

Terms of Reference

I, Rob Stokes MP, Minister for Planning and Public Spaces, with the approval of the Premier, have entered into an arrangement for the provision of services by the Independent Pricing and Regulatory Tribunal (IPART) under section 9 of the *Independent Pricing and Regulatory Tribunal Act 1992* in accordance with these Terms of Reference.

Background

The NSW Productivity Commissioner undertook a review of the infrastructure contributions system in NSW in 2020 and made findings and recommendations for reform that were outlined in a Final Report released on 3 December 2020.

On 5 March 2021, the Treasurer and I announced that the NSW Government had accepted and is implementing all 29 of the NSW Productivity Commissioner's infrastructure contributions reform recommendations.

Recommendation 4.5: Contributions plans use benchmarked costs

Independent Pricing and Regulatory Tribunal to develop and maintain standardised benchmark costs for local infrastructure that reflect the efficient cost of provision.

These recommendations included that IPART develop and maintain standardised benchmark costs for development-contingent local infrastructure that is included in local infrastructure contributions plans under section 7.11 of the *Environmental Planning and Assessment Act 1979*. The NSW Productivity Commissioner identified that a standardised set of benchmark costs for development-contingent infrastructure would help to ensure that contributions plans are costed efficiently.

Matters for consideration

I am requesting IPART deliver a report recommending:

- Standardised benchmark costs for efficiently designed, development-contingent infrastructure on the essential works list, where the costs of that infrastructure are suitable to benchmark. These costs should cover the different transport, stormwater and open space infrastructure needs for infill, greenfield and regional development, and should reflect the base level of infrastructure that is appropriately funded by development.
- A standardised benchmark cost or costing approach for local infrastructure plan preparation and administration costs that specifies the components that are included in this cost category.
- Standardised allowances for inclusions such as contingency, project management and design.
- A costing approach that councils should use for any base level infrastructure costs that are not derived from the standardised benchmark costs.
- Differential costs to reflect geographic issues (i.e. metropolitan versus regional areas) and development typologies (infill versus greenfield) for the same types of infrastructure.

In undertaking the review, IPART should have regard to the NSW Productivity Commissioner's recommendations and guidance in relation to:

- contribution plans reflecting development-contingent costs only,

Benchmark costs

Independent Pricing and Regulatory Tribunal

- benchmark costs reflecting base level embellishment (with embellishment above base level being funded from other sources), and
- benchmark costs being used unless:
 - a specific, efficient cost estimate has been prepared, or
 - actual costs based on efficient base level design are determined following construction.

In this section—

development-contingent costs means infrastructure costs with a causal connection to a development because they would be avoided if the development did not proceed, and includes:

- within-development open space, some roads, and pedestrian facilities
- network connections for water facilities (potable, waste, and stormwater) (*NOTE: only stormwater facilities are to be included as water and wastewater connections are dealt with under separate legislation*).
- facilities shared between multiple developments, e.g. open space and some collector roads.

Where nexus is shared between multiple developments, the relative demand each development places on infrastructure can be quantified through apportionment (being the equitable sharing of benefiting developments based on the level of demand they generate).

efficient costs means the most cost-effective means of creating assets that provide the minimum acceptable level of service.

Consultation

The reformed infrastructure contribution system will commence from 1 July 2022.

As the issues the subject of this review have previously been canvassed through the work of the NSW Productivity Commissioner, and noting the Government response, an issues paper is not required for this review.

IPART will conduct targeted consultation as part of its review including forums established to support the implementation of the NSW Productivity Commissioner's recommendations which include an External Advisory Group (comprised of peak industry and council representative bodies), an Agency Reference Group and the Department's Internal Working Group.

In October 2021, IPART will publish a draft report and conduct public consultation.

Reporting

IPART should submit its final report to the Minister for Planning and Public Spaces by 31 December 2021.

Progress briefings on costs structure

The Department is developing a suite of digital tools to support the reformed contributions system. This includes shifting contributions plan to the NSW Planning Portal to be delivered in a digital format. A critical input to this process will be the creation of standardised 'schedule of works' as a key feature of the template contributions plans.

