

Assessment of Blacktown City Council's Section 94 Contributions Plan No 20

Riverstone and Alex Avenue Precincts

Local Government — Assessment
October 2011

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The Committee members for this review are:

Mr James Cox PSM, Acting Chairman and Chief Executive Officer

Mr Stuart McDonald, Committee Member

Mr Stephen Lyndon, Committee Member

Inquiries regarding this document should be directed to a staff member:

Michael Seery (02) 9290 8421

Chris Ihm (02) 9113 7736

Independent Pricing and Regulatory Tribunal of New South Wales
PO Box Q290, QVB Post Office NSW 1230
Level 8, 1 Market Street, Sydney NSW 2000
T (02) 9290 8400 F (02) 9290 2061
www.ipart.nsw.gov.au

Contents

1	Executive Summary	1
1.1	Background	2
1.2	Summary of Blacktown Council's CP20	3
1.3	How we assessed CP20	4
1.4	Our findings and recommendations	5
1.5	Structure of this report	10
2	Background	11
2.1	Introduction	11
2.2	Contributions plans	11
2.3	Role of IPART	14
3	Summary of Blacktown Council's CP20	16
3.1	Land to which CP20 applies	17
3.2	Contribution rates in CP20	20
3.3	Public amenities and services in CP20	20
4	Assessment of Blacktown Council's application for CP20	22
4.1	Summary of IPART's assessment	22
4.2	Criterion 1 - The public amenities and services are on the Essential Works List	24
4.3	Criterion 2 - There is nexus between the development and the public amenities and services	26
4.4	Criterion 3 - The development contribution is based on a reasonable estimate of the cost of the public amenities and services	28
4.5	Criterion 4 - The public amenities and services can be provided within a reasonable timeframe	38
4.6	Criterion 5 - The development contribution is based on a reasonable apportionment between existing and new demand	39
4.7	Criterion 6 - The council has conducted appropriate community liaison and publicity in preparing the contributions plan	44
5	Issues arising from IPART's assessment of contributions plans	45
5.1	Provision of information	45
5.2	Regular review of plans	47
5.3	Administration costs	47
5.4	Net present value model	48
5.5	Escalation of contributions	50

5.6	Determining rates for different types of development	51
5.7	Non-essential works in the plan	51
5.8	Major cost items	52
Appendices		55
A	Final report from JBA Urban Planning	57
B	Blacktown Council's response to consultant's review of CP20	79
Glossary		106

1 Executive Summary

The NSW Government has asked the Independent Pricing and Regulatory Tribunal (IPART) to review certain contributions plans that have been prepared by councils under section 94 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The plans outline the infrastructure to be provided, its cost, and how it relates to existing infrastructure and services within the development area. Based on these plans, councils calculate the amount they will levy developers for the cost of providing amenities and services within a development area.

Blacktown City Council (referred to throughout this report as Blacktown Council) has submitted *Contributions Plan 20 – Riverstone and Alex Avenue Precincts* (CP20) to IPART for assessment. The Riverstone and Alex Avenue release area is a residential development area in North West Sydney and is located around and to the south of the existing township of Riverstone.

We have estimated that an indicative development contribution under the plan would be between \$58,000 and \$60,000 per lot.¹ This is above the maximum contribution of \$30,000 per residential lot applying to this plan.²

We have assessed CP20 in accordance with the criteria set out in the *Local Development Contributions Practice Note for the assessment of contributions plans by IPART* (the Practice Note).³ We have made recommendations on CP20 to the Minister for Planning and Infrastructure and Blacktown Council.

¹ IPART's calculations are based on an assumption of 15 dwellings per hectare and 2.9 persons per dwelling.

² See Minister for Planning, *Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2011*, 3 March 2011, Schedule 2.

³ Department of Planning, *Local Development Contributions Practice Note for assessment of contributions plans by IPART*, November 2010.

1.1 Background

During 2010 the NSW Government made a number of amendments to the framework for contributions plans.⁴ These changes include:

- ▼ imposing caps on the amount that councils can levy developers – the cap is \$20,000 for established areas and \$30,000 for ‘greenfield’ areas⁵
- ▼ requiring councils to levy contributions only for key infrastructure which the government has specified in an Essential Works List
- ▼ requiring councils to submit to IPART for review any contributions plans that have a contribution above the cap and for which the council is seeking additional funding, either from the government or from ratepayers
- ▼ exempting a number of existing developments from the cap and the requirement for review by IPART
- ▼ providing for councils to seek funding through the Priority Infrastructure Fund⁶ or through special rate variations for reasonable costs above the cap.

IPART is required to assess the plans against the criteria in the Practice Note.⁷ Our main purpose is to assess whether:

- ▼ the public amenities and services included in the contributions plans comply with the Essential Works List
- ▼ the costs of the items in the plans are reasonable.

IPART reviews:

- ▼ new contributions plans which propose a development contribution level above the relevant cap
- ▼ existing contributions plans above the relevant cap for which a council seeks funding from the Priority Infrastructure Fund or through a special rate variation under the *Local Government Act 1993*⁸
- ▼ contributions plans referred by the Minister for Planning and Infrastructure.⁹

⁴ Premier of New South Wales, *Significant reform to local council infrastructure charges*, Media Release, 4 June 2010 and Minister for Planning, *Direction Section 94E under the Environmental Planning and Assessment Act 1979*, 4 June 2010 and *Direction Section 94E under the Environmental Planning and Assessment Act 1979*, 15 September 2010.

⁵ A greenfield area is a yet undeveloped site needing significant infrastructure to support residential development.

⁶ The Priority Infrastructure Fund is a \$50m fund established by in 2010 by the Minister for Planning to enable councils to recover (from the NSW Government) the difference between the contributions amount contained in a contributions plan (that is assessed as being reasonable by IPART) and the relevant cap.

⁷ Department of Planning, *Local Development Contributions Practice Note for assessment of contributions plans by IPART*, November 2010.

⁸ Councils may apply to IPART for a special rate variation to their general income under either section 508A or 508(2) of the *Local Government Act 1993*.

⁹ Department of Planning, *Planning Circular PS 10-025 Development Contributions*, 23 November 2010.

1.2 Summary of Blacktown Council's CP20

The council has submitted its contributions plan for development in Riverstone and Alex Avenue Precincts to IPART for review in accordance with the Practice Note.

The Minister's Direction issued on 3 March 2011 classifies Riverstone and Alex Avenue Precincts as greenfield sites. The relevant section 94 contributions cap per dwelling, or residential lot, is \$30,000.¹⁰

This contributions plan applies to land within Riverstone and Alex Avenue Precincts which are 2 of the first release precincts in the North West Growth Centre.

- ▼ the Alex Avenue Precinct is bounded by Schofields Road to the north, Burdekin Road to the south, Richmond Rail Line to the west and the Second Ponds Creek release area to the east
- ▼ the Riverstone Precinct is bounded by Bandon Road to the north, Schofields Road to the south, Richmond Rail Line to the west and First Ponds Creek and Windsor Road to the east.

Generally, the Riverstone and Alex Avenue precincts drain to either the Eastern Creek or First Ponds Creek/Killarney Chain of Ponds Creek catchments (the latter referred to as First Ponds Creek catchment for simplicity). The areas of both catchments were determined having regard for the natural watershed and the proposed local road layout, both of which will affect drainage flows.

CP20 outlines the council's policy regarding the application of section 94 of the EP&A Act in relation to the provision of local infrastructure and baseline facilities within the Riverstone and Alex Avenue Precincts.

Within the precincts, contributions are levied for the following amenities and services:

- ▼ stormwater management facilities
- ▼ transport management facilities
- ▼ open space and recreation facilities
- ▼ community facilities and combined precinct facilities.

Table 1.1 summarises the items and the costs in CP20. Over 50% of the costs are for stormwater management facilities and mostly comprise the capital costs for stormwater works.

¹⁰ See Minister for Planning, *Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2011*, 3 March 2011, Schedule 2.

Table 1.1 Items included in the Riverstone and Alex Avenue Precincts Contributions Plan (\$)

Works	Land Acquisition	Capital Works	Cost in Plan
Open space and recreation	90,768,000	94,912,000	185,680,000
Community services	9,897,000		
Community resource hub ^a		18,464,000	
Upgrades to the aquatic facility		17,476,000	
Conservation zone		3,571,000	49,408,000
Transport	10,273,000	105,955,000	116,228,000
Stormwater management	139,355,000	254,505,000	393,860,000
Total			745,176,000

^a The Community Resource Hub comprises Neighbourhood Centre and Community Development activities, Youth Centre, Arts Centre Function and an Informal Indoor Recreational Centre.

Source: Blacktown City Council, *Section 94 Contributions Plan No.20 – Riverstone & Alex Avenue Precincts*, pp 32-63.

Blacktown Council has provided an indicative timetable for the provision of facilities for stormwater management. These are to be provided in 3 blocks between 2013 and 2027. The timing of other items in the plan is uncertain at this stage. CP20 is a new plan that came into force in December 2010. No development contributions have been levied.¹¹ At the time of applying to IPART for review of CP20, the only expenditure has been for the acquisition of 2 parcels of land from the respective land owners under hardship provisions.¹²

The council has indicated that it owns around 46 hectares of land in Riverstone and Alex Avenue Precincts. Of these, about 15 hectares will be used to deliver items in CP20. The council has indicated that despite the fact that it already owns the 15 hectares of land, the cost of acquiring this land has been included in the contributions plan.

1.3 How we assessed CP20

We received the contributions plan with an application from Blacktown Council. The application form included the council's revisions to the plan arising from the Practice Note and the Essential Works List.

¹¹ Blacktown City Council, *Application for assessment of contributions plan*, 28 January 2011, p 24.

¹² Under the *Land Acquisition (Just Terms Compensation) Act 1991* an owner of land may require that a council acquires the land if the land is designated for acquisition by the council for a public purpose, and the owner considers that he or she will suffer hardship if there is any delay in the acquisition of the land.

Our assessment involved:

- ▼ engaging JBA Urban Planning to review the plan (JBA Urban Planning's report is Appendix A)
- ▼ consulting with the council about JBA's assessment of CP20 to allow the council to respond to JBA's findings and the issues raised (the council's response is Appendix B)
- ▼ consulting the Department of Planning and Infrastructure in relation to the plan, JBA's assessment and the council's response.

As permitted under the *Independent Pricing and Regulatory Tribunal Act 1992*, IPART delegated its functions of reviewing contributions plans to a committee comprising Mr James Cox, Mr Stuart McDonald and Mr Stephen Lyndon.

During the preparation of the draft contributions plan, and before our review, the Department of Planning had commissioned reports from the following consultants:

- ▼ Cardno to review the water cycle management costs as the department was concerned about the extent of the costs¹³
- ▼ MJ Davis Valuations to review the council's land valuation methodology¹⁴
- ▼ Newplan Urban Planning (Newplan) to review the other items in the plan such as open space, transport management and community facilities.¹⁵

The council provided us with a copy of the reports and we considered them in our assessment. For example, we considered the Cardno and the MJ Davis Valuations reports in our assessment (see section 4.4 under reasonable cost estimates for stormwater management and land valuations). We note that Newplan assessed a draft of CP20 before the Practice Note came into effect in November 2010.

1.4 Our findings and recommendations

1.4.1 In relation to CP20

This section summarises our assessment of council's application against the assessment criteria in the Practice Note. Our findings are set out in Table 1.2, our assessment of the reasonable cost of CP20 is in Table 1.3 and our recommendations follow.

¹³ Cardno, *Alex Avenue and Riverstone Precincts Section 94 Engineering Review*, Prepared for Department of Planning, June 2010.

¹⁴ MJ Davis Valuations, *Alex Avenue and Riverstone Contributions Plan – Land valuation Issues*, 26 February 2010.

¹⁵ Newplan, *Review of Draft Blacktown Contributions Plan No.20 - Alex Avenue and Riverstone Precincts*, email to Department of Planning, 5 March 2010.

We have concluded that CP20 satisfies the criteria with the following exceptions:

- ▼ the skate park, capital works for the community resource hub and upgrades to the aquatic facility do not comply with the Essential Works List
- ▼ the value of the land that council owns and will be used to provide essential infrastructure within the development area
- ▼ apportionment of drainage areas between this development area and Riverstone East.

We note that, in its application, the council recognised that the skate park, capital works for the community resource hub and upgrades to the aquatic facility do not comply with the List. We assessed only the items that complied with the List for the remaining criteria.

Despite the costs for stormwater management facilities being over 50% of the costs of CP20, we found that the cost estimates are reasonable in view of the detailed review process to which they have already been subjected.

We note that the council currently owns land that will be used to provide essential works in CP20 and has valued this land at average market values. We consider that whether land should be included at market value depends on whether the land was acquired before or after June 2006. This is when the Minister for Planning released the land in the 2 precincts for rezoning. We conclude that:

- ▼ for land acquired prior to June 2006, market value is reasonable
- ▼ for land acquired after June 2006, actual purchase price adjusted for inflation should be used.

While we found that most items have been apportioned reasonably, we found that there are 2 detention basins in Riverstone (located on First Ponds Creek) which we consider could serve both Riverstone and the adjacent Riverstone East precinct. All the costs of the basins have been allocated to Riverstone under CP20. We consider that the council should revise CP20 to share the cost of the basins between the 2 development areas which will benefit from them in proportion to the benefits received.

The council can provide only a broad indication at this early stage of when the new facilities for managing the stormwater will be delivered. The council will be able to reassess the timing of delivery of new facilities (and other essential works) as development proceeds. It should revise CP20 as development occurs to reflect the greater certainty in the timing of development.

Table 1.2 IPART's findings in relation to each criterion

Criterion	Finding
1. The public amenities and public services in the plan are on the Essential Works List as identified within the Practice Note	With the exception of the skate park, capital works for the community resource hub and the upgrades to the aquatic facility, totalling \$36,340,000, the public amenities and infrastructure are on the Essential Works List.
2. There is nexus between the development in the area to which the plan applies and the kinds of public amenities and public services identified in the plan	There is nexus between items in CP20 and the expected development in Riverstone and Alex Avenue Precincts.
3. The proposed development contribution is based on a reasonable estimate of the cost of the proposed public amenities and public services	<p>The cost estimates in CP20, other than for land that council purchased after the release of Riverstone and Alex Avenue Precincts in June 2006, are reasonable.</p> <p>In relation to land purchased since June 2006:</p> <ul style="list-style-type: none"> – the reasonable value of 0.11 hectares of land that the council bought in February 2008 is \$105,442, which is the actual purchase price indexed by the CPI – the reasonable value for the 0.17 hectares of land that the council bought in January 2011, when CP20 was reviewed, is the actual purchase price of \$67,000 indexed by the CPI. <p>The reasonable cost of items complying with the Essential Works List for:</p> <ul style="list-style-type: none"> – stormwater management is \$385,078,000 – transport management is \$116,228,000 – open space and recreation facilities is \$185,280,000 – community precinct facilities is \$13,465,000. <p>The total reasonable cost for items in CP20 that comply with the Essential Works List is \$700,051,000.</p>
4. The proposed public amenities and public services can be provided within a reasonable timeframe	The timing of infrastructure delivery for stormwater management works is only indicative at this stage but is reasonable. We were not able to assess the other items as their timing of delivery was not given.
5. The proposed development contribution is based on a reasonable apportionment between existing demand and new demand for the public amenities and public services	The apportionment for the items on the Essential Works List and in CP20 is reasonable, except for 2 detention basins that would support development in Riverstone East as well as Riverstone. We consider that the cost of stormwater management facilities in CP20 should be reduced by \$8,782,000 to reflect this.
6. The council has conducted appropriate community liaison and publicity in preparing the contributions plan	Blacktown Council undertook appropriate community liaison and publicity in producing CP20.
7. The plan complies with other matters IPART considers relevant	Not applicable.

Table 1.3 shows the cost of items in CP20 and our assessment of the total reasonable cost of Essential Works. As a result of our assessment we have reduced the total cost of items in CP20 by \$45,125,000 and concluded that the total reasonable cost of Essential Works in CP20 is \$700,051,000.

Table 1.3 Cost of items in CP20 and IPART's assessment of the total reasonable cost of Essential Works in CP20 (\$)

Category	Cost in Plan	IPART adjustment	IPART assessed
Open space and recreation facilities	185,680,000	-400,000 (skate park removed)	185,280,000
Community services facilities	49,408,000	-3,000 (for land purchased in February 2008) -35,940,000 (for the community resource hub and upgrades to the aquatic facility)	13,465,000
Transport management	116,228,000	-	116,228,000
Stormwater management facilities	393,860,000	-8,782,000 (apportionment of facilities supporting Riverstone East)	385,078,000
Total	745,176,000	-45,125,000	700,051,000

Source: Blacktown City Council, *Section 94 Contributions Plan No.20 – Riverstone & Alex Avenue Precincts*, pp 32–63, and IPART's calculations.

Recommendations in relation to CP20

We have made recommendations which relate to CP20 to the Minister for Planning and Infrastructure and to Blacktown City Council.

- 1 The council should deduct an amount of \$36,340,000 representing the cost of the skate park, capital works for the community resource hub and the upgrades to the aquatic facility from the total costs of essential works in CP20. 26
- 2 Blacktown Council should continue to seek alternative sites to dispose of landfill and further refine their cost estimates as it reviews CP20. 32
- 3 When Blacktown Council next reviews CP20, the 0.17 hectares of land purchased in January 2011 should be included in CP20 at the actual purchase price adjusted for inflation. 36
- 4 When Blacktown Council reviews CP20, it should review the timing of the delivery of stormwater management facilities and other infrastructure works having regard to the rate of development. 39

- 5 Blacktown Council should amend CP20 to reduce the costs of stormwater management by \$8,782,000 to reflect an apportionment to Riverstone East of that proportion of the costs of 2 online basins that support development in Riverstone East. 42

1.4.2 In relation to other issues arising from our review of contributions plans

The Minister for Planning exempted a large number of contributions plans from the cap and the requirement for review by IPART.¹⁶ To date, IPART has reviewed 3 plans in 2 council areas:

- ▼ Blacktown City Council's Contributions Plan 20 – Riverstone and Alex Avenue (CP20)
- ▼ The Hills Shire Council's Contributions Plan No 12 – Balmoral Road Release Area (CP12)
- ▼ The Hills Shire Council's Contributions Plan No 13 – North Kellyville (CP13).

