $78m deficit apportionment to CP15, which is calculated to be $18,762. This component is added to the Alternative Rate of $53,299 to arrive at IPART's recommended rate of $72,061.

<u>Land Cost Indexation</u>

Currently Council's NPV model does not index completed land acquisition costs. However, it has been identified that this is inconsistent with IPART's Information Paper: 'Contributions plan assessment: land costs' (2020) which states the following:

> Land costs represented around 42% of the assessed reasonable costs in the plans IPART assessed between October 2011 and July 2020. These costs can include:
>
> - The actual costs of land already acquired by a council, indexed by the CPI
> - The estimated costs of land yet to be acquired
> - Any just terms compensation that has been or is likely to be paid in association with land acquisition
> - Any conveyancing costs associated with the land acquisition.

Accordingly, this submission recommends that IPART's modelling be updated to index completed land costs in accordance with CPI to reflect IPART's published guidance.

<u>Alternative Options</u>

Council officers have undertaken further modelling in light of the above matters and have developed a number of alternative options for IPART's consideration:

1. **Option 1 (preferred):** The <u>preferred</u> approach is to:

    - Accept IPART's recommendations 1-4;
    - Do not accept IPART's recommendations 5 and 6;
    - Treat AIF, LIGS and WIK as contribution income in the alternative NPV modelling;
    - Bring forward PPI indexation to the operational base year FY 2022/23;
    - Index completed acquisition costs in accordance with CPI consistent with IPART's Practice Note; and
    - Incorporate adjustments to reflect updates since the plan was submitted to IPART (Attachment 3).
    - Option includes 0% share of Deficit.

2. Option 2: The <u>second</u> preference is to:

    - Accept IPART's recommendations 1-4;
    - Accept IPART's recommendations 5 and 6 but with the following adjustments:

        - Treat AIF, LIGS and WIK as contribution income in the alternative NPV modelling;
        - Bring forward PPI indexation to the operational base year FY 2022/23;
        - Index completed acquisition costs in accordance with CPI consistent with IPART's Practice Note; and

- Adjustments to reflect updates since the plan was submitted to IPART (Attachment 3).
- Option includes 50% share of Deficit.

A summary of the financial implications of the above options is provided in the table below:

Options	Total Work Schedule Value	Dwelling Rate (KCP)	Non-Residential Rate (KCP)	Deficit Apportioned to CP15	Unfunded Deficit
Option 1 - Treat AIF&LIGS&WIK as Contributions with 0% Share Deficit	$1,058,142,085	$104,187	$172	$168,632,113	$0
Option 2 - Treat AIF&LIGS&WIK as Contributions with 50% Share Deficit	$1,058,142,085	$84,043	$165	$84,316,057	$84,316,057

f) IPART's Alternative Solutions

The suggestion within the draft Report that a more appropriate solution would be to transfer any of this cost to other members of the broader community (either the local ratepayers or state taxpayers) who had no role in creating the demand for this infrastructure, do not benefit from the development potential granted in the growth area, and who will not utilise the infrastructure being funded, is simply not a reasonable solution.

Retaining all of the infrastructure within the Plan on the grounds that it has nexus to future demand within the Precinct, then forcing Council to adjust the NPV model to prevent the collection of $78.6m in contributions would also be completely unreasonable and financially irresponsible. To do this, and not provide Council with any viable solution to the problem that is being created, will not provide any certainty to Council, developers or the community.

g) Consistency of IPART's Review Processes and Outcomes

It is highlighted that IPART's 2023 assessment of the Schofields Contributions Plan included consideration of similar issues to CP15, in particular higher infrastructure costs and limited remaining development from which to cover cost increases. As part of its assessment IPART concluded the following:

> *"[the] proposed costs in CP24 (2022) are reasonable and are necessary to service demand from the new development. While developers may be facing increasing costs in other areas, we consider it is critical that developers are given accurate signals about the cost of servicing new development. If developers do not pay for the true cost of infrastructure, councils will either underinvest in services or costs will be passed onto ratepayers, resulting in existing ratepayers paying more than their fair share."*

The above position is contrary to the recommended approach for CP15. The draft recommendations will mean that development will not be funding the true cost of infrastructure and will result in an under provision of services and / or costs could be passed onto a wider rate base for which there is definitively no nexus. There are mixed signals being sent to the market on the cost of servicing development.