Benchmark costs

Independent Pricing and Regulatory Tribunal

Progress briefings from IPART on the 'cost structure' are required six-weekly or as requested by the Group Deputy Secretary Planning and Assessment at the Department of Planning, Industry and Environment. These will inform how costs are presented in the schedule of works.

The 'cost structure' should include the categories of infrastructure, charging methodology (such as rate per lineal metre, rate per square metre) and cost components required to be shown in the schedule of works (such as margins, approvals, contingency). The 'dollar amount' to be charged is not required as part of this review.

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Background

The NSW Productivity Commissioner undertook a review of the infrastructure contributions system in NSW in 2020 and made findings and recommendations for reform that were outlined in a Final Report released on 3 December 2020.

On 5 March 2021, the Treasurer and I announced that the NSW Government had accepted and is implementing all 29 of the NSW Productivity Commissioner's infrastructure contributions reform recommendations.

Recommendation 4.6: Contributions plans reflect development-contingent costs only

- i. Apply the essential works list to all section 7.11 contributions plans.
- ii. Independent Pricing and Regulatory Tribunal to review the essential works list and provide advice on the approach to considering efficient infrastructure design and application of nexus.
- iii. Subject to review by the Independent Pricing and Regulatory Tribunal, issue a revised practice note.

These recommendations included that local infrastructure contributions plans under section 7.11 of the *Environmental Planning and Assessment Act 1979* should reflect development-contingent costs only. To help achieve this, the NSW Productivity Commissioner recommended that IPART review the essential works list and provide advice on the approach to consider efficient infrastructure design and application of nexus. The objective is to ensure that new development pays the capital costs of efficiently designed local infrastructure needed to service the new population.

Matters for Consideration

I am requesting IPART deliver:

- A review of the essential works list for efficiently designed development-contingent cost to determine the contents of the essential works list. This would apply to all section 7.11 contributions plans.
- A report providing advice on the approach councils should use to determine the most efficient local infrastructure to meet the needs of new development, applying the principle of nexus.

The report should include the evidence and documentation required to demonstrate that local infrastructure included in a contributions plan is:

- contingent on development, and
- efficient in design.

In delivering the report, IPART must have regard to the following:

- The NSW Productivity Commissioner's recommendations in relation to:
 - the principle that local contributions are cost-reflective charges on impactors, applied through a consistent framework but with some flexibility for adaptation to local circumstances
 - infrastructure planning as part of the strategic planning process to encourage early identification of infrastructure needs and optimisation of infrastructure costs.
- IPART's review of the local government rate peg to allow councils' general income to increase with population and provides the flexibility for additional rate revenue being used to fund the general costs from population growth.
- The essential works list must not expand beyond the current parameters and community facilities works must not be included.
- Differential infrastructure needs to reflect geographic issues (i.e. metropolitan versus regional areas) and development typologies (infill versus greenfield).

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Local Government Rating Reform – population growth factor

The NSW Government response to the IPART review of the local government rating system in NSW includes allowing for the better alignment of council income growth with population growth.

This Government policy is being implemented by:

- Terms of Reference issued to IPART to review the local government rate peg to allow councils' general income to increase with population, and
- The Local Government Amendment Act 2021 assented on 24 May 2021, which will give effect to the review.

Councils will have a reliable and sustainable revenue stream to provide key infrastructure for growing communities into the future.

Allowing for the local government rate peg to reflect population growth is highlighted as one of the key components underpinning a reformed contributions system in the Productivity Commission Review of Infrastructure Contributions. The rate peg reform enables general population costs to be removed from local infrastructure contributions.

Consultation

The reformed infrastructure contribution system will commence from 1 July 2022.

As the issues the subject of this review have previously been canvassed through the work of the NSW Productivity Commissioner, and noting the Government response, an issues paper is not required for this review.

IPART will conduct targeted consultation as part of its review including forums established to support the implementation of the NSW Productivity Commissioner's recommendations which include an External Advisory Group (comprised of peak industry and council representative bodies), an Agency Reference Group and the Department's Internal Working Group.

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Reporting

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