The initial submissions that we received for the 3 contributions plans did not have enough information and supporting documentation to enable us to satisfy the requirements of our terms of reference. We note that this has been a new process. However, for future reviews we expect that councils will provide all the necessary information for the review with the initial submission. This will be more efficient for councils and IPART.

Recommendations in relation to other issues

We have made recommendations to councils in general and to the Minister for Planning and Infrastructure regarding the policy framework.

- 6 Councils should review their contributions plans at least every 5 years, unless a significant change in circumstances prompts an earlier review. 47
- 7 The Minister for Planning and Infrastructure should consider amending the Practice Note to allow development contributions to be levied to recoup administration costs incidental to items on the Essential Works List. 48
- 8 Administration costs should be defined to include: 48
- the costs that councils incur in preparing the contributions plan, including preparation of studies to identify the needs of the proposed development 48
 - the costs that councils incur in reviewing and updating of contributions plans and managing contributions receipts and expenditures. 48

¹⁶ Minister for Planning, *Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2011*, 3 March 2011, Schedule 1.

- 9 When councils choose to use an NPV model to calculate development contributions, the modelling should be done using real figures and a discount rate which reflects the council's risk related rate of return. 50
- 10 Further consultation should be undertaken on a discount rate that could be applied consistently. Consultation should involve IPART, Treasury, Department of Planning and Infrastructure, councils and developers. 50
- 11 Contribution rates should be indexed by the CPI (All Groups Index) for Sydney, as published by the Australian Bureau of Statistics. The contributions plan should specify whether the index is to be applied quarterly or annually. 50
- 12 The Minister for Planning and Infrastructure should consider clarifying the policy with regard to contributions rates for different types of development (eg, single dwellings versus multi-unit dwellings). 51
- 13 The Minister for Planning and Infrastructure should consider clarifying the policy so that the total cost of items on the Essential Works List is able to be clearly distinguished in a contributions plan. Further, the policy should require that contributions plans must include a contributions rate which recovers only the costs of items on the Essential Works List. 52
- 14 A whole-of-government review of the requirements for open space and other land uses that sterilise land for development should be undertaken. 53
- 15 The system of recouping the cost of stormwater management works should be given further consideration in light of potential inequities between different areas. 53

1.5 Structure of this report

The rest of this report explains our assessment in more detail:

- ▼ Chapter 2 provides background information on development contributions and IPART's role
- ▼ Chapter 3 summarises CP20
- ▼ Chapter 4 explains our assessment of CP20 against the criteria in the Practice Note in detail
- ▼ Chapter 5 discusses issues that have arisen in our review of the contributions plans
- ▼ Appendix A is JBA Urban Planning's report on CP20
- ▼ Appendix B is Blacktown Council's response to the JBA report.

2 Background

2.1 Introduction

The NSW development contributions system helps to provide new and growing communities with the infrastructure that they require. The EP&A Act and the *Environmental Planning and Assessment Regulation 2000* set out how the development contribution system in New South Wales works. Under the provisions of section 94 of the EP&A Act, councils are able to levy developers for contributions to the cost of, and/or the provision of, a reasonable level of local public facilities and infrastructure required as a result of the new development.¹⁷

In 2010 the Premier asked IPART to assist the Minister for Planning in the implementation of the new framework by reviewing councils' plans.

This chapter outlines the contributions system in NSW, the changes to the contributions system introduced in 2010, and IPART's role in assessing contributions plans.

2.2 Contributions plans

Councils may seek a contribution from developers under section 94 to help fund the cost of providing facilities, infrastructure and/or services associated with the proposed development. Before they can levy these contributions councils are required to prepare a contributions plan.¹⁸ The plan outlines the expected types of development in an area and the public amenities and services that will be needed to meet demand arising from that development.

Generally, contributions from developers under section 94 can be sought for:

- ▼ capital costs, including land acquisitions
- ▼ public facilities that a council reasonably has to provide
- ▼ public facilities that are needed as a consequence of, or to facilitate, new development.

¹⁷ Department of Planning, *Local Government Contributions Practice Note for the assessment of Local Government Contributions by IPART*, November 2010.

¹⁸ *Environmental Planning and Assessment Act 1979* s 94B.

Section 94 contributions must be reasonable and meet requirements for accountability. In addition, the Minister for Planning issued a Direction under section 94E of the EP&A Act on 15 September 2010 that limits the development contributions that councils can charge.¹⁹

This Direction introduced changes to the development contributions framework. It also set out maximum development contributions that could be levied on developers and outlined the facilities, infrastructure and/or services that may be included in contributions plans. The major policy changes are included in Box 2.1.

Contributions can be levied for essential works. This includes 'base level embellishment' of open space. Base level embellishments are works that are required to bring open space to a level where the site is secure and suitable for passive and active recreation.

Box 2.1 Major changes to planning policy

The Direction under section 94E included the following changes to the development contributions framework:

New 'hard caps' on development contributions. These set maximum development contributions that councils can levy:

- ▼ \$30,000 per dwelling or residential lot in greenfield areas
- ▼ \$20,000 per dwelling or residential lot in all other areas.

Exemptions to the relevant cap. These apply to areas where development applications have been lodged for more than 25% of the expected dwelling yield under existing contributions plans or where the Minister directs that the development is excluded.

An Essential Works List. This applies when councils are seeking priority infrastructure funding or a special rate variation.

A \$50 million Priority Infrastructure Fund. This is a 2-year arrangement to assist councils (where the caps apply).

¹⁹ Minister for Planning, *Direction Section 94E under the Environmental Planning and Assessment Act 1979*, 15 September 2010.

Box 2.2 Essential Works List and base level embellishment

Essential Works List

The Minister for Planning issued the following Essential Works List on 16 September 2010

Description	Component	Essential works
Open space	Land ^a	✓
	Facilities	X
Community services	Land	✓
	Facilities	X
Emergency services	Land	X
	Facilities	X
Transport		
eg, roadworks, traffic management, pedestrian and cycle facilities	Land	✓
	Facilities	✓
Car parks	Land	X
	Facilities	X
Stormwater management	Land	✓
	Facilities	✓

^a Land for open space can include base level embellishment (see definition below).

Source: Department of Planning, *PS 10-22 Reforms to Local Development Contributions*, 16 September 2010.

Base level embellishment

Base level embellishment may include:

- ▼ site regrading
- ▼ utilities servicing (water, sewer, electricity and gas supply)
- ▼ basic landscaping (turfing, asphalt and other synthetic playing surfaces, planting, paths and cycle ways)
- ▼ drainage and irrigation
- ▼ basic park structures and equipment (park furniture, toilet facilities and change rooms, shade structures and play equipment)
- ▼ security lighting and local sports field floodlighting
- ▼ sports fields, tennis courts, netball courts and basketball courts.

Base level embellishment does not include skate parks, BMX tracks and the like.

In correspondence dated 23 March 2011, the Department of Planning advised us that asphalt includes car parks to the extent that they service the recreation area only and does not include multi-storey car parks – that is, they are to be at ground level.

Source: Department of Planning, *Local Development Contributions Practice note for assessment of contributions plans by IPART*, November 2010, p 6 and Letter to IPART dated 23 March 2011.

2.3 Role of IPART

The main purpose of IPART's assessment is to determine whether:

- ▼ the public amenities and services comply with the Essential Works List
- ▼ the costs of the items in the plan are reasonable.

IPART reviews:

- ▼ new contributions plans that propose a contribution level above the relevant cap
- ▼ existing contributions plans above the relevant cap for which a council seeks funding from the Priority Infrastructure Fund,²⁰ or funding through a special rate variation under the *Local Government Act 1993*²¹
- ▼ contributions plans as otherwise determined by the Minister for Planning and Infrastructure.²²

IPART will report its assessment to the Minister for Planning and Infrastructure and the local council. The Minister may consider IPART's findings and recommendations in determining a council's application for funding under the Priority Infrastructure Fund.

IPART will consider the assessment when reviewing a council's application for a special rate variation. The assessment also helps to inform councils about how their plans comply with the Practice Note issued by the Department of Planning.

IPART assesses contributions plan against the criteria in the Practice Note as listed in Box 2.3.

These criteria are based on the key concepts of reasonableness and accountability:

- ▼ Reasonableness relates to nexus and apportionment:
 - **Nexus** refers to the connection between the development and the demand created. The requirement to satisfy nexus is based on ensuring that there is a link between the development and increased demand for facilities. In addition, the infrastructure needs to be provided within a timeframe that meets the demand.
 - **Apportionment** refers to the share borne by the future development. The concept of apportionment is based on ensuring that developers are only paying for the portion of demand that results from their development.

²⁰ The Priority Infrastructure Fund is a \$50m fund set up in late 2010 by the Minister for Planning to enable councils to recover the difference (from the NSW Government) between the contributions amount (which IPART assesses as reasonable), and the relevant cap.

²¹ Councils may apply to IPART for a special rate variation to their general income under either section 508A or 508(2) of the *Local Government Act 1993*.

²² Department of Planning, *Planning Circular PS 10-025 Development Contributions*, 23 November 2010, p 2.

While nexus is about establishing a relationship between the development and demand for infrastructure, apportionment is about quantifying the extent of the relationship.

- ▼ Accountability relates to both public and financial accountability:
 - **Accountability** is a basic requirement of section 94. Public accountability may be sought through open decision making, maintenance of appropriate financial records and community involvement. Financial accountability may be sought through the works schedule to the contributions plan, annual reports and a contributions register.
 - Key issues with accountability are the completion of the works program within the contributions plan and that the infrastructure is provided within a timeframe that meets the need of the development.²³

Box 2.3 Assessment criteria

The following criteria will be used in the assessment of contributions plans by IPART:

1. The public amenities and public services in the plan are on the “Essential Works List” as identified within the Practice Note.
2. There is nexus between the development in the area to which the plan applies and the kinds of public amenities and public services identified in the plan.
3. The proposed development contribution is based on a reasonable estimate of the cost of the proposed public amenities and public services.
4. The proposed public amenities and public services can be provided within a reasonable timeframe.
5. The proposed development contribution is based on a reasonable apportionment between existing demand and new demand for the public amenities and public services.
6. The council has conducted appropriate community liaison and publicity in preparing the contributions plan.
7. The plan complies with other matters IPART considers relevant.

Source: Department of Planning, *Local Development Contributions Practice note for assessment of contributions plans by IPART*, November 2010, pp 6-7.

²³ Department of Planning, *Local Government Contributions Practice Note for the assessment of Local Government Contributions by IPART*, November 2010, p 3.

3 Summary of Blacktown Council's CP20

Riverstone and Alex Avenue Precincts are development precincts in the North West Growth Centre²⁴ (see Figure 3.1). They were approved as release areas by the Minister for Planning in June 2006 and cover an area of 1395 hectares in total. The 2 precincts are expected to provide more than 15,300 residential dwellings for around 45,000 residents²⁵ over a net developable area of about 820 hectares.²⁶

Blacktown Council submitted to IPART its contributions plan for the Riverstone and Alex Avenue precincts, *Contributions Plan No 20 – Riverstone & Alex Avenue Precincts*. The Minister for Planning directed in March 2011 that land within Blacktown City Local Government Area identified as Riverstone Precinct or Alex Avenue Precinct in *Section 94 Contributions No 20 – Riverstone & Alex Avenue Precincts* is subject to a maximum contribution of \$30,000.²⁷

CP20 came into force in December 2010. The council had previously submitted a draft plan to the Department of Planning for a voluntary review. We note that the plan came into force after the issue of the Practice Note, but was prepared before the policy changes requiring IPART review.

²⁴ In 2005 the NSW Government identified the North West and South West Growth Centres to accommodate 500,000 people over the next 30 years. It established the Growth Centres Commission to be responsible for streamlining the release and planning of greenfield land for urban development and coordinating the delivery of infrastructure. The functions of the Growth Centres Commission are now undertaken by the Department of Planning and Infrastructure.

²⁵ Growth Centres Commission (<http://www.gcc.nsw.gov.au/home-3.html>).

²⁶ Blacktown Council, *Section 94 Contributions Plan No 20 – Riverstone & Alex Avenue Precincts*, p 63.

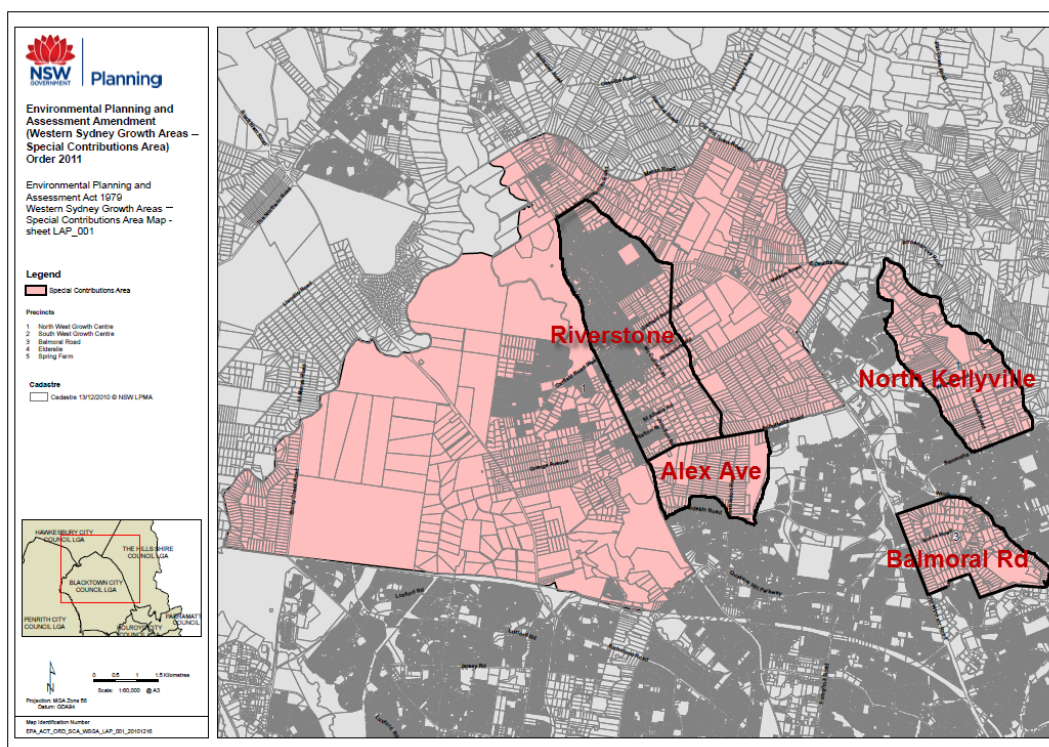
²⁷ Minister for Planning, *Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2011*, 3 March 2011, Schedule 2.

3.1 Land to which CP20 applies

This contributions plan applies to land within Riverstone and Alex Avenue Precincts which are 2 of the first release precincts in the North West Growth Centre (see Figures 3.1 and 3.2):

- ▼ the Riverstone Precinct is bounded by Bandon Road to the north, Schofields Road to the south, Richmond Rail Line to the west and First Ponds Creek and Windsor Road to the east
- ▼ the Alex Avenue Precinct is bounded by Schofields Road to the north, Burdekin Road to the south, Richmond Rail Line to the west and the Second Ponds Creek release area to the east.

Figure 3.1 Location of Riverstone and Alex Avenue Precincts



Data source: Department of Planning and Infrastructure.

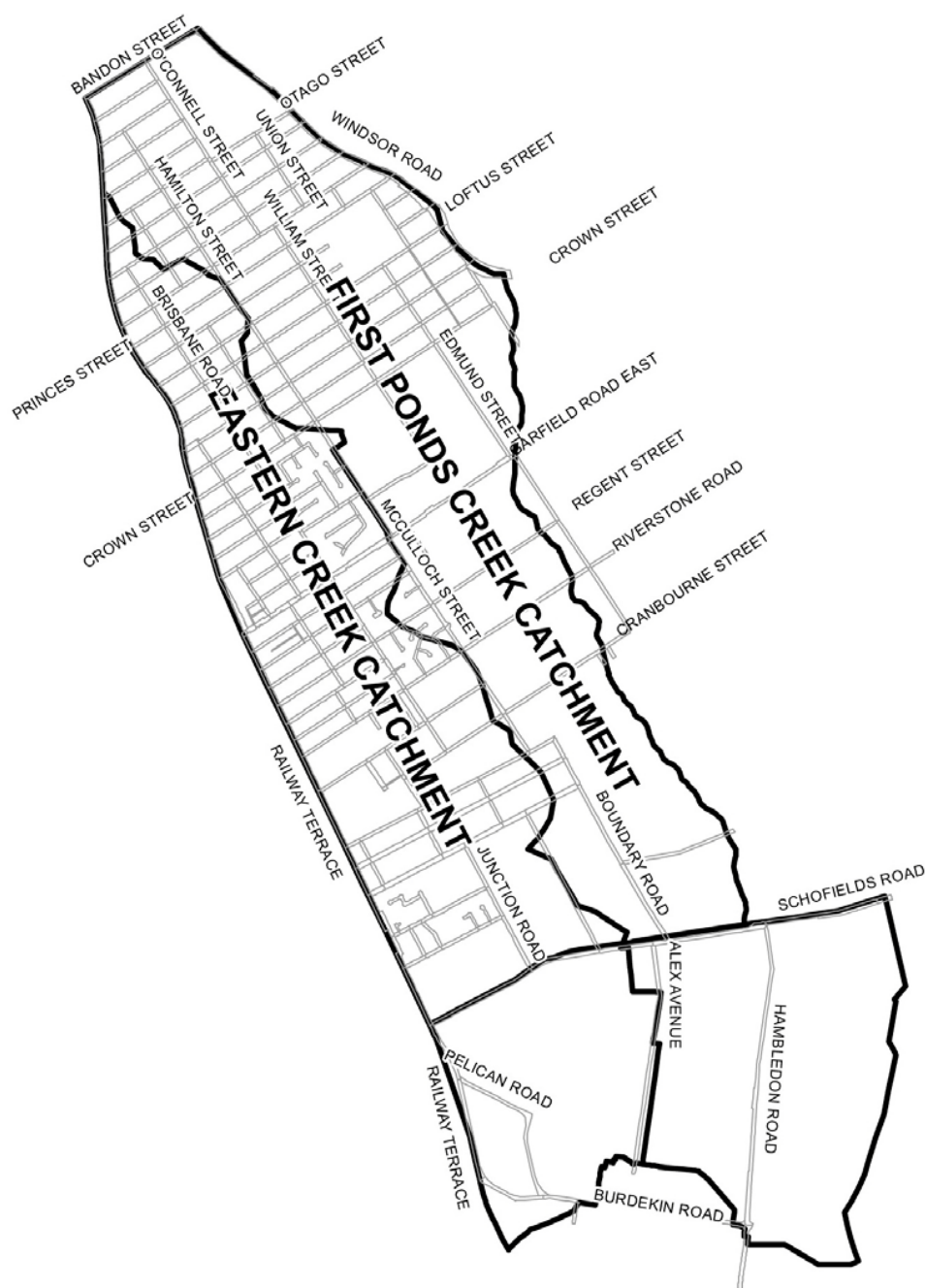
Figure 3.2 Alex Avenue and Riverstone precincts



Data source: Blacktown City Council, Section 94 Contributions Plan No.20 – Riverstone & Alex Avenue Precincts, p 3.