If IPART is of the view that higher than expected costs should only be partially borne by remaining development, then this approach should be reflected throughout all reviews regardless of the extent of the financial impact. Also the projected end of plan shortfall should be known to the community. Based on the methodology proposed within the draft Report the rates within the adopted Plan should not account for actual income received or the future income required to deliver the remainder of the work program. In the case of CP15 the updates to the assumptions have resulted in an increase in the cost of infrastructure and resulting increase in the contribution rates. However, if this methodology was applied consistently, in instances where the cost estimates within the Plan reduced as part of the review, IPART would have no regard to the higher income received from earlier in the plan and would knowingly recommend a higher rate than what is required which would lead to a known end of plan surplus. This would be inappropriate, yet is what would eventuate if the recommended methodology is applied consistently.

It should also be noted that CP15 has now been reviewed by IPART on 5 occasions and it is only as part of the current review that the matter of apportionment to remaining population has arisen. IPART needs to apply its assessment process and criteria consistently and cannot simply recommend changes to fundamental elements a plan, part of the way through the life of a precinct, simply because of the magnitude of financial impact or community objection.

ATTACHMENT 3 – ADDITIONAL MATTERS AND REQUESTS

a) Capital Cost Update – BHT22

It is requested that the capital cost for BHT22 – Signalisation of Old Pitt Town Road / Terry Road / Fontana Drive be increased from $6,882,227 to $7,970,558.85. Council recently awarded the construction contract for these signals with construction expected to commence in early 2024. A breakdown of the associated costs is provided as Attachment 4.

b) Land Acquisition Updates

Since the draft plan was submitted to IPART for review, design work has been continuing for certain traffic items which has resulted in some refinements to the extent of land acquisition required. As these are simply refinements to reflect further design work, no change is required to the scope or cost of the associated capital items.

Changes to land acquisition extents have been reflected in the work schedule provided as Attachment 5 to this submission. They are also summarised in the table below.

Amended / New	Land Code	Capital Code
New	BHT22006	BHT22
Amended	BHR05001	BHR05
New	BHR05002	BHR05
Amended	BHR05003	BHR05
Amended	BHR05005	BHR05
Amended	BHR05011	BHR05
Amended	BHR05012	BHR05
New	BHRU06B1001	BHRU06B
New	BHRU06B1006	BHRU06B
New	BHRU06B1007	BHRU06B
New	BHRU06B1008	BHRU06B
New	BHRU06B1009	BHRU06B
New	BHRU06B1010	BHRU06B
New	BHRU06B1011	BHRU06B
New	BHT13002	BHT13
New	ARU1010	ANNANGROVERD
New	ARU1011	ANNANGROVERD
New	CP15BHT13003	BHT13
New	CP15BHT13004	BHT13
Amended	BHNR06A1002	BHT13
New	BHT14001	BHT14
New	BHT14003	BHT14
Amended	BHT14005	BHT14

As noted previously, Council's recommended options 1 and 2 have incorporated accounting for land indexation for completed acquisitions in accordance with IPART's Practice Note.

c) Apportionment Updates

The current and draft versions of CP15 include some commentary to explain how items have been apportioned between the residential and non-residential development within the precinct. However, recently Council has been challenged on the apportionment assumptions for the

Edwards Road bridge (northern bridge connection) on the basis that the apportionment for this particular item is not abundantly clear within the plan.

To avoid future confusion for this item and any other items within the plan, it is requested that IPART's final report include a further recommendation that the plan be updated to specify the apportionment split between residential and non-residential development of each specific item within the work schedule.

d) Other

In Section 4.4.3 of IPART's draft report (relating to open space) there appears to be an incorrect reference to "costs for stormwater management works".

There are also various sections of the draft report which make reference to a projected residential population of 51,231 people. Whilst this is the *total* expected population within the precinct at full development, the projected *additional* population upon which the demand for infrastructure under CP15 has been based is 48,956 people.