The Riverstone and Alex Avenue Precincts contain 2 drainage catchments, Eastern Creek Catchment and First Ponds Creek Catchment. Eastern Creek and First Ponds Creek both drain to the Hawkesbury Nepean River. The areas of both catchments were determined having regard for the natural watershed and the proposed local road layout, both of which will affect drainage flows. The 2 catchments are shown in Figure 3.3.

Figure 3.3 Eastern Creek and First Ponds Creek catchments



Data source: Blacktown City Council, Section 94 Contributions Plan No.20 – Riverstone & Alex Avenue Precincts, p 28.

3.2 Contribution rates in CP20

CP20 levies contributions on the basis of the total costs of the public amenities and public services that are required to service the whole development. Costs are divided into 4 categories: stormwater management works, transport works, open space and recreation facilities, and community services. These total costs are then converted to unit amounts on the basis of area or population as follows:

- ▼ by area (ie, \$/hectare) – stormwater and transport
- ▼ by population (ie, \$/person) – open space and recreation and community services.²⁸

The contributions plan levies stormwater contributions based on the 2 drainage catchments (ie, Eastern Creek Catchment and First Ponds Creek Catchment). To obtain per lot contribution rates for each catchment area, the \$/hectare and \$/person figures are multiplied by the area of the development and assumed occupancy rates in the plan.

We have estimated that an indicative contributions amount for the developable area is about \$60,000 per dwelling in the First Ponds Creek catchment and about \$58,000 in the Eastern Creek catchment.²⁹

3.3 Public amenities and services in CP20

CP20 outlines the council's policy regarding the application of section 94 of the EP&A Act in relation to the provision of local infrastructure and baseline facilities within the Riverstone and Alex Avenue Precincts. Table 3.1 details the items included in CP20.

More than half of the cost of the plan is for stormwater management. Blacktown Council has provided an indicative timetable for the provision of facilities for stormwater catchment. These are to be provided in 3 tranches between 2013 and 2027. The timing of other facilities is uncertain at this stage.

²⁸ Blacktown City Council, *Section 94 Contributions Plan No.20 – Riverstone & Alex Avenue Precincts*, p 64.

²⁹ IPART's calculations are based on an assumption of 15 dwellings per hectare and 2.9 persons per dwelling.

Table 3.1 Items included in the Riverstone and Alex Avenue Precincts Contributions Plan

Works categories	Items	Cost in Plan (\$)
Open space and recreation	Land acquisition	90,768,000
	Local parks, riparian corridor parks, landscaping, car parks, sporting facilities and tennis courts	94,912,000
Community	Land acquisition	9,897,000
	Community resource hub ^a	18,464,000
	Upgrades to the aquatic facility	17,476,000
	Conservation zone	3,571,000
Transport	Land acquisition	10,273,000
	Facilities such as local roads, railway terraces, load limits, shelters near schools and traffic signals	105,955,000
Stormwater management	Land acquisition	139,355,000
	Facilities such as detention basins, culverts, inlet to basins, bio-retention system and open channels	254,505,000
Total		745,176,000

^a The Community Resource Hub comprises Neighbourhood Centre and Community Development activities, Youth Centre, Arts Centre Function and an Informal Indoor Recreational Centre.

Source: Blacktown City Council, *Section 94 Contributions Plan No.20 – Riverstone & Alex Avenue Precincts*, pp 32-63.

4 Assessment of Blacktown Council's application for CP20

We have assessed Blacktown Council's application for CP20 against the criteria in the Practice Note (see Box 2.3). We also engaged JBA Urban Planning Consultants Pty Ltd to help us assess the council's application. A copy of JBA's report is Appendix A and a copy of the council's response is Appendix B.

This chapter summarises our assessment of the plan against the criteria. For each criterion we have summarised JBA's assessment, the council's response to JBA's findings and our overall assessment, findings and recommendations.

4.1 Summary of IPART's assessment

We have concluded that CP20 satisfies the criteria with the following exceptions:

- ▼ the skate park, capital works for the community resource hub and upgrades to the aquatic facility do not comply with the Essential Works List
- ▼ the value of the land that council owns and will be used to provide essential infrastructure within the development area
- ▼ apportionment of drainage areas between this development area and Riverstone East.

We note that the council recognised in its application that the skate park, capital works for the community resource hub and upgrades to the aquatic facility do not comply with the Essential Works List. We have assessed only the items that comply with the List against the remaining criteria.

Although the costs for stormwater management facilities are over 50% of the costs in CP20, we found that the cost estimates are reasonable having regard to the detailed review process which has already occurred.

The council currently owns land that will be used for providing essential works in CP20 and has valued this land at average market values. Whether it should be included at market value will depend on whether the land was acquired before or after June 2006. This is when the Minister for Planning released the land for rezoning.

We conclude that:

- ▼ the market value is reasonable for land acquired prior to June 2006
- ▼ actual purchase price adjusted for inflation should be used for land acquired after June 2006
- ▼ the market value is reasonable for land that has not yet been purchased.

Most items have been apportioned reasonably. However there are 2 detention basins in Riverstone (located on First Ponds Creek) which could serve both Riverstone and Riverstone East. All the costs of the basins have been allocated to Riverstone under CP20. We consider that the council should revise CP20 to reflect demand from both development areas which will benefit from these detention basins.

The council is uncertain at this early stage when the new facilities for managing the stormwater will be delivered. The council will be able to reassess the timing of delivery of these facilities (and other essential works) as development proceeds. It should revise CP20 as development occurs to reflect the greater certainty in the timing of development.

Table 4.1 shows our assessment of the reasonable cost of essential works in CP20. We found that the total reasonable cost of essential works is \$700,051,000.

Table 4.1 Cost of items in CP20 and IPART's assessment (\$)

Category	Cost in Plan	IPART adjustment	IPART assessed
Open space and recreation facilities	185,680,000	-400,000 (skate park removed)	185,280,000
Community services facilities	49,408,000	-3,000 (for land purchased in February 2008) -35,940,000 (for the community resource hub and upgrades to the aquatic facility)	13,465,000
Transport management	116,228,000	-	116,228,000
Stormwater management facilities	393,860,000	-8,782,000 (apportionment of facilities supporting Riverstone East)	385,078,000
Total	745,176,000	-45,125,000	700,051,000

Source: Blacktown City Council, *Section 94 Contributions Plan No.20 – Riverstone & Alex Avenue Precincts*, pp 32–63, and IPART's calculations.

4.2 Criterion 1 - The public amenities and services are on the Essential Works List

Under the changes to the development contributions framework introduced in 2010, the Essential Works List will be used if a council wishes to seek either funding from the Priority Infrastructure Fund or through a special rate variation.³⁰ The Practice Note also states that the Essential Works List is relevant only to those contributions plans that propose a contribution level above the relevant cap, unless otherwise directed by the Minister for Planning and Infrastructure.³¹

We assessed the items in CP20 against the Essential Works List as set out in the Practice Note and correspondence from the Department of Planning which updated the definition of base level embellishment (see Box 2.2).

The majority of the items contained in CP20 comply with the Essential Works List, with the exception of the skate park, capital works for the community resource hub and the upgrades to the aquatic facility.

JBA's report

The report identified a number of items in the plan that are not on the Essential Works List. These are the capital costs for the:

- ▼ skate park in Open Space Reserve 893
- ▼ community resource hub
- ▼ combined precinct aquatic facility.

Blacktown Council's response

The council agreed that these items are not on the Essential Works List. The council considered that the relevant costs should remain in the plan but would not attract funds from the Priority Infrastructure Fund. This would enable these costs to be recovered if the total contributions were below the cap of \$30,000.

The council has also indicated that these facilities are still permitted under the EP&A Act and Regulations.

³⁰ Department of Planning, *Planning Circular PS 10-022 Reforms to Local Development Contributions*, 16 September 2010.

³¹ Department of Planning, *Local Development Contributions Practice Note for assessment of contributions plans by IPART*, November 2010, p 7.

IPART's assessment

The following items are not included on the Essential Works List, as defined in the Practice Note:

- ▼ skate park in Open Space Reserve 893 (capital cost \$400,000)
- ▼ community resource hub (\$18,464,000 of the capital cost of this project has been apportioned to CP20)
- ▼ upgrades to the aquatic facility (\$17,476,000 of the capital cost of this project has been apportioned to CP20).

The council recognises that these items (which have a total value of \$36,340,000) are not included on the Essential Works List.

Table 4.2 summarises the items in the contributions plan and IPART's assessment of whether these items are included on the Essential Works List.

Table 4.2 Items in CP20 and IPART's assessment of inclusion on the Essential Works List

Works program	Items	On Essential Works List
Open space and recreation	Land, local parks, riparian corridor parks, landscaping, car parks, sporting facilities and tennis courts	Yes Excluding the skate park in Open Space Reserve 893
Community services facilities	Land and facilities such as a community resource hub, ^a upgrades to an aquatic facility and conservation zone	Yes Excluding the capital works for the community resource hub and the upgrades to the aquatic facility
Transport management	Land and facilities such as local roads, railway terraces, load limits, shelters near schools and traffic signals	Yes
Stormwater management	Land and facilities such as detention basins, culverts, inlet to basins, bio-retention system and open channels	Yes

^a The Community Resource Hub comprises a neighbourhood centre and community development activities, youth centre, Arts Centre Function and an Informal Indoor Recreational Centre.

Source: Blacktown City Council, *Section 94 Contributions Plan No.20 – Riverstone & Alex Avenue Precincts*, pp 32–63.

We note Blacktown Council's position that the items not included on the Essential Works List should remain in the plan.

The section 94E Direction is unclear on whether contributions plans can recover costs that are not included on the Essential Works List. However, we consider it likely that the intention of the policy is that contributions should be levied only for essential works. Accordingly, we consider that the council should not be able to levy contributions for the skate park, capital works for the community resource hub and

upgrades to the aquatic facility, even if the resulting contributions are, in total, below \$30,000 per dwelling/lot.

Items that are not included on the Essential Works List can remain in the plan. These items and their costs should be separately identified as not included on the list. The plan would then be used to seek funds for these items through other means, such as a special rate variation application. We have made a recommendation to this effect to the Minister for Planning and Infrastructure in section 5.7.

IPART's finding

- 1 Most items contained in CP20 are included on the Essential Works List, with the exception of the skate park, capital works for the community resource hub and the upgrades to the aquatic facility. These items have a total value of \$36,340,000.

Recommendation

- 1 The council should deduct an amount of \$36,340,000 representing the cost of the skate park, capital works for the community resource hub and the upgrades to the aquatic facility from the total costs of essential works in CP20.

4.3 Criterion 2 - There is nexus between the development and the public amenities and services

Nexus ensures that there is a connection between the infrastructure included in contributions plans and increased demand for facilities from the incoming population.

Blacktown Council indicated that nexus for items in CP20 has been established by consultants' reports prepared for the Growth Centres Commission and the council's own reports.³² In considering nexus we examined the following components of the CP20:

- ▼ open space and recreation
- ▼ community services facilities
- ▼ transport management
- ▼ stormwater management.

There are no contentious issues concerning nexus in CP20 in either JBA's report or the council's response to JBA's report. In our view there is nexus between the proposed development and the items in CP20.

³² Blacktown Council's application for assessment of contributions plan, p 26 and Blacktown City Council, *Section 94 Contributions Plan No 20 – Riverstone & Alex Avenue Precincts*, pp 17, 65.

JBA's report

Nexus for items on the Essential Works List is demonstrated by the supporting documents listed in Table 4.3. These documents were produced by qualified experts who are independent of the council. JBA considers that these reports sufficiently demonstrate nexus between the development and the items in CP20.

CP20 provided slightly less open space than is required by the *Growth Centres Development Code* but is generally consistent with the Code. The rate of provision for various types of sporting fields and courts is also less than the relevant Department of Planning and Infrastructure criteria.

JBA indicated that the Macroplan report established the need for community infrastructure. The council's report then proposed that this infrastructure should be delivered in the form of a community resource hub.

Table 4.3 Reports used to establish nexus in CP20

Category	Reports
Open space and recreation facilities	Growth Centres Commission, 2006, <i>Growth Centres Development Code</i> Macroplan Australia Pty Ltd, 2007, <i>Riverstone and Alex Avenue Precincts Demographic Profile and Community Infrastructure Report</i>
Community services facilities	Macroplan Australia, 2007, <i>Riverstone and Alex Avenue Precincts Demographic Profile and Community Infrastructure Report</i> Blacktown City Council's <i>Informal Indoor Recreation Needs Assessment and Section 94 Community Facilities Report</i>
Transport management	Road Delay Solutions, July 2009, <i>North West Growth Centres Indicative Layout Plan Revision Transport and Traffic Model Year 2036</i> ARUP Pty Ltd, 2007, <i>The Draft Riverstone & Alex Avenue Transport & Access Study</i> , prepared for the Growth Centres Commission
Stormwater management	GHD Pty Ltd, 2008, <i>Alex Avenue and Riverstone Precinct Planning Part 2 of 3: Riparian Assessment July 2008</i> , prepared for the Growth Centres Commission GHD Pty Ltd, 2008, <i>Alex Avenue and Riverstone Precincts – Integrated Natural Environment Management Part 3 of 3: Water Sensitive Urban Design and Flooding Draft Report Part 3 of 3, September 2008</i> , prepared for the Growth Centres Commission GHD Pty Ltd, 2008, <i>Riverstone and Alex Avenue Precincts – Post exhibition Flooding and Water Cycle Management (including Climate Change Impact Flooding)</i> , prepared for the Growth Centres Commission

Source: JBA, Urban Planning's review of CP No 20, pp 8–10.

IPART's assessment

Nexus has been demonstrated by the consultants' reports that were prepared for the Growth Centres Commission and the subsequent reports prepared for council.

IPART's finding

- 2 There is nexus between items in CP20 and the expected development in Riverstone and Alex Avenue Precincts.

4.4 Criterion 3 - The development contribution is based on a reasonable estimate of the cost of the public amenities and services

We have assessed the reasonableness of council's costs included in CP20, not the efficient costs. We considered the possibility of establishing the efficient costs of providing facilities in the contributions plans. However, this is not practical for 2 reasons:

- 1 contributions plans for greenfield sites will usually include concept design and broad cost estimates with more precise costs estimates being developed before construction starts
- 2 engineering judgements require a trade-off between reduced risk and increased costs and therefore estimates within a range may all be reasonable.

Reasonable costs may be based on estimates that have been provided by consultants or the council's experience. They should be comparable to the costs required to deliver similar items in other areas.

Blacktown Council has indicated that its cost estimates have been derived from internal estimates and consultants' reports.³³ We have examined the reasonableness of cost estimates only for items that are included on the Essential Works List.

We examined the following matters:

- ▼ open space and recreation
- ▼ community precinct facilities
- ▼ stormwater management
- ▼ transport management
- ▼ land valuations
- ▼ cost estimate contingencies.

We found that the cost estimates for the majority of the items in CP20 are reasonable. This excludes the value of land that the council bought after June 2006 when the Minister for Planning announced the release of Riverstone and Alex Avenue Precincts for precinct planning.

The cost estimates for transport management, open space and recreation, community precinct facilities and cost estimate contingencies are reasonable (see Table 4.4).

³³ Blacktown Council's application for assessment of contributions plan, p 24.

Table 4.4 IPART's assessment of reasonable costs

Matters considered	JBA comments	IPART's assessment
Open space and recreation	The cost estimates for open space and recreation facilities were based on a quantity surveyor's report carried out for the council by Rider Levett Bucknall. The cost estimates and methodology are reasonable.	The costs for open space and recreation facilities are reasonable.
Community facilities	The cost estimates for the conservation zone are based on costs of \$45.28 per square metre and are reasonable.	The costs for the community precinct facilities are reasonable.
Transport management	The cost estimates for transport management included in CP20 have been derived from the council's asset design services based on average works tender rates from contractors. The cost estimates and methodology for transport management are reasonable.	The costs for traffic transport management are reasonable.
Stormwater management	Total landfill disposal costs in CP20 are substantial at \$129,784,080. As a result of the Cardno review, the costs of stormwater increased by \$74,578,568 for the First Ponds Creek Catchment and \$27,255,008 for the Eastern Creek Catchment mainly due to corrections in cost estimates around landfill disposal rates. The cost estimates and methodology used by the council for the stormwater need further review.	The cost estimates for the stormwater management works are conservative. Overall, the cost estimates are not unreasonable.
Land valuations	If the purchase price of land that the council currently owns is less than the market rates used by council, it would be more reasonable to include that land in the plan at the actual purchase price.	
Cost estimate contingencies	The council's cost estimates for the items in CP20 include a contingency of 5% to 10% is reasonable.	The cost estimates for contingencies are reasonable.

Source: JBA, Urban Planning's review of CP No 20 and email dated 9 May 2011.

We decided that council's estimates of the costs of stormwater management and land purchases needed further consideration. Our assessment is discussed below.

4.4.1 Stormwater

Stormwater management is based on the expectation that residential land should be satisfactorily drained and flood free. Urban development results in a greater amount of stormwater run-off and stream flows than occur naturally. Stormwater management systems are designed to control this increased run-off and flows.

Stormwater management works are a significant cost in CP20, representing over 50% of the total cost of the plan. These works include trunk drainage, flood mitigation and stormwater quality systems.

The Riverstone and Alex Avenue Precincts contain 2 drainage basins, Eastern Creek Catchment and First Ponds Creek Catchment. Two of the stormwater detention basins on First Pond Creek encroach into the adjacent Riverstone East precinct, which is yet to be developed.

The cost estimates for the stormwater management works were prepared by the Asset Design Services section of Blacktown Council. The estimates were based on average tender rates from contractors and stormwater concept designs prepared by GHD Pty Ltd as part of the precinct planning process.

The Department of Planning commissioned Cardno (NSW) Pty Ltd to review the stormwater works in CP20.³⁴ This work was completed in June 2010. The council indicated that it implemented the recommendations from Cardno's report to the extent possible to protect the council's financial risk.

The total landfill disposal costs in CP20, at \$129,784,080, are substantial. This represents 51% of the total cost of drainage works cost and translates to an average disposal cost of around \$206 per cubic metre.³⁵ The Department of Planning expressed concern that the average cost of fill disposal in CP20 is significantly higher than the costs incurred by other state government agencies that dispose of landfill.³⁶

JBA's report

JBA recommended that the cost estimates and methodology used by the council for the stormwater management should be reviewed further. This recommendation was based on the Department of Planning's advice that the council had not adopted all recommendations in the Cardno review for minimising costs. The Department was

³⁴ Cardno, *Alex Avenue and Riverstone Precincts Section 94 Engineering Review*, Prepared for Department of Planning, June 2010.

³⁵ Blacktown Council correspondence (Basins channels raingardens), 24 May 2011.

³⁶ Meeting with Department of Planning, 10 March 2011.

particularly concerned that the cost of cutting and filling and disposing of excess material was substantial.

JBA also noted that, as a result of the Cardno review, the costs of water management facilities increased by \$74,578,568 for the First Ponds Creek Catchment and \$27,255,008 for the Eastern Creek Catchment. This was mainly due to revised estimates of the cost of disposing excess material to landfill.³⁷

Blacktown Council's response

The council had attempted to implement Cardno's recommendations. Cardno considered that the council's revised cost estimates are generally reasonable.

The council stated that the methodology it used in CP20 was the same as that it used for CP1 and CP5. The Minister for Planning had determined that these plans are reasonable.

A significant cost is the disposal of soil resulting from the construction of facilities for stormwater management. The council stated that it explored other alternatives for use of landfill. For example, it had investigated areas outside the precincts (such as the Western Sydney Parklands area and Whalan Reserve) as alternative disposal sites. The council did not consider these options were acceptable due to the uncertainty of obtaining alternative sites and site constraints (such as flooding) for those specific areas.³⁸ The council argues that it would place itself at considerable financial risk if it relied on finding contractors that were able to dispose of material at a lower cost.

The plan incorporates large increases between the initial and final estimates of the cost of stormwater management (\$74,578,568 for First Ponds Creek and \$27,255,008 for Eastern Creek). The council advanced 3 reasons to explain these increases:

- 1 The initial cost estimate for CP20 included about 300,000 cubic metres of surplus material. As a result of GHD's review this increased to 1,000,000 cubic metres.
- 2 A review by Cardno then resulted in an estimate of 631,000 cubic metres of surplus material in the final plan.
- 3 There was significant rezoning of land from recreation to drainage purposes by the Department of Planning. This increased acquisition costs by \$35,503,590 for First Ponds Creek and \$12,647,700 for Eastern Creek. This also resulted in a decrease of \$91,620,500 in acquisition costs for open space.³⁹

³⁷ JBA's review of CP20, p 15. Subsequent discussions with the council identified that the change in cost estimates could be attributed to a combination of more accurate information regarding the topography (through "ground-truthing"), the preparation of a concept design and, to a lesser extent, the correction of unit cost assumptions.

³⁸ Blacktown Council correspondence to IPART, 3 June 2011 p 4.

³⁹ Blacktown Council correspondence to IPART, 23 and 24 May 2011 and Blacktown Council's response to JBA's report.

IPART's assessment

The council has gone through a detailed process over 3 years to prepare the cost estimates for facilities for the stormwater management in CP20. This involved:

- ▼ work by GHD to prepare concept designs for stormwater drainage (which were used by council to develop its own concept designs)
- ▼ work by Cardno to review the council's concept designs at the request of the Department of Planning
- ▼ work by GHD in its post exhibition review which examined the original assumptions made by the council in its concept designs and Cardno's recommendations.

The council stated that it has carried out further work to implement the recommendations from the Cardno review to the 'extent possible to protect the financial risk to the council'.⁴⁰

Blacktown Council has adopted a high estimate of the costs of fill disposal in CP20. We note that it has explored alternative landfill disposal methods, including approaching land owners outside of the precincts and investigating other sites such as Whalan Reserve.⁴¹

The cost estimates for the stormwater management works are conservative but not unreasonable given:

- ▼ the extensive review of CP20
- ▼ the council's efforts to investigate alternative disposal sites for landfill
- ▼ that the stormwater cost estimates are still at the concept design stage and works have not been carried out.

We consider that the council could continue to seek better options for disposing of the landfill and could further refine its cost estimates.

IPART's finding

- 3 Blacktown Council has adopted conservative estimates of costs for stormwater management works.
- 4 Blacktown Council's estimates of costs for stormwater management works are not unreasonable.

Recommendation

- 2 **Blacktown Council should continue to seek alternative sites to dispose of landfill and further refine their cost estimates as it reviews CP20.**

⁴⁰ Blacktown Council's response to JBA's report, pp 6-7.

⁴¹ Blacktown Council correspondence, 3 June 2011, p 4.

4.4.2 Land valuations

JBA's report

Land acquisition costs in CP20 are estimated by the council's valuer in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* based on market valuations.

The council indicated that, in February 2010, an independent assessment was commissioned by the Department of Planning to review the council's land valuation methodology for CP20. The assessment was carried out by MJ Davis Valuations. The review concluded that the valuation methodology at the time appeared to be reasonable.

The council has also indicated that it already owns about 46 hectares of land in the precincts,⁴² some of which will be used to provide items in CP20. The plan identifies this land for acquisition at current market rates.

JBA recommended that, if the purchase price of the 46 hectares of land is less than the market rates used by council, it would be more reasonable to include that land in the plan at the actual purchase price.⁴³

Blacktown Council's response

The council has clarified that, although it owns 46.23 hectares of land in Riverstone and Alex Avenue Precincts, only 15.05 hectares of council-owned land that is zoned for a public purpose is included in CP20. The council has also indicated that it acquired 14.77 hectares of this land before June 2006 (which is when the Minister for Planning announced the release of Riverstone and Alex Avenue Precincts in the North West Growth Centre). This land was acquired for various reasons, for example, as a result of the land owners defaulting on rates.

After June 2006, the council acquired an additional 0.28 hectares of land in those Precincts for \$167,000.⁴⁴ This land was acquired in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.

The council considers including the 15.05 hectares of land in CP20 at market rates is reasonable and that this approach only treats it equally with all other land owners in the Precincts. It stated that "it is unreasonable to expect the existing rate payers of Blacktown City to subsidise new development in these 2 new Precincts by using an acquisition method that is less than market rates".⁴⁵ It also received legal advice to support this position.

⁴² Blacktown Council correspondence, 3 June 2011, p 15.

⁴³ Blacktown Council correspondence, 3 June 2011, p 17.

⁴⁴ Blacktown Council correspondence, 3 June 2011, p 5.

⁴⁵ Blacktown Council's response to JBA's report, p 5.

IPART's assessment

The council already owns 15.05 hectares of land which is required for works in CP20 that are on the Essential Works List.

We found that the cost estimates for land that the council is yet to acquire are reasonable considering the independent valuation by MJ Davis Valuations.

Regarding the cost estimate for the 15.05 hectares, the Department of Planning referred us to the NSW Court of Appeal's decision of *Allsands Pty Ltd v Shoalhaven City Council*⁴⁶ (see Box 4.1). The decision was that payment of monetary contribution required by a council toward recoupment of costs for public amenities and services under the EP&A Act was limited to historic costs actually paid by council.

Box 4.1 Allsands Pty Ltd v Shoalhaven City Council

The Department of Planning advised that it considered that land which the council had already acquired should be included in CP20 at its purchase cost rather than at market rates. We understand that the Department based this view on the New South Wales Court of Appeal's decision of *Allsands Pty Ltd v Shoalhaven City Council*^a (*Allsands*). *Allsands* held that the payment of monetary contribution required by a council towards the recoupment of costs for providing public amenities or services under the predecessor to section 94(3) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) was limited to historic costs actually paid by the council.

Although we had regard to *Allsands* when assessing CP20, we considered that our assessment was not constrained by *Allsands* for a number of reasons. In particular, *Allsands* is limited in its authority as to what constitutes the "reasonableness" of conditions imposed under section 94(3) of the EP&A Act.

We also consider that the "reasonableness" test under section 94 only arises when a council assesses a specific development application, whereas our assessment concerns the overall contributions plan. That assessment takes place in a broader policy context than under section 94, and involves a broader inquiry than the "reasonableness" test in section 94.

Further, although conditions imposed by a council when approving a specific development application under section 94 must be "reasonable", and can only be imposed if it is of a kind allowed by, and determined in accordance with a contributions plan,⁴⁸ there is no specific statutory requirement for the conditions included in a contributions plan to be "reasonable". That is ultimately controlled by the Minister's ability to give directions, for example, as to the maximum level of monetary contributions.^b

^a (1993) 20 NSWLR 596

^b EP&A Act, s 94E(1)(b). A court can also disallow or amend a condition because it is unreasonable in the particular circumstances of the case: EP&A Act, s 94B(3).

⁴⁶ (1993) 20 NSWLR 596.

However, we did not consider that our assessment should be constrained by this case as *Allsands* relates specifically to Section 94(3) of the EP&A Act and the reasonableness test under Section 94 relates to a specific development contributions plan. Also, there is no specific statutory requirement for the conditions included in a contributions plan to be "reasonable." This is ultimately controlled by the Minister's ability to give directions, for example, as to the maximum level of monetary contributions.⁴⁷

We consider that the value in plan of the 15.05 hectares that council already owns should be as follows:

- ▼ 14.77 hectares of land that was purchased before June 2006⁴⁸ should be valued at the average market value. This is the methodology which is currently used to value land in CP20.⁴⁹ We consider that this approach is reasonable given that general council funds were used to purchase the land. The council would have received a market value for its purchase had the land not been zoned for public purposes by the Minister for Planning in June 2006.
- ▼ 0.11 hectares of land bought in February 2008⁵⁰ should be valued at \$105,442.⁵¹ The land was zoned for public purposes in June 2006, and the council would have been aware that a contributions plan would be made for Riverstone and Alex Avenue Precincts. As the value of this land was determined in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*, the purchase price would have reflected the fair market value at the time of purchase. Therefore, we consider that the reasonable cost to include is the purchase cost of land indexed to March 2010 using the CPI (All Groups Index) for Sydney⁵² because that is the base date for the costs in CP20.
- ▼ 0.17 hectares of land bought in January 2011⁵³ should be valued at the actual settlement price of \$67,000. As the value of this land was determined in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*, the purchase price would have reflected the fair market value at the time of purchase. In future, when the council reviews the plan, this purchase price should be indexed by CPI.

⁴⁷ *Environmental Planning and Assessment Act 1979* s 94E(1)(b). A court can also disallow or amend a condition because it is unreasonable in the particular circumstances of the case: s 94B(3).

⁴⁸ Blacktown Council correspondence, 23 May 2011.

⁴⁹ Blacktown Council, *Section 94 Contributions Plan No.20 – Riverstone & Alex Avenue Precincts*, p 20.

⁵⁰ Blacktown Council, *Section 94 Contributions Plan No.20 – Riverstone & Alex Avenue Precincts*, p 20.

⁵¹ Blacktown Council, *Section 94 Contributions Plan No.20 – Riverstone & Alex Avenue Precincts*, p 25.

⁵² The value of \$105,442.18 is calculated as \$100,000 × (170.5/161.7) where 170.5 is the value of the CPI (All Groups Index) for Sydney at March 2010 and 161.7 is the value at March 2008.

⁵³ Blacktown Council correspondence, 23 May 2011.

The Department of Planning and Infrastructure has also informed us that it owns land in Riverstone and Alex Avenue Precincts that Blacktown Council will be acquiring for CP20. The Department added that the council owns a similar amount of land in the precincts that the Department will need to acquire and so the Department approached the council to negotiate a land swap. No agreement was reached.

Table 4.5 summarises our position on the valuation of land within CP20.

Table 4.5 IPART assessed value method for land acquisition

Purchase date	Land area (ha)	IPART assessed value
Prior to June 2006	14.77	market value (no adjustment)
February 2008	0.11	indexed purchase price
Post commencement of CP20 ^a	203.00	market value (no adjustment)
Total	217.88	

^a Council purchased 0.11 hectares of land in January 2011. The actual settlement value of this land (\$67,000) should be included in any revisions of the plan but has not been included in IPART's assessment. IPART has not made any adjustment on the basis of this parcel of land being acquired since the plan was made.

The reasonable valuation of land in CP20 is \$250,290,000.⁵⁴ This includes the land that council has acquired and the land that it will acquire in the future. The land settled in February 2008 has been valued at \$105,442 rather than the council's estimate of \$108,446.⁵⁵ We have not made an adjustment for the 0.17 hectares purchased in January 2011 as this land was acquired after the plan was made.

Recommendation

- 3 When Blacktown Council next reviews CP20, the 0.17 hectares of land purchased in January 2011 should be included in CP20 at the actual purchase price adjusted for inflation.

4.4.3 Summary of total reasonable costs

Table 4.6 lists IPART's assessment of the reasonable cost of each item in CP20. As a result of our assessment total costs have reduced from \$745m to \$700m. The main contributors to the reductions have been for community service facilities which are not on the Essential Works list (\$35.9m) and stormwater management facilities (\$8.8m).

⁵⁴ We have rounded this figure from \$250,289,996 to the nearest thousand.

⁵⁵ The council has indicated that the land settled in February 2008 falls under the conservation zone in the combined precinct facilities category of CP20. It also indicated that the average market value that has been applied to land to be acquired in this category is \$97 per square metre. This means the indicative value of the 0.11 hectares in CP20 is \$108,446 (Blacktown Council correspondence, 9 June 2011).

Although we found that the cost estimates for the facilities for stormwater management are not unreasonable, we have reduced the total costs as the 2 online basins will support development in Riverstone East as well as the Riverstone and Alex Avenue Precincts. We have included the cost of acquiring land in Riverstone East for the 2 online basins and have apportioned the total cost of the stormwater management facilities to reflect the estimated demand generated by each precinct.

IPART's finding

- 5 The total reasonable cost of items in CP20 that comply with the Essential Works List is \$700,051,000.

Table 4.6 Items included in the Riverstone and Alex Precinct Contributions Plan

Works program	Schedule of works	Essential works	Cost in Plan (\$)	IPART assessed (\$)
Open space and recreation facilities	Land acquisition	Yes	90,768,000	90,768,000
	Local parks, riparian corridor parks, landscaping, car parks, sporting facilities and tennis courts	Yes Excluding the skate park in reserve 893	94,912,000	94,512,000
Community precinct facilities	Land acquisition	Yes	9,897,000	9,894,000 ^a
	Community resource hub	No	18,464,000	-
	Upgrades to the aquatic facility	No	17,476,000	-
Transport management	Conservation zone	Yes	3,571,000	3,571,000
	Land acquisition	Yes	10,273,000	10,273,000
	Facilities such as local roads, railway terraces, load limits, shelters near schools and traffic signals	Yes	105,955,000	105,955,000
Stormwater management facilities	Land acquisition	Yes	139,355,000	139,895,000 ^b
	Facilities such as detention basins, culverts, inlet to basins, bio-retention system and open channels.	Yes	254,505,000	245,183,000 ^b
Total			745,176,000	700,051,000

^a This reflects our assessment of the land acquired by the council in February 2008 to be included in CP20 at \$105,442 rather than \$108,446. We rounded the total actual figure to the nearest thousand from \$9,893,996.

^b We have apportioned some of the cost of 2 online basins that encroach into Riverstone East. This resulted in a reduction of about \$8,782,000 from the total cost in the plan.

Source: Blacktown Council, *Section 94 Contributions Plan No.20 – Riverstone & Alex Avenue Precincts*, p 63 and IPART' calculations.

4.5 Criterion 4 - The public amenities and services can be provided within a reasonable timeframe

The proposed public amenities and public services included in the contributions plan should be provided at a time required by those demanding the infrastructure. This should be based on expected development and population trends.

Priorities for works in CP20 are in the following order:

- ▼ facilities for stormwater management
- ▼ transport management facilities
- ▼ open space and recreation facilities
- ▼ community facilities and combined precinct facilities.⁵⁶

The council has indicated in its contributions plan that, due to the contributions cap and the uncertainty of the total funding that can be received from developers under the contributions plan, the council has given an indicative timing for only the stormwater management facilities.⁵⁷

The stormwater management works are to be constructed in 3 tranches, of 4 years each:

- ▼ the first block is 2013 - 17
- ▼ the second block is 2018 - 22
- ▼ the third block is 2023 - 27.⁵⁸

For the provision of other items, the council has stated that its timing of delivery is dependent 'upon the balance of funding received under this Contributions Plan, and the sufficient receipt of funding outside of this Contributions Plan'.⁵⁹

JBA's report

The timing of stormwater management facilities is reasonable given the contextual situation of Riverstone and Alex Avenue Precincts. They suggested that more discussion should be included in the contributions plan about the delivery of the other infrastructure items.

The timing of the delivery of infrastructure is not important to the contributions amount. This is because council has not used a net present value (NPV) methodology.

⁵⁶ Blacktown Council, *Section 94 Contributions Plan No.20 – Riverstone & Alex Avenue Precincts*, p 5.

⁵⁷ Blacktown Council, *Section 94 Contributions Plan No.20 – Riverstone & Alex Avenue Precincts*, p 6.

⁵⁸ Blacktown Council, *Section 94 Contributions Plan No.20 – Riverstone & Alex Avenue Precincts*, pp 32- 46.

⁵⁹ Blacktown Council, *Section 94 Contributions Plan No.20 – Riverstone & Alex Avenue Precincts*, p 6.

Blacktown Council's response

Blacktown Council acknowledged JBA's comments and noted that the next version of the contributions plan will incorporate further discussion about the timing of works.

IPART's assessment

The council can provide only a broad indication at this early stage of when the new facilities for managing the stormwater can be delivered. The council will be able to reassess the timing of delivery of these facilities (and other essential works) as development proceeds. It should revise CP20 as development occurs to reflect the greater certainty in the timing of development.

Recommendation

- 4 When Blacktown Council reviews CP20, it should review the timing of the delivery of stormwater management facilities and other infrastructure works having regard to the rate of development.

4.6 Criterion 5 - The development contribution is based on a reasonable apportionment between existing and new demand

Apportionment refers to the share of the relevant costs of public amenities and services that is borne by the future development. The concept of apportionment is based on ensuring that developers pay only for the portion of demand that results from their new development. While nexus is about establishing a relationship between the development and demand for infrastructure, apportionment is about quantifying the extent of the relationship.

Apportionment should take into account and quantify:

- ▼ the demand generated by different types of development covered by a contributions plan, including residents in new dwellings, workers in new employment floor space and visitors in tourist accommodation
- ▼ the capacity of existing infrastructure
- ▼ the proportional needs of the existing population, if any
- ▼ demand for infrastructure in the plan arising from existing or expected development outside the development area.

Riverstone and Alex Avenue Precincts are greenfield sites and so the council attributes most of the cost in the plan to new development. To determine whether the proposed costs had been reasonably apportioned we considered the following components of the plan:

- ▼ open space and recreation
- ▼ community and combined precinct facilities
- ▼ transport management
- ▼ stormwater management.

Overall, we found that the costs have been reasonably apportioned apart from the 2 basins in Riverstone that we consider also support development in Riverstone East.

Table 4.7 below summarises our assessment of the way CP20 apportions costs for the new amenities and infrastructure.

Table 4.7 Summary of IPART's assessment of the reasonableness of apportionment

Works	Is apportionment reasonable?	Comments
Open space and recreation	Yes	The council has apportioned the total costs to the additional population expected to live in Riverstone and Alex Avenue Precincts. We consider this to be reasonable because these items specified in the plan are needed to service new development.
Community	Yes	The council has apportioned the cost of items in CP20 according to the additional population expected in Riverstone and Alex Avenue Precincts and neighbouring precincts. This is reasonable because the community facilities and combined precinct facilities in CP20 are needed as a result of demand generated by new residents. There are existing facilities in Riverstone and Alex Avenue but they have been provided to service existing residents only.
Transport management	Yes	The council has apportioned the total costs to the additional population expected to live in Riverstone and Alex Avenue Precincts. This is reasonable because these items specified in the plan are needed to service new development.
Stormwater management	No	The total costs of the 2 basins should be apportioned between Riverstone/Alex Avenue Precincts and the adjacent Riverstone East Precinct. This would reduce the total reasonable cost of CP20 by about \$8,782,000.

4.6.1 Stormwater management facilities

CP20 attributes 100% of the cost of facilities for stormwater management to Riverstone and Alex Avenue Precincts.

JBA's report

JBA advised that the apportionment is only partly reasonable. Some stormwater management facilities will support development in the Riverstone East Precinct. JBA recommended that the apportionment of the costs of facilities for stormwater management should be further reviewed.

Blacktown Council's response

The council has stated that JBA's assessment appears to be reasonable. The GHD post exhibition report⁶⁰ commissioned by the Department of Planning did not provide sufficient information to enable the council to apportion costs between Riverstone and Riverstone East precincts.

The GHD report did not include Riverstone East in its hydrologic modelling. The council therefore concluded that the water management strategy in the report does not support development in Riverstone East. As a result, all costs have been apportioned to CP20. The council has indicated it may be understating the true cost as it has not included the land purchased in Riverstone East for the construction of the 2 basins.

IPART's assessment

It is reasonable to apportion 100% of most of the facilities for stormwater management to CP20 because they are needed to support expected development in Riverstone and Alex Avenue Precincts.

There are 2 detention basins in Riverstone (located on First Ponds Creek) that serve both Riverstone and Riverstone East.

The Department of Planning has provided information from GHD that includes the costs of the basins to be apportioned between Riverstone and Riverstone East. We note that this information is not provided in the GHD report.

The GHD information indicates that 44% of the capital costs for online basin F16 and 50% of the capital costs for online basin F28 should be apportioned to Riverstone East.⁶¹ We note that Blacktown Council has requested information from the Department of Planning and Infrastructure to support this apportionment.

⁶⁰ GHD Pty Ltd, *Riverstone and Alex Avenue Precincts – Post exhibition Flooding and Water Cycle Management (including Climate Change Impact Flooding)*, May 2010, prepared for the Growth Centres Commission.

⁶¹ Department of Planning and Infrastructure correspondence, 25 May 2011.

The council has provided its own apportionment percentages based on the size of the catchment areas affected by these 2 basins. These percentages are:

- ▼ for online basin F16, 49% for Riverstone and 51% for Riverstone East
- ▼ for online basin F28, 54% for Riverstone and 46% for Riverstone East.⁶²

The council has also indicated that additional land will need to be acquired in Riverstone East for the construction of these basins. The council has estimated that this cost is \$4,117,200.⁶³

Using the apportionment percentages that it has provided, council has estimated that the cost of CP20 should be reduced by \$8,781,596 to reflect the apportionment of some of the costs of the 2 basins to Riverstone East (see Box 4.2). This is an indicative figure only. The council currently does not support apportionment of some of the 2 basins to Riverstone East.

Despite the fact that no contributions plan has yet been made for Riverstone East, we suggest apportionment of the costs of the basins to Riverstone and Riverstone East precincts. This is because the on line basins will benefit both precincts.

When the council creates a contributions plan for Riverstone East, it should reflect the apportionment of the 2 online basins in that contributions plan.

IPART's finding

- 6 Most of the apportionment for the items on the Essential Works List and in CP20 is reasonable.
- 7 The 2 online basins would support development in the both the Riverstone precinct and the adjacent Riverstone East precinct.
- 8 The council should apportion the costs of the 2 online basins between the Riverstone and Alex Avenue precincts in CP20 and the adjacent Riverstone East area. This would result in a reduction in total reasonable costs for stormwater management facilities of \$8,782,000.

Recommendation

- 5 Blacktown Council should amend CP20 to reduce the costs of stormwater management by \$8,782,000 to reflect an apportionment to Riverstone East of that proportion of the costs of 2 online basins that support development in Riverstone East.

⁶² Blacktown Council correspondence, 9 June 2011.

⁶³ Blacktown Council correspondence, 9 June 2011.

Box 4.2 Inputs for calculating the apportionment of costs for online basins F16 and F28
Land acquisition costs

The estimated land acquisition costs for the 2 online basins (F16 and F28) in CP20 are:

- ▼ \$1,663,800 for F16
- ▼ \$1,475,800 for F28.

Blacktown Council has indicated that land will be acquired in Riverstone East for the construction of the basins. They have provided the following additional estimated land acquisition costs:

- ▼ \$2,904,600 for F16
- ▼ \$1,212,600 for F28.

The total apportioned cost of land acquisition (using the council's apportionment percentages according to catchment areas) to CP20 is:

- ▼ \$2,235,842 for F16
- ▼ \$1,444,034 for F28
- ▼ Therefore, the resulting net change to CP20 for the land acquisition cost is about an additional \$540,000.^a

Capital costs

The estimated capital costs in CP20 for the 2 online basins are:

- ▼ \$12,042,000 for F16
- ▼ \$6,856,000 for F28.

Thus the apportioned capital cost (using the council's apportionment percentages according to catchment areas) to CP20 is:

- ▼ \$5,893,531 for F16
- ▼ \$3,682,598 for F28.

Therefore, the resulting net change to CP20 for the apportioned capital cost is about - \$9,322,000.^b

Total apportioned costs for online basins F16 and F28.

The total net change to CP20 is about -\$8,782,000.

^a We have rounded this figure from \$540,275 to the nearest thousand.

^b We have rounded this figure from -\$9,321,872 to the nearest thousand.

Source: IPART's calculations based on information provided by Blacktown Council, 9 June 2011.

4.7 Criterion 6 - The council has conducted appropriate community liaison and publicity in preparing the contributions plan

The EP&A Regulations require councils to exhibit contributions plans to the public and seek submissions from the public on the plan.⁶⁴ The regulations also require the council to consult the community and provide relevant information.

The council's application states that precinct planning was done jointly with the Department of Planning as part of the growth centres arrangement. It also states that CP20 was one of the documents that was part of a precinct planning package that the Department of Planning exhibited.

During the public exhibition period (25 November 2008 to 5 February 2009) the council indicated it received 8 submissions on various issues such as cost estimates, apportionment and the inclusion of particular community facilities. The council responded to those submissions.⁶⁵

We note that the council has a FAQ document on its website⁶⁶ for Alex Avenue and Riverstone Precincts to inform the community based on common questions the community has raised. It also tells readers how to get certain documents and provides contact details for further information.

IPART's assessment

We found that the council undertook appropriate community liaison and publicity in producing CP20 as it:

- ▼ complied with the precinct planning process
- ▼ responded to submissions received
- ▼ informed the community about Riverstone and Alex Avenue Precincts through relevant information such as the online FAQ document.

⁶⁴ *Environmental Planning and Assessment Regulation 2000*, cl 28.

⁶⁵ Blacktown City Council correspondence, 25 May 2011.

⁶⁶ http://www.blacktown.nsw.gov.au/planning-and-development/north-west-growth-centre/north-west-growth-centre_home.cfm Alex Avenue & Riverstone Precincts Your questions Answered, August 2010.

5 Issues arising from IPART's assessment of contributions plans

To date, IPART has reviewed 3 plans in 2 council areas:

- ▼ Blacktown City Council's Section 94 Contributions Plan No 20 – Riverstone and Alex Avenue (CP20)
- ▼ The Hills Shire Council's Contributions Plan No. 12 – Balmoral Road Release Area (CP12)
- ▼ The Hills Shire Council's Contributions Plan No. 13 – North Kellyville Precinct (CP13).

During our review of these plans, we identified issues that relate more widely to the review of contributions plans. These issues are:

- ▼ provision of information
- ▼ regular review of plans
- ▼ the levying of administration costs under contributions plans
- ▼ net present value model
- ▼ escalation of contributions
- ▼ determining rates for different types of development
- ▼ the treatment of non-essential works in the plan
- ▼ major cost items.

This chapter discusses the issues more fully and recommends actions to address these.

5.1 Provision of information

Since the policy announcement in June 2010 we have received 3 contributions plans for review before councils apply for alternative funding. Our application form asked for information about the contributions plans such as:

- ▼ maps or plans showing the geographical areas covered by the contributions plan
- ▼ statements regarding:
 - land acquisition (including size, cost, quality and open space strategy)
 - design and construction standards

- how costs have been derived and when these costs estimates were prepared
- ▼ full costs of each item of infrastructure
- ▼ infrastructure studies, census data, flood modelling demonstrating demand and nexus.

In all our reviews we found that the initial submission we received included insufficient information and supporting documentation to satisfy the requirements of our terms of reference.

We note that this has been a new process. For future reviews we expect that councils will provide all the necessary information for the review with the initial submission. This will be more efficient for both councils and IPART.

The necessary information includes, but is not limited to:

- ▼ supporting studies for the demand, nexus and apportionment figures
- ▼ supporting reports for the costs included in the plan, including any expert or legal advice received
- ▼ detailed cost calculations for a sample of the items within the plan
- ▼ financial models and/or spreadsheets upon which the plan is based
- ▼ council meeting minutes demonstrating key decision points in the development of the plan
- ▼ design evolution documents that are fully auditable for any major items of infrastructure
- ▼ fully auditable calculations that reconcile any differences in infrastructure cost assumptions used in the plan, any current financial models and the template prepared for the submission.

IPART will undertake a preliminary assessment of any application it receives. Where a council does not provide the information required and the detail required, we will send the application back to the council.

IPART's finding

- 9 Councils' initial submissions have included insufficient information and supporting documentation to enable us to adequately assess the plans against the criteria.

5.2 Regular review of plans

Our consultants placed different emphases on the need for the review of contributions plans:

- ▼ Newplan considers that the council should review CP12 to reflect changes since the plan was made (eg, staging, population estimates and land use). Newplan also considers that the council should review the plan on a regular basis to reflect significant changes in assumptions underlying the plan.
- ▼ SGS Economics and Planning considers that annual reviews, as suggested by one council, are not necessary if the plan gives appropriate instructions for indexing contributions.

While we expect a council to strive for plans based on the most accurate current information, we find that it is unrealistic to expect that the estimated costs and revenues for long development periods will remain the same during the life of the plan.

There is some merit in updating contributions plans on a regular basis. This is supported by the 2005 Practice Note,⁶⁷ which states that plans quite often adopt a horizon of 10 to 15 years, with a commitment to review at least every 5 years. The Practice Note also acknowledges that if an area is growing rapidly, there may be a need for more regular reviews.

We consider it appropriate that councils review contributions plans on at least a 5-yearly basis, unless a significant change in circumstances prompts an earlier review. This reduces unnecessary fluctuations in the contributions and the potential for large losses and gains in councils' administration of the plans.

Recommendation

- 6 Councils should review their contributions plans at least every 5 years, unless a significant change in circumstances prompts an earlier review.

5.3 Administration costs

Blacktown Council did not include administrative costs for CP20 in its application. However, The Hills Shire Council's CP12 and CP13 included administration costs. The Hills Shire Council indicated that it believed that administration costs should be included in contributions plans as it is a part of the "true cost" of preparing plans.⁶⁸ However, because administration costs are not specifically on the Essential Works List we did not incorporate these costs in our assessment of the total reasonable cost for The Hills Shire Council's contributions plans.

⁶⁷ Department of Infrastructure, Planning and Natural Resources, *Development contributions Practice notes – July 2005*, July 2005.

⁶⁸ The Hills Shire Council Response to draft consultants reports for CP12 and 13, p 10.

For Blacktown Council, we note that it has removed administrative costs of about \$4.3m from CP20 post-exhibition in an effort to make the costs in CP20 more affordable.⁶⁹

We consider that various administrative activities are important to ensure that contributions plans are well managed, current and responsive to any changes which might arise over the course of development. On this basis, we consider these activities to be best practice for contributions plans and that administration costs that a council incurs should be included in the Essential Works List.

Recommendations

- 7 The Minister for Planning and Infrastructure should consider amending the Practice Note to allow development contributions to be levied to recoup administration costs incidental to items on the Essential Works List.
- 8 Administration costs should be defined to include:
 - the costs that councils incur in preparing the contributions plan, including preparation of studies to identify the needs of the proposed development
 - the costs that councils incur in reviewing and updating of contributions plans and managing contributions receipts and expenditures.

If the Minister agrees with these recommendations, Blacktown Council should amend CP20 to include administration costs.

5.4 Net present value model

In a new development area expenditure on infrastructure (particularly land acquisition) generally occurs early in the development process, whereas the revenue from developers is not received until much later. This creates a risk for councils that they may not recoup the cost of their expenditure on infrastructure and land. Council expenditure also generally occurs much later than when plans are initially finalised. This can create risks for councils if actual land or infrastructure costs increase significantly over time and deviate from planned expenditures.

The 2005 Development Contributions Practice Note⁷⁰ allows the use of an NPV model to calculate development contributions. A net present value (NPV) model can assist councils in minimising the gap between costs and funding over time.

The Hills Shire Council is one of only a few councils in NSW that uses an NPV model to calculate contributions. Blacktown City Council does not use an NPV model to calculate contributions for CP20.

⁶⁹ Blacktown Council, Works and Finance Report, 16 June 2010, pp 11, 12.

⁷⁰ Department of Infrastructure, Planning and Natural Resources, *Development contributions Practice notes – July 2005*, 'Financial management of development contributions', July 2005, p 3.

Advantages of using an NPV model

We consider that there are advantages of councils using an NPV model, however, the maintenance and use of a model requires councils to have staff with the necessary financial skills.

The primary advantage is that the model may help to ensure that the contributions plan is fully funded over the life of the plan. Councils will incur a funding cost in providing the infrastructure in advance of receiving contributions. If they do not use an NPV approach this cost may not be recovered.

Important assumptions in the application of an NPV model include:

- ▼ the use of real or nominal values
- ▼ the choice of discount rate.

Neither the 2005 Practice Note nor the 2010 Practice Note is prescriptive regarding the preferred model assumptions.

Real versus nominal values

When using an NPV model, councils have various options for structuring the model. An NPV model may be prepared in either nominal terms or in real terms. The NPV models for CP12 and CP13 are prepared in nominal terms.

In a nominal model, the monetary values (ie costs and revenues) take into account future cost increases that would include the effects of inflation. In a real model, the effects of inflation are removed from the costs and revenues.

Nominal models require councils to select indices with estimates of cost inflation. These inflators must be applied over long periods of time, which can lead to forecasting errors.

Discount rate

The **discount rate** is used to calculate the present value of future expenditure and contributions as received. This rate can represent the time preference for money (ie, funds received today are worth more than the same funds received at some future time), the social opportunity cost of capital, or the cost of funds.⁷¹ We note that the NSW Treasury's Guidelines for Economic Appraisal recommend the use of a real discount rate of 7% while the Guidelines for Financial Appraisal refer to a nominal rate of return based on the weighted average cost of capital (WACC).

⁷¹ NSW Treasury, Office of Financial Management, *tpp 07-5 NSW Government Guidelines for Economic Appraisal*, July 2007, pp 51-52. NSW Treasury, Office of Financial Management, *tpp 07-4 NSW Government Guidelines for Financial Appraisal*, July 2007.

In our view the discount rate that is used in the modelling of contributions rates should not be derived from an index but rather from an estimate of the return expected over time. An appropriate discount rate should be based on market interest rates and include an adjustment for risk.

We note that the discount rate chosen by The Hills Shire Council is much lower than both a real discount rate of 7% and the WACC used for determining prices in other industries that IPART regulates.

We consider that councils might need further guidance in selecting an appropriate discount rate. Therefore we propose to initiate further consultation with interested parties, such as the Department of Planning and Infrastructure, NSW Treasury, selected councils and bodies representing developers. This would enable us to determine a consistent rate that could be adopted by all councils if they choose to use an NPV model.

Recommendations

- 9 When councils choose to use an NPV model to calculate development contributions, the modelling should be done using real figures and a discount rate which reflects the council's risk related rate of return.
- 10 Further consultation should be undertaken on a discount rate that could be applied consistently. Consultation should involve IPART, Treasury, Department of Planning and Infrastructure, councils and developers.

5.5 Escalation of contributions

As mentioned above, it is not possible to forecast accurate changes in the cost of items at the time of preparing a contributions plan. However, once a contributions plan has been made, costs *will* change as a result of inflation. Therefore the contributions rates need to be adjusted at regular intervals to ensure that the revenue received by councils moves in line with the changes in the costs of their expenditure. That is, so that the real value of contributions does not erode.

The *Environmental Planning and Assessment Regulation 2000* requires that contributions rates be indexed by the CPI (All Groups Index) for Sydney, as published by the Australian Bureau of Statistics.

Recommendation

- 11 Contribution rates should be indexed by the CPI (All Groups Index) for Sydney, as published by the Australian Bureau of Statistics. The contributions plan should specify whether the index is to be applied quarterly or annually.

5.6 Determining rates for different types of development

Councils are given the flexibility of deciding the 'base' upon which to levy development contributions.⁷² The 'base' refers to a particular demand unit or units. For example, plans may contain:

- ▼ a per dwelling contribution rate
- ▼ a per person contribution rate
- ▼ a per lot contribution rate
- ▼ a per square metre of floorspace
- ▼ a per worker contribution rate.

There may also be subcategories of demand units. For example, CP12 and CP13 set different contribution rates depending on whether the proposed development is a detached dwelling or an apartment. It also distinguishes between different sizes of apartments. This approach recognises that the demand for services depends to a large degree on the number of people in each dwelling.

The 2010 Practice Note only specifies that caps apply per dwelling or per residential lot. It does not provide any detail on how the costs should be shared amongst subcategories of demand units.

Contributions caps may create an incentive for councils to 'load up' the contributions rate for smaller groupings of demand units. For example, under the current policy, it appears permissible for councils to reduce the maximum contributions rate without a commensurate reduction of all contributions rates. One council also suggested that it could include the costs of items not on the Essential Works List in instances where the contributions rate for a subcategory of the demand unit was below the cap.

Recommendation

- 12 The Minister for Planning and Infrastructure should consider clarifying the policy with regard to contributions rates for different types of development (eg, single dwellings versus multi-unit dwellings).

5.7 Non-essential works in the plan

Through our reviews of both The Hills Shire Council's and Blacktown City Council's plans we have found the councils intend to leave in the plan the items that are not on the Essential Works List. We consider that this is reasonable as the plan should reflect all of the infrastructure needed to service the development. However, the plan needs to clearly identify the Essential Works and their costs.

⁷² Department of Infrastructure, Planning and Natural Resources, *Development Contributions Practice Notes – July 2005*, 'Determining rates for different types of development', July 2005, p 1.

Councils may apply to IPART for a special rate variation to meet the cost of local infrastructure that is not on the Essential Works List.

Recommendation

- 13 The Minister for Planning and Infrastructure should consider clarifying the policy so that the total cost of items on the Essential Works List is able to be clearly distinguished in a contributions plan. Further, the policy should require that contributions plans must include a contributions rate which recovers only the costs of items on the Essential Works List.

5.8 Major cost items

Land acquisition is a major component of costs in each of the contributions plans we reviewed. The majority of land that must be acquired is for open space and recreation, including riparian corridors.

We note that work commissioned by the NSW Land and Housing Supply Coordination Taskforce showed that requirements for the provision of riparian corridors and other uses that sterilise land for development impact the total cost of development.

We also found that there were inconsistencies in how the stormwater management costs were treated across the contributions plans. We found that the costs for stormwater management in CP20 were particularly high, compared to the other plans we reviewed. As Blacktown Council is responsible for stormwater management works in the Riverstone and Alex Avenue Precincts, it has included the cost of stormwater management works in CP20. In contrast, Sydney Water is responsible for stormwater management in the Rouse Hill Development Area, including the North Kellyville Precinct and the Balmoral Road Release Area.

We note that in 2008, the government set development contributions levied by Sydney Water to zero.⁷³ Consequently, Blacktown Council has to fund the majority of the cost of stormwater management in CP20 while Sydney Water (or ultimately Sydney Water customers) funds the stormwater management costs for CP12 and CP13.

We note that much stormwater expenditure provides benefits not only to the local community but also the wider Sydney community through improvements in water quality in the Hawkesbury-Nepean River. The benefit principle of public finance suggests that contributions should be levied in proportion to the benefits received. This suggests that a degree of cost-sharing between local residents and the wider Sydney community may be reasonable.

⁷³ Sydney Water is still able to levy charges to recover the costs of providing recycled water services to new development in the Rouse Hill Project Area.

We consider that the development contributions could potentially be lower if the amount of non-developable land was reduced. This would require a review of the regulatory and environmental requirements. Similarly a consistent approach to stormwater management could lead to lower development contributions. These matters may warrant a whole-of-government review of these requirements.

Recommendations

- 14 A whole-of-government review of the requirements for open space and other land uses that sterilise land for development should be undertaken.
- 15 The system of recouping the cost of stormwater management works should be given further consideration in light of potential inequities between different areas.



Appendices

A | Final report from JBA Urban Planning

We engaged JBA Urban Planning to assist in assessing Blacktown City Council's application (which includes CP20) against the assessment criteria in the Practice Note, specifically matters relating to nexus, reasonableness of infrastructure costs, timing of infrastructure delivery and apportionment. The Consultant's report is attached.

Report to IPART

Review of Blacktown City Council Contributions Plan No.20 - Riverstone and Alex Avenue Precincts

21 April 2011 ■ 11083

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JBA Urban Planning Consultants Pty Ltd operates under a Quality Management System. This report has been prepared and reviewed in accordance with that system. If the report is not signed below, it is a preliminary draft.

This report has been prepared by: Andrew Wilson

Signature

Date 21/4/11



This report has been reviewed by: Lesley Bull

Signature

Date 21/4/11



Contents

1.0	Introduction & background	1
2.0	Overview of Blacktown City Council CP No.20	4
3.0	Essential Works List	6
4.0	Nexus	8
5.0	Apportionment	11
6.0	Timeframe for Provision of Infrastructure	13
7.0	Estimate of Cost	14
8.0	Summary and Conclusion	17

1.0 Introduction & background

On 3 March 2011, the Minister for Planning issued a Direction under section 94E of the *Environmental Planning & Assessment Act, 1979* which took effect on 4 March 2011. The Direction effectively states that a Council (or planning panel) must not impose a condition of development consent under section 94(1) or (3) of the *Environmental Planning and Assessment Act 1979* requiring the payment of a monetary contribution exceeding a \$30,000 cap for each dwelling or residential lot in the Riverstone or Alex Avenue Precincts as identified within the Blacktown City Council Contributions Plan No.20 – Riverstone and Alex Avenue Precincts (hereafter referred to as ‘Blacktown CP No.20’).

A council may apply to the NSW Government for Priority Infrastructure Funding (PIF) to recover the amount by which a contributions rate contained in an existing contributions plan exceeds the maximum \$30,000 cap in the Minister’s Direction.

The *Local Development Contributions Practice Note for the assessment of Local Contributions Plans by IPART* (hereafter referred to as the ‘Practice Note’) issued by the Department of Planning in November 2010 establishes the process for a council to submit a contributions plan and supporting documentation to IPART for review as part of an application for Priority Infrastructure Funding (PIF).

On 28 January, 2011, Blacktown City Council made a submission to IPART seeking a review of Blacktown CP No.20 in support of an application for PIF.

JBA Urban Planning Consultants has been engaged to provide specialist assistance to IPART in reviewing Blacktown CP No.20 and the submission made by Blacktown City Council. The review is to be carried out in accordance with the Practice Note which includes prescribed assessment criteria. The criteria specified in the Practice Note are as follows:

- The public amenities and public services in the plan are on the “Essential Works List” as identified within the Practice Note;
- There is nexus between the development in the area to which the plan applies and the kinds of public amenities and public services identified in the plan;
- The proposed development contribution is based on a reasonable estimate of the cost of the proposed public amenities and public services;
- The proposed public amenities and public services can be provided within a reasonable timeframe ;
- The proposed development contribution is based on a reasonable apportionment between existing demand and new demand for the public amenities and public services;
- The council has conducted appropriate community liaison and publicity in preparing the contributions plan; and
- The plan complies with other matters IPART considers relevant.

The brief prepared by IPART for JBA Planning is to prepare a report that specifically addresses the following:

“1. Assess BCC’s contributions plan and any other information that BCC has provided to IPART to determine whether the public amenities and public services included in the contributions plan are on the “Essential Works List” as defined in the Practice Note for the assessment of Local Contributions Plans by IPART.

2. Assess BCC’s contributions plan and any other information that BCC has provided to IPART to determine whether there is nexus between the development in the area to which the plan applies and the public amenities and public services identified in the plan.

3. Assess BCC’s contributions plan and any other information BCC has provided to IPART to determine whether the contributions for public amenities and public services is based on a reasonable apportionment between new and existing demand for those amenities and services. In doing so, the consultant will need to consider, amongst other things:

- a) The kinds of public amenities and services that the development will create a demand for*
- b) Whether the information on demand is reliable and up to date*
- c) Whether the location of the services is appropriate for the development*
- d) Whether the estimates of population change are realistic*
- e) Whether the amenities and public services are to serve only the new development or the new development and the existing community*
- f) Whether the new demand could be accommodated within existing public amenities and services and, if so, how costs have been apportioned*
- g) Whether the public amenities and public services would be required if the development did not proceed.*

4. Assess BCC’s contributions plan and any other information that BCC has provided to IPART to determine whether BCC can provide those services in a reasonable timeframe. In doing so, the consultant will need to consider, amongst other things:

- a) whether the timeframe for the provision of the amenities and services is relevant for those kinds of amenities and services*
- b) whether the public amenities and services will be provided at a time that those demanding the services require them*

5. Review the public amenities and public services included within BCC’s contributions plan and assess whether the estimate of costs of those services is reasonable. In doing so, the consultant will need to consider, amongst other things:

- a) How the cost estimates within the plan were developed, and whether the costs are up to date*
- b) Whether the cost estimates include all of the costs required to bring the public amenities and services into operation*
- c) Whether council has engaged relevant professionals to provide an independent assessment of the costs of providing the public amenities and services*
- d) Whether council has taken CPI or other measures of cost inflation into account and the assumptions and calculations made*
- e) Whether council has used an NPV methodology and, if so, whether the discount rate is reasonable.”*

This report is structured in accordance with the above brief from IPART.

In preparing this report, JBA has reviewed the following documents:

- Section 94E Direction of the Minister for Planning dated 3 March 2011;
- Local Development Contributions Practice Note for the assessment of Local Contributions Plans by IPART (Department of Planning, November 2010);
- Development Contributions Practice Notes – July 2005 (Department of Planning);
- Blacktown City Council Contributions Plan No.20 – Riverstone and Alex Avenue Precincts;
- State Environmental Planning Policy (Sydney Region Growth Centres) 2006;
- Growth Centres Development Code (October 2006);
- Blacktown City Council Growth Centre Precincts Development Control Plan 2010;
- Riverstone and Alex Avenue Precinct - Indicative Layout Plans; and
- Supporting information, documents and studies provided by Council.

2.0 Overview of Blacktown City Council CP No.20

The following table provides an overview of the infrastructure items, costs and contribution rates specified in Blacktown CP No.20.

Infrastructure item	Cost of infrastructure			Contribution rate
	Land acquisition	Works	Total Cost	
Water Cycle Management				
<i>Stormwater quantity</i>				
- First Ponds Creek	\$95,132,000	\$135,306,000	\$230,438,000	\$ 436,163 per hectare
- Eastern Creek	\$44,223,000	\$55,783,000	\$100,006,000	\$ 398,050 per hectare
<i>Stormwater quality</i>				
- First Ponds Creek		\$47,525,000	\$47,525,000	\$ 93,985 per hectare
- Eastern Creek		\$15,891,000	\$15,891,000	\$ 91,924 per hectare
Traffic / Transport Management	\$10,273,000	\$105,955,000	\$116,228,000	\$ 141,977 per hectare
Open Space	\$90,768,000	\$94,912,000	\$185,680,000	\$ 4,199 per person
Community and Combined Precinct Facilities	\$9,897,000	\$39,511,000	\$49,408,000	\$ 1,118 per person
TOTAL	\$250,293,000	\$494,883,000	\$745,176,000	

The contribution rates in CP No.2 equate to a contribution amount for a dwelling or residential lot in the Riverstone and Alex Avenue precincts according to the density of development as shown in the following table provided by Council.

Density (Dwellings Per Ha)	Occupancy (No. persons per dwelling)	Contribution per dwelling in First Ponds Creek catchment	Contribution per dwelling in Eastern Creek catchment
12.5	2.9	\$69,190	\$65,976
15	2.9	\$60,229	\$57,551
20	2.9	\$49,025	\$47,017
25	1.2	\$30,446	\$28,901
25	1.9	\$34,168	\$32,623
25	2.9	\$39,485	\$37,940
40	1.2	\$21,423	\$20,457
40	1.9	\$25,145	\$24,179
40	2.7	\$29,398	\$28,432
40	2.9	\$30,462	\$29,496
45	1.2	\$19,750	\$18,893
45	1.9	\$23,472	\$22,615
45	2.7	\$27,725	\$26,868
45	2.9	\$28,789	\$27,932

The proportion of the contribution rate derived from each of the infrastructure facilities in CP No.20 is shown in the following tables which differ between the water catchments in the precincts.

First Ponds Creek Catchment			
Infrastructure item	Proportion of contribution rate derived from infrastructure cost		
	Land Acquisition	Works	Total
Water Cycle Management	17.74%	34.5%	52.24%
Traffic/Transport Management	1.24%	12.75%	13.99%
Open Space	13.04%	13.63%	26.67%
Community and Combined Precinct Facilities	1.42%	5.68%	7.1%
Total	33.44%	66.56%	100%

Eastern Creek Catchment			
Infrastructure item	Proportion of contribution rate derived from infrastructure cost		
	Land Acquisition	Works	Total
Water Cycle Management	18.06%	32.21%	50.27%
Traffic/Transport Management	1.29%	13.28%	14.57%
Open Space	13.58%	14.19%	27.77%
Community and Combined Precinct Facilities	1.48%	5.91%	7.39%
Total	34.41%	65.59%	100%

3.0 Essential Works List

3.1 IPART Brief

1. Assess BCC's contributions plan and any other information that BCC has provided to IPART to determine whether the public amenities and public services included in the contributions plan are on the "Essential Works List" as defined in the Practice Note for the assessment of Local Contributions Plans by IPART.

The 'Essential Works List' in the Practice Note comprises the following public amenities or public services:

- *"land for open space (for example, parks and sporting facilities) including base level embellishment;*
- *land for community services (for example, childcare centres and libraries);*
- *land and facilities for transport (for example, road works, traffic management and pedestrian and cyclist facilities), not including carparking;*
- *land and facilities for stormwater management."*

The Practice Note further defines base level embellishment. We are instructed by IPART to use the following impending revised definition:

"Base level embellishment of open space is considered to be those works required to bring the open space up to a level where the site is secure and suitable for passive and active recreation. This may include:

- *site regrading*
- *utilities servicing*
- *basic landscaping (turfing, asphalt and other synthetic playing surfaces, planting, paths and cycleways)*
- *drainage and irrigation*
- *basic park structures and equipment (park furniture, toilet facilities and change rooms, shade structures and play equipment)*
- *security lighting and local sports field floodlighting*
- *sports fields, tennis courts, netball courts, basketball courts*

but does not include skate parks, BMX tracks and the like."

The definition of 'essential works' in the Practice Note excludes community facility works, and car parking that is not ancillary to essential works.

3.2 Blacktown CP No.20

The infrastructure and works included in Blacktown CP No.20 comprise the following:

- Water Cycle Management (land and facilities);
- Traffic and Transport Management (land and facilities);
- Open Space and Recreation (land and embellishment);
- Community and combined precinct facilities (land and facilities).

The above infrastructure and works included in Blacktown CP No.20 are within the definition of 'Essential Works' in the Practice Note (as to be revised) with the exception of the community facility works, combined precinct aquatic facility, and the skate park facility in open space Reserve 893.

The combined precinct Conservation Zone in CP No.20 falls within the 'Essential Works' as open space including base level embellishment.

Infrastructure outside the definition of 'essential works'

The following facilities described in Blacktown CP No.20 are outside the 'Essential Works List';

- Community Resource Hub building works - a multipurpose facility that can include activities and functions relating to neighbourhood centre, children and family services facilities, youth centre, arts centre function, library and informal indoor recreational facility - (Cost: \$18,464,000 apportioned to CP No.20);
- Combined Precinct Aquatic Facility - (Cost: \$17,476,000 apportioned to CP No.20); and
- Skate park in Open Space Reserve 893 - (Cost: \$400,000).

4.0 Nexus

4.1 IPART Brief

2. Assess BCC's contributions plan and any other information that BCC has provided to IPART to determine whether there is nexus between the development in the area to which the plan applies and the public amenities and public services identified in the plan.

The three types of nexus associated with contributions plans in NSW are causal nexus, spatial nexus and temporal nexus. This section of the review deals with causal nexus (ie. demand/ need from new development) and spatial nexus (ie. proximity between infrastructure and new development).

Temporal nexus relates to the timely provision of infrastructure which is addressed in Section 6 of this Report under the separate Criteria 4 in the Practice Note.

4.2 General Nexus in Blacktown CP No.20

The demand or need for infrastructure in Blacktown CP No.20 to support urban development in the Riverstone and Alex Avenue precincts is based on the established statutory planning instruments and associated planning studies for the development of the North West Growth Centres. This includes the State Environmental Planning Policy (Sydney Region Growth Centres) 2006 and associated Growth Centres Development Code and Precinct Plan Development Control Plan, and the planning studies for Riverstone and Alex Avenue precincts listed in Appendix G of the Blacktown CP No.20.

4.3 Water Cycle Management Facilities

The nexus between the proposed water management facilities in Blacktown CP No.20 and urban development in the Riverstone and Alex Avenue precincts is established in the specialist water management reports listed in Appendix G of CP No.20 which were prepared as part of the precinct planning for these precincts conducted by the NSW Government. These specialist engineering studies and plans include the following:

- GHD Pty Ltd (2008) Alex Avenue and Riverstone Precincts - Integrated Natural Environment Management Part 3 of 3: Water Sensitive Urban Design and Flooding Draft Report Part 3 of 3, September 2008, prepared for the Growth Centres Commission.
- GHD Pty Ltd (2008) Alex Avenue and Riverstone Precinct Planning Part 2 of 3: Riparian Assessment July 2008, prepared for the Growth Centres Commission.
- GHD Pty Ltd (2010) Riverstone and Alex Avenue Precincts – Post exhibition Flooding and Water Cycle Management (including Climate Change Impact Flooding), May 2010, prepared for the Growth Centres Commission.

The water management plans and concept designs in these GHD documents and adopted in Blacktown CP No.20 are, according to the CP No.20, based on established engineering standards and guidelines adopted by NSW Government and Blacktown City Council including the Growth Centres Development Code (2006), BCC Engineering Guideline for Development (2005), and NSW Floodplain Development Manual.

These studies were prepared by experts in water management as part of the NSW Government's Growth Centres precinct planning process for the development of Riverstone and Alex Avenue precincts and in accordance with established State and local Government engineering practice and standards.

4.4 Traffic and Transport Management Facilities

The nexus between the proposed traffic and transport management facilities in Blacktown CP No.20 and urban development in the Riverstone and Alex Avenue precincts is established in the specialist transport and access studies listed in Appendix G of CP No.20 which were prepared as part of the precinct planning for these precincts conducted by the NSW Government. These specialist access and transport studies include the following:

- ARUP Pty Ltd (2007) *The Draft Riverstone & Alex Avenue Transport & Access Study*, prepared for the Growth Centres Commission.
- Road Delay Solutions (2009) *North West Growth Centres Indicative Layout Plan Revision Transport and Traffic Model Year 2036 report*.

The standard of local road construction adopted in Blacktown CP No.20 is, according to Council, based on established engineering standards and guidelines for urban areas adopted by NSW Government and Blacktown City Council.

These studies were prepared by experts in transport and traffic engineering as part of the NSW Government's Growth Centres precinct planning process for the development of Riverstone and Alex Avenue precincts and in accordance with established State and local Government practices and standards.

4.5 Open Space and Recreation Facilities

The nexus between the proposed open space and recreation facilities in Blacktown CP No.20 and urban development in the Riverstone and Alex Avenue precincts is established in CP No.20 which refers to a number of reference documents and studies prepared by the NSW Government and Council for the Growth Centres and precinct planning. These reference documents include:

- Growth Centre Development Code(2006);
- Blacktown City 2025 – Delivering the Vision (Blacktown City Council, 2008);
- Macroplan Australia - Riverstone and Alex Avenue Precincts Demographic Profile and Community Infrastructure Report (2007);
- North West Grown Centre Recreational Framework (Blacktown City Council, 2007); and
- Wellness Through Physical Activity Policy (Blacktown City Council, 2008)
- Blacktown City Social Plan (2007).

The standard of open space provision in CP No.20 including open space zones, conservation zone, and areas of riparian corridors suitable for recreational use totals 2.56 hectares per 1,000 people which is slightly less and generally consistent with the Growth Centre Development Code of 2.83 hectares of useable open space per 1,000 people. The standard/rate of provision for various types of sporting fields and courts is less than that in the Department of Planning criteria.

The standards of open space embellishment and recreation facilities in Blacktown CP No.20 appear to accord with the 'base level embellishment' in the Essential Works List.

4.6 Community and Combined Precinct Facilities

Blacktown CP No.20 states that the nexus between the proposed community facilities and urban development in the Riverstone and Alex Avenue precincts is established in the following documents:

- Macroplan Australia Pty Ltd *Riverstone & Alex Avenue Precincts Demographic Profile and Community Infrastructure Report*, November 2007, prepared for the Growth Centres Commission which is referenced in Appendix G of CP No.20 and was prepared as part of the precinct planning for these precincts; and
- Council's *Informal Indoor Recreation Needs Assessment and Section 94 Community Facilities Report*.

The Macroplan Report was prepared by a planning expert as part of the NSW Government's Growth Centres precinct planning process for the development of Riverstone and Alex Avenue precincts and in accordance with established State and local Government practice. It provides a comprehensive analysis of demand for community infrastructure based on projected population and dwelling growth in the precincts, current and future supply of community infrastructure, and consideration of approaches to community infrastructure provision.

Council's *Informal Indoor Recreation Needs Assessment and Section 94 Community Facilities Report* provides more detailed reports and recommendations for the implementation and delivery of the community infrastructure recommended in the Macroplan Report, primarily through a community resource hub model.

4.7 Conclusion on Nexus

The nexus or demand for infrastructure in Blacktown CP No.20 to support urban development in the Riverstone and Alex Avenue precincts is established in the statutory planning instruments and associated planning studies prepared for the development of the North West Growth Centres. This includes the State Environmental Planning Policy (Sydney Region Growth Centres) 2006 and associated Growth Centres Development Code and Precinct Plan Development Control Plan, and the planning studies for Riverstone and Alex Avenue precincts listed in Appendix G of the Blacktown CP No.20.

This nexus also addresses the criteria numbered 3 (a), (b), (c), (d) and (g) in Section 5 – Apportionment below.

5.0 Apportionment

5.1 IPART Brief

3. Assess BCC's contributions plan and any other information BCC has provided to IPART to determine whether the contributions for public amenities and public services is based on a reasonable apportionment between new and existing demand for those amenities and services. In doing so, the consultant will need to consider, amongst other things:

- a) The kinds of public amenities and services that the development will create a demand for
- b) Whether the information on demand is reliable and up to date
- c) Whether the location of the services is appropriate for the development
- d) Whether the estimates of population change are realistic
- e) Whether the amenities and public services are to serve only the new development or the new development and the existing community
- f) Whether the new demand could be accommodated within existing public amenities and services and, if so, how costs have been apportioned
- g) Whether the public amenities and public services would be required if the development did not proceed.

The matters in 3 (a), (b), (c), (d) and (g) above are addressed in this report under Section 3 – Nexus. The matters in 3 (e) and (f) above are addressed below.

5.2 Blacktown CP No.20

The apportionment of costs and contributions towards funding of infrastructure under Blacktown CP No.20 is summarised in the following table:

Infrastructure item	Apportionment of cost		Reason for apportionment	Reasonableness of apportionment
	New development under CP No.20	Other		
Water Cycle Management Facilities	100%	0%	New water management facilities are needed for new urban development only, and not other existing development.	Partly reasonable. Some water management facilities will contribute to supporting urban development in adjoining Riverstone East precinct, and the cost has not been reasonably apportioned to the adjoining precinct. Council advises it does not have the modelling data to quantify the apportionment.
Traffic & Transport Management Facilities	100%	0%	New traffic and transport management facilities are needed for new urban development only, and not other existing development.	Reasonable.

Infrastructure item	Apportionment of cost		Reason for apportionment	Reasonableness of apportionment
	New Development under CP No.20	Other		
Open Space & Recreation Facilities	100 %	0 %	New open space and recreation facilities are needed for new urban development only, and not other existing development.	Reasonable (however the skate park in Reserve 893 is outside the 'essential works' list as raised in Section 3 of this report).
Community and Combined Precinct Facilities				
- Community resource hub	75.6 %	24.4 %	Community resource hub services four precincts, and costs have been apportioned to all precincts based on expected population.	Reasonable (however the community facility works are outside the 'essential works' list as raised in Section 3 of this report).
- Aquatic facility	75.6 %	24.4 %	Aquatic facility services four precincts, and costs have been apportioned to all precincts based on expected population.	Reasonable (however the aquatic facility is outside the 'essential works' list as raised in Section 3 of this report).
- Conservation Zone	38.7 %	61.3 %	Costs of conservation zone have been apportioned across whole Blacktown LGA.	Reasonable.

Spare capacity in existing facilities

Council has demonstrated that there is no spare capacity in existing facilities in and around the Riverstone and Alex Avenue precincts to support new development in these precincts.

6.0 Timeframe for Provision of Infrastructure

6.1 IPART Brief

4. Assess BCC's contributions plan and any other information that BCC has provided to IPART to determine whether BCC can provide those services in a reasonable timeframe. In doing so, the consultant will need to consider, amongst other things:

- a) whether the timeframe for the provision of the amenities and services is relevant for those kinds of amenities and services*
- b) whether the public amenities and services will be provided at a time that those demanding the services require them.*

6.2 Blacktown CP No.20

Blacktown CP No.20 states the following on page 6 in relation to the timeframe for the provision of infrastructure funded under the plan:

*"As the categories of works under this Plan have been prioritised (refer section 1.13 above), and contributions to be received under this Plan are limited to a "Contribution Cap", Council can only provide an indicative timing of delivery for **Water Cycle Management Facilities**. The indicative timing of delivery of other prioritised categories is dependent upon the balance of funding received under this Contributions Plan, and the sufficient receipt of funding outside of this Contributions Plan."*

The indicative timing for delivery of water cycle management facilities shown in Blacktown CP No.20 at 4 yearly intervals in 2013-2017, 2018-2022 and 2023 to 2027. The timing of the delivery of water cycle management facilities specified in Blacktown CP No.20 is reasonable within the context of the lead time for development of Riverstone and Alex Avenue Precincts.

Council's submission and CP No.20 effectively state that the timing of infrastructure delivery is tied to development trends and rates, provision of utility infrastructure, and receipt of contributions under the plan. Whilst this is realistic, we suggest that CP No.20 needs to provide more discussion and explanation on periodic reviews of the plan and staging of delivery of infrastructure after contributions and other funds have been received.

This timing of delivery is, however, not important to the contribution amounts exceeding the Minister's contributions cap.

7.0 Estimate of Cost

7.1 IPART Brief

5. Review the public amenities and public services included within BCC's contributions plan and assess whether the estimate of costs of those services is reasonable. In doing so, the consultant will need to consider, amongst other things:

- a) How the cost estimates within the plan were developed, and whether the costs are up to date*
- b) Whether the cost estimates include all of the costs required to bring the public amenities and services into operation*
- c) Whether council has engaged relevant professionals to provide an independent assessment of the costs of providing the public amenities and services*
- d) Whether council has taken CPI or other measures of cost inflation into account and the assumptions and calculations made*
- e) Whether council has used an NPV methodology and, if so, whether the discount rate is reasonable.*

7.2 Blacktown CP No.20

Works Cost Estimates

Council's submission states the cost of works and value of land acquisition has been derived as shown in the following table.

Infrastructure Item in Blacktown CP No.20	Works cost estimate (source and method)	Comment
Water Cycle Management Facilities	Council's Asset Design Services based on average works tender rates from contractors	Cost estimate and methodology need further review.
Traffic & Transport Management Facilities	Council's Asset Design Services based on average works tender rates from contractors	Cost estimate and methodology are reasonable.
Open Space & Recreation Facilities	Quantity Surveyor (Rider Levett Bucknall) based on BCC quality standards	Cost estimate and methodology are reasonable.
Community and Combined Precinct Facilities		
- Community resource hub	Quantity Surveyor (Rider Levett Bucknall)	Cost estimate of \$5,500 per sq.m appears slightly excessive.
- Aquatic facility	Quantity Surveyor (Rider Levett Bucknall)	Cost estimate and methodology are reasonable.
- Conservation Zone	\$45.28 per sq.m	Cost estimate is reasonable.

The costs of the community resource hub building works at \$5,500 per sq.m appear slightly excessive. However, any further cost review would have only a very minor impact on contribution rates in CP No.20 given that these costs are apportioned between other precincts and represent less than 6% of the infrastructure costs and contribution rates in CP No.20. Further, the community facility works are outside the 'essential works' list.

Land Valuations

The land identified for acquisition in the relevant planning instruments for Alex Avenue and Riverstone were valued by Council's valuer based on market valuations in accordance with the Land Acquisition (Just Terms Compensation) Act 1991.

The land valuations and methodology used in CP No.20 have been subject to a review prepared by MJ Davis Valuations on behalf of the NSW Department of Planning dated 26 February 2010. The review concludes that the valuation approach/methodology "appear reasonable", and recommends the rates be reviewed every six months in addition to being adjusted according to CPI.

However, Council advises that it already owns 46 hectares of land on which some of the infrastructure in CP No.20 will be located. CP No.20 identifies this land for acquisition at current market rates with the acquisition cost to be met through contributions. We recommend that CP No.20 be amended to include the actual purchase price for this land that is already in Council ownership as a methodology that is, in our opinion, more reasonable if less than market rates used by Council.

7.3 Planning and design cost review

The planning and design of infrastructure in CP No.20 was reviewed by the Department of Planning and Blacktown City Council in conjunction with a number of independent experts during and after the exhibition period with the intention of minimising costs and contribution rates. A summary of these reviews is below.

Infrastructure Item in Blacktown CP No.20	Extent of design efficiency and cost review
Water Cycle Management Facilities	<p>The water cycle management facilities in CP No.20 have been subject to a design efficiency and cost review documented in the <i>Alex Avenue and Riverstone Precincts Section 94 Engineering Review</i> prepared by Cardno for the DoP in June 2010. The Cardno Review makes a number of recommendations for minimising the costs of water management facilities in these precincts primarily relating to minimising excavation by raising basin levels, steepening batter slopes, reconfiguring and providing on-line basins, and findings alternatives to the costly disposal of spoil to landfill.</p> <p>Council advises that the recommendations in the Cardno Review have been implemented to the extent possible, and we understand this excludes finding alternatives to costly landfill sites.</p> <p>Council advises that although the recommendations in the Review have been implemented as far as possible, the costs of water management facilities increased by \$74,578,568 for First Ponds Creek catchment and \$27,255,008 for Eastern Creek catchment due to corrections in cost estimates particularly in relation to landfill disposal costs.</p> <p>DoP advise that the majority of the recommendations in the Cardno review for minimising costs have not been adopted by Council.</p>
Traffic & Transport Management Facilities	<p>Council advises that the road works in CP No.20 have been subject to a design efficiency and cost review by Council which led to a reduction in the number of road bridges from 6 to 3, and reduction in the extent of roads through deletions and downgrading of road classifications.</p> <p>Council advises that the review led to a cost reduction of \$48,057,849 in the precincts and an increase in \$14,073,000 in the Scheduled Lands.</p>

Infrastructure Item in Blacktown CP No.20	Extent of design efficiency and cost review
Open Space & Recreation Facilities	<p>The standard of open space provision in CP No.20 including open space zones, conservation zone, and areas of riparian corridors suitable for recreational use totals 2.56 hectares per 1,000 people which is slightly less and generally consistent with the Growth Centre Development Code of 2.83 hectares of useable open space per 1,000 people. The standard/rate of provision for various types of sporting fields and courts is less than that in the Department of Planning criteria.</p> <p>Council advises that the open space and recreation facilities in CP No.20 have been subject to review which led to cost reductions through changes to the ILP reducing the area of open space, reducing the extent of landscaping of open space, eliminating pedestrian bridges, signage, public art and embellishments within 50m of riparian zoned land, reducing the extent of a youth play facility, and reducing land acquisition valuation rates.</p> <p>Council advises that this review reduced open space costs by \$126,557,472.</p>
Community and Combined Precinct Facilities	<p>The community facility works and aquatic facility are outside the 'essential works' list as raised in Section 3 of this report.</p> <p>Council prepared an <i>Informal Indoor Recreation Needs Assessment</i> and <i>Section 94 Community Facilities Report</i> which effectively reported on the planning efficiency and cost effectiveness of the proposed community facilities. These reports essentially confirm the Macroplan report and recommend a community hub model of co-located and multi-purpose facilities as the most cost effective in minimising the area of land that needs to be acquired for it.</p> <p>Council advises that it proposed a second community resource hub in the exhibited CP No.20, but deleted it with a commensurate cost reduction of \$14,959,000 following a peer review by Newplan.</p>

7.4 Indexing

CP No.20 indexes contributions at the time of payment using CPI.

CP No.20 does not appear to use a net present value (NPV) methodology to take into account inflation and value of money over time.

8.0 Summary and Conclusion

8.1 IPART Criteria

A summary of our review of the Blacktown CP No.20 against the criteria specified by IPART is shown in the table below.

IPART Criteria	Water cycle management	Traffic & transport	Open space & recreation	Community Resource Hub	Combined precinct facilities
Essential Works	Yes	Yes	Yes, except for skate park in Reserve 893.	Yes for land. No for works.	Yes for Conservation Zone. No for Aquatic Facility.
Nexus	Yes	Yes	Yes	Yes	Yes
Reasonable apportionment of cost	Yes, except for facilities that support urban development in adjoining precinct.	Yes	Yes	Yes	Yes
Provision within a reasonable timeframe	Yes	Recommend further elaboration in CP No.20, but not important to contribution amount.			
Reasonable cost estimate					
- Works	Needs further review	Yes	Yes	No, appears slightly excessive	Yes
- Land valuations		Yes for land to be acquired by Council. No for land already acquired by Council.			

8.2 Land Valuations

The land valuations and methodology used in CP No.20 for land to be acquired by Council at market rates are reasonable according to a previous review conducted by the Department of Planning with an independent valuer.

However, Council already owns 46 hectares of land which is identified in CP No.20 for acquisition at market rates. We recommend that CP No.20 be amended to include the actual purchase price for this land that is already in Council ownership as a methodology that is, in our opinion, more reasonable if less than the market valuation.

8.3 Planning and Design Cost Review

The planning and design of infrastructure in CP No.20 was reviewed by the Department of Planning and Blacktown City Council in conjunction with a number of independent experts during and after the exhibition of CP No.20 with the intention of minimising costs and contribution rates. Council advises that the recommendations in the cost reviews have been implemented to the extent possible resulting in substantial reductions in infrastructure costs and contributions rates in CP No.20.

However, DoP advises that all the recommendations in the cost review for water management facilities were not adopted by Council, and that further independent review of the CP would deliver significant additional savings. The cost of the water management facilities represent over 50% of the total infrastructure costs in CP No.20 from which the contribution rates are derived. Therefore, any significant cost reductions that can be made from the water management facilities would result in significant reductions to the contribution rates in CP No.20.

The cost of the community resource hub building works at \$5,500 per sq.m appear slightly excessive. However, these works are outside the scope of the 'essential works' list in the Practice Note. Further, any cost review would have only a very minor impact on contribution rates in CP. No.20 given that the costs are apportioned between other precincts and comprise less than 6% of the infrastructure costs and contribution rates in CP No.20.

8.4 Recommendations

Given the above, we recommend that IPART advise the Minister that the following items in CP No.20 are in need of review to accord with the Practice Note and the requirement in the EP&A Act for contributions to be reasonable:

- review of the potential for cost savings, correct cost apportionment and consequent reduction in the contributions rate for water cycle management facilities in CP No.20;
- removal of infrastructure that is outside the 'essential works' list in the Practice Note, and consequent reduction in infrastructure costs shown in the table below and contribution rates:

Infrastructure item outside essential works list	Cost Reduction
Community Resource Hub building works	\$18,464,000 apportioned to CP No.20
Combined Precinct Aquatic Facility	\$17,476,000 apportioned to CP No.20
Skate park in Open Space Reserve 893	\$400,000

- inclusion of the actual purchase price for land that has already been acquired by Council for the infrastructure if less than the market rates used by Council, and consequent reduction in contribution rates.

B Blacktown Council's response to consultant's review of CP20

We provided a copy of JBA's assessment of CP20 to Blacktown Council so that the council could respond to the consultant's recommendations. The council's response is attached.

File no: 145-187-28

12 May 2011

Independent Pricing and Regulatory Tribunal
PO Box Q290
QVB Post Office
SYDNEY NSW 1230

Attention: Lucy Garnier

By email: lucy_garnier@ipart.nsw.gov.au

Dear Lucy,

**JBA Planning Report to IPART – Review of Blacktown City Council Contributions
Plan No. 20 – Riverstone and Alex Avenue Precincts**

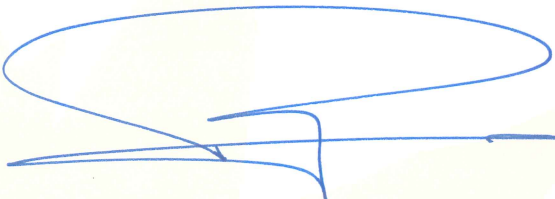
Thank you for referring the above Report to Council for comment.

Council's response to the issues and recommendations contained in the Report are attached to this letter.

Council further requests that Council's Council's Director City Strategy and Development, Ms Glennys James, Council's Director City Assets, Mr Greg Morgan and myself be given the opportunity to speak to IPART further on specific issues raised in the Report before a decision is finalised by the Tribunal.

Should you require any further information regarding this matter, please contact Council's Contributions & Expenditure Accountant, Dennis Bagnall on 9839 6461.

Yours faithfully,



Ron Moore
General Manager

General

Council's response to *JBA Planning's Report to IPART on the Review of Blacktown City Council Contributions Plan No. 20 – Riverstone and Alex Avenue Precincts* is provided below. Council's comments are directed to the specific sections of the Report where Council feels it can clarify particular issues or where Council objects to the findings of the Report.

5.2 Blacktown CP No. 20 (Apportionment - Water Cycle Management Facilities)

Response

This section of the Report deals with the apportionment of costs between the Riverstone & Alex Avenue Precincts and future Precincts and notes that 100% of the water cycle management costs are apportioned to CP No. 20.

JBA considers this to only be "partly reasonable" as it considers some of the online basins on First Ponds Creek will contribute to urban development in the future Riverstone East Precinct.

On face value, the JBA assessment appears reasonable. However, as Council has already stated in its submission to IPART, it has received no documentation in any form that demonstrates that the infrastructure included within the GHD Post Exhibition Report will support urban development in the Riverstone East Precinct.

Council has requested this documentation on numerous occasions from the Department of Planning and Infrastructure who commissioned the GHD Report, but has not received it. The GHD Post Exhibition Report makes a generalised statement that it has considered the Riverstone East Precinct, but provides no basis on which to quantify its impact or apportionment.

The catchment plans included in the GHD Report do not show any part of the Riverstone East Precinct area as being included in the hydrologic modelling or Water Cycle Management Strategy. Therefore the only conclusion that Council can draw is that the proposed Water Cycle Management Strategy as included in the GHD Post Exhibition Report DOES NOT support urban development in the Riverstone East Precinct and that all costs should be apportioned to CP No. 20.

In this case, Council is potentially under-estimating the true cost to CP No. 20 as it has not included any land acquisition in the Riverstone East Precinct for the construction of the proposed online basins. Until documentation demonstrating any benefit to the Riverstone East Precinct is provided, the conclusion by JBA that the apportionment adopted by Council is not reasonable cannot be justified.

5.2 Blacktown CP No. 20 (Apportionment - Conservation Zone)

Response

This section of the Report states that the costs of the Conservation Zone have been apportioned across the whole Blacktown LGA. This is incorrect. The costs of the Conservation Zone have been apportioned across all the North-West residential Growth Centre Precincts in the City of Blacktown, not the whole of the Blacktown LGA.

6.2 Blacktown CP No. 20 (Timeframe for Provision of Infrastructure)

Response

This section of the Report suggests in relation to the timing of infrastructure that CP No. 20 needs to provide more discussion and explanation on periodic reviews of the Plan, and staging and delivery of infrastructure after contributions and other funds have been received.

Council notes JBA's suggestion and will provide more discussion and explanation on this issue upon its next review of the Contributions Plan.

7.2 Blacktown CP No. 20 (Works Cost Estimates - Water Cycle Management Facilities)

Response

This section of the Report presents an assessment of whether the Works Cost Estimates are considered "reasonable". JBA's assessment states that the Water Cycle Management Facilities cost estimate and methodology need further review. It does not state on what basis the review is required, or how or by whom it should be conducted.

Council has already provided detailed cost estimates for the water cycle management works to JBA Planning & IPART for review and has offered to further address any questions that JBA & IPART may have. No request for further explanation has been received. The methodology adopted by Council in costing these works is generally the same as that which Council uses for estimating its infrastructure works in the rest of the LGA.

This methodology has underpinned Council's Contributions Plans No's 1 & 5 in its existing major release areas. These Contributions Plans have already been assessed by the Department of Planning and Infrastructure and have been determined as reasonable by the Minister for Planning.

Council requires clarification on what elements of its costing or methodology are not considered "reasonable" in order to provide an informed response to this issue. It is Council's understanding that the adopted cost rates were generally considered reasonably by Cardno as part of their engineering review.

Given that Council is responsible for CP No. 20, any decisions on the level of financial risk to be accepted by Council in providing infrastructure must rest with Council.

7.2 Blacktown CP No.20 (Works Costs Estimates - Community Resource Hub)

Response

This section of the Report states that the cost estimates of \$5,500 per sq.m for the Community Resource Hub in the Riverstone Township appear to be slightly excessive. However, the Report provides no basis for this statement.

Council has provided to IPART and JBA Planning a 24 page Budget Estimate, prepared by Quantity Surveyors, Rider Levett Bucknell on the proposed Community Resource Hub.

Additionally, Council has provided further supporting information in its submission attachment *Community Facilities in Riverstone / Alex Ave Precinct (with additional information relating to Riverstone East and Area 20)* that explains the differences between providing a number of traditional smaller Neighbourhood/Community Centres vs a centralised “hubbed” approach to Community Facilities. Council maintains that this is a better outcome for the community and a more cost effective outcome for the Contributions Plan.

This *Community Facilities in Riverstone / Alex Ave Precinct (with additional information relating to Riverstone East and Area 20)* is again provided for IPART's further consideration as Attachment 1 to this letter.

7.2 Blacktown CP No. 20 (Land Valuations)

Response

This section of the Report provides an opinion that it is more reasonable to include the actual purchase price for land that is already in Council ownership, if that rate is less

than the market rates used by Council for the acquisition of this land in the Contributions Plan.

It is noted that the Report does not state that it is unreasonable to use market rates for the acquisition of land that is already in the Council's ownership.

Reasonableness

Reasonableness is a key concept that is evident throughout Section 94 and is the philosophy underlying the preparation and administration of a Section 94 Contributions Plan. The Department of Planning's 2005 *Development Contributions Practice Note* provides the following statement regarding the concept of reasonableness:

The development contributions system places the responsibility on council to determine what may be reasonable and to use s94 in a reasonable manner.

Section 94 of the EP&A Act expressly refers to reasonableness by:

- *Requiring reasonable dedication or contribution (s94(2))*
- *Requiring reasonable contribution towards recoupment (s94(4))*
- *Enabling a condition to be disallowed by the Court because it is unreasonable (s94B(3)).*

Council contends that there is nothing in the Practice Note or in the Act that discusses what is more reasonable, or that a council must use a method that achieves the most inexpensive contribution rate. A council is only required to demonstrate that a method is reasonable.

JBA's report actually confirms that the method used by Council in applying a market rate to land that is in Council's ownership is considered reasonable.

Legal Advice

During the preparation of CP20, Council sought advice from Dr Lindsay Taylor as to whether Council's method of applying a market rate to land that is already in Council's ownership was legal and reasonable. Dr Taylor's advice dated 26 February 2010 **is provided as Attachment 2 to this letter**. This advice was also provided to the Department of Planning and Infrastructure.

As this advice was obtained on 26 February 2010, and various State Government Policy changes have occurred regarding developer contributions since this time, Council again sought Dr Taylor's advice on this issue. However, this time the advice sought by Council was to specifically address JBA's opinion on this matter. Dr Taylor's further advice dated 10 May 2011 **is provided as Attachment 3 to this letter.**

His advice concludes that:

Whilst the requirement that contributions under s94(1) must be reasonable should ensure that a council cannot use s94 to enrich itself, there is no warrant to interpret the requirement or the section so as to generally disadvantage the council and the community (on behalf of whom the Council holds its assets) for a direct private benefit to new development.

It follows in my view that when determining a reasonable cost for the purposes of levying monetary contributions under s94(1), it is lawful and reasonable in my opinion, for the Council to determine the contribution rate relating to the provision of the Council Land for the public purposes specified in the CP taking into account the commercial

returns to the community from other uses of the land that are foregone as a result of providing the land for public purposes to address the needs of new development.

An example of when a contribution would be unreasonable would be if the contribution were calculated based on a land value that exceeded the fair market value.

Council's Land

The various allotments of land that have come into Council's ownership over many years, even as early as the late 1800's, were not acquired for any one particular purpose.

Council has consistently maintained that this land contributes to the long term financial sustainability of all its ratepayers, not just the existing or future residents of the Riverstone and Alex Avenue Precincts. Council, like any other land owner, seeks only the reasonable market value of this land. Council believes that it would be unreasonable to expect the existing ratepayers of Blacktown City to subsidise new development in these two new Precincts by using an acquisition method that is less than market rates.

Department of Planning and Infrastructure Land

Council notes that there is currently **10.9203 hectares** of land in CP20 that is in the ownership of the Department of Planning and Infrastructure that is zoned for a public purpose. The Department of Planning and Infrastructure, like any other landowner in the Precinct, is entitled to the market value of this land.

Council submits this information to demonstrate that it is only treating itself equally with all other landowners within the two Precincts.

Quantum of land

During the assessment of CP 20 by IPART, Council was asked to provide information as to how much land was in Council's ownership in the two Precincts.

Council owns 46 hectares of land in the two Precincts. However, Council notes that there are various references in the Report that state that the acquisition cost of these 46 hectares of land is being recovered through the Contributions Plan. This is incorrect.

There is only **14.7705 hectares** of Council owned land in the two Precincts that is zoned for a Public Purpose that is being recovered through the Contributions Plan.

7.3 Planning and design cost review

Response

The table presented in Section 7.3 of the Report summarises the main actions and outcomes of the post exhibition review of the precinct planning and CP No. 20. The main area of concern is the water cycle management facilities, and reference is made to the *Cardno Alex Avenue and Riverstone Precincts Section 94 Engineering Review*.

Based on the Cardno Review, the Department of Planning and Infrastructure contracted GHD to investigate some of the recommendations in the Cardno Review. Council's understanding is that the GHD post exhibition study work was to focus on those items that could result in the largest cost savings. Therefore, it is possible that the Department did not commission investigations into all of the Cardno Review recommendations.

Council did investigate alternative disposal sites for landfill. However, apart from some sites within the two Precincts on surplus land, no acceptable alternatives were identified that would deliver any significant savings to CP 20 without potentially adversely impacting on Council's ability to service its existing community needs.

Therefore the understanding that alternative disposal solutions were not investigated is incorrect.

The assessment indicates that the water cycle management costs have increased as a result of the review due to corrections in cost estimates relating to landfill disposal costs. The initial CP No. 20 cost estimates were based on assumed earthworks quantities, assuming that a reasonable balance in earthworks would be achieved by the precinct planning layout which was in the order of 300,000 m³ of surplus material.

In order to increase the level of confidence in the earthworks quantities, the Department of Planning and Infrastructure engaged GHD to prepare concept designs for the water cycle management facilities. These concept designs are based on Council's Airborne Laser Scanning data, the department's Indicative Layout Plan (ILP) and the hydrologic and hydraulic modelling conducted by GHD.

These concept designs resulted in surplus material in the order of 850,000 m³.

Therefore the main initial cost increase is due to ground truthing the original assumptions made in relation to earthworks volumes, which based on the delivered ILP were unrealistically low. On this basis further work was conducted to rationalise the strategy and reduce costs where possible, which was informed by the Cardno review. The current adopted water cycle management estimates include surplus material in the order of 400,000 m³.

Another significant change to the cost structure was a significant transfer of land from recreation to drainage purposes. Of the \$74,578,568 increase for First Ponds Creek, \$35,503,590 is increased acquisition cost, and of the \$27,255,008 increase for Eastern Creek, \$12,647,700 is increased acquisition cost.

The majority of the increased acquisition cost for water cycle management is due to changes in zoning from open space to drainage made by the Department of Planning

and Infrastructure. Consequently, the acquisition cost for open space has decreased by \$91,620,500.

The table in Section 7.3 and the comments in Section 8.3 include statements that the Department of Planning and Infrastructure do not believe that Council has adopted the majority of the Cardno review recommendations.

Council contends that it has implemented the Cardno Review recommendations to the extent possible to protect the financial risk to Council. A full response to the Cardno Review **is provided as Attachment 4 to this letter.**

JBA Report Recommendations

Further Water Cycle Management Facility Cost Savings

Council does not agree with the Report recommendation that a further review of the water cycle management costs is required. Council would be prepared to review its plan in relation to apportionment for the Riverstone East Precinct if and when documentation is provided that demonstrates the basis for and quantum of the apportionment.

Removal of Infrastructure that is outside the "Essential Infrastructure List"

Council does not agree with the removal of infrastructure that is outside the 'essential works' list in the Practice Note, and the consequent reduction in infrastructure costs for the:

- Community Resource Hub Building
- Combined Precinct Aquatic Facility
- Skate Park in Open Space Reserve 893.

Council notes that the three Infrastructure items listed above are not included in the Essential Infrastructure List. As such, Council will not be applying for Priority Infrastructure Funding for any of these items.

Council contends that these infrastructure items should remain in the Plan.

Page 4 of JBA's Report (table 2) shows the indicative per dwelling contributions that a developer may be levied subject to various densities being achieved in their development.

At the time of assessment, a contribution levied on a Development Application may fall below the \$30,000 per dwelling threshold and will be conditioned to make contributions as per the Contribution Rates in the Plan. This would include contributions for the three facilities listed above.

By deleting these infrastructure items from the Plan, Council cannot receive any contributions for these facilities. It is noted that these facilities are still permitted under the EP&A Act and Regulation.

Inclusion of the actual purchase price of Council owned Land that is Zoned for a Public Purpose.

As addressed above, Council does not agree with the Report's recommendation that the actual purchase price of land that has come into Council's ownership should be included in the Plan.

Council, and it's supporting legal advice, maintains that using market rates for the acquisition of land in the Contributions Plan by any landowner including the Department of Planning and Infrastructure or the Council, is reasonable, lawful and equitable.

Attachment 1 – Community Facilities in Riverstone / Alex Ave Precinct (with additional information relating to Riverstone East and Area 20

Attachment 2 – Legal Advice dated 26 February 2010

Attachment 3 – Legal Advice dated 10 May 2011

Attachment 4 - Full response to the Cardno Review

Community Facilities in Riverstone / Alex Ave Precinct (with additional information relating to Riverstone East and Area 20)

The following provides key background for community facilities delivery within the precincts of Riverstone, Alex Avenue, Riverstone East and Area 20. It includes: community resource hub model; working nexus for floor space requirement; costing information; sites; combined precinct facilities and **noted costings on the traditional model**.

Community Resource Hub Model

The identified need for community facilities in the Riverstone and Alex Avenue Precincts was informed by the GCC Riverstone and Alex Ave Precincts Demographic Profile and Community Infrastructure Report (Macroplan Draft 3).

While this report was focused on the Riverstone and Alex Avenue Precincts the 'Location and Catchment Context' (Page 30) used to develop the community infrastructure and opportunity assessment includes a 5km investigation buffer (mapping boundary) that includes the Riverstone East and Area 20 Precincts.

The identified need for community facilities was informed by the GCC Riverstone and Alex Ave Precincts Demographic Profile and Community Infrastructure Report (Macroplan Draft 3) as a reference. This report argued the benefits of co-location and hubbing of facilities and then identified the need for:

- 2 Youth Centres (Riverstone & Alex Avenue)
- Community Service Centre (Community Resource Hub – co-located)
- Child Care (to have more detailed modelling done to establish needs – would need to be provided earlier in release – co-located)
- Library – (1000 – 2000 m2 – co-located)
- Performing Arts / Cultural Centre functions to be co-located within other facilities

Council's Aquatic and Recreation Services Unit identified the need for an Informal Indoor Recreational Facility and that the co-location of this within the Community Resource Hub would allow for a more cost effective as well as improved outcomes for the community.

- Informal Indoor Recreational Facility

Using the demographic profiling and benchmarking work within the above mentioned report, as well as the new Community Resource Hub model for future community facilities, endorsed in principal by Council in May 2007, the following is proposed for the Riverstone and Alex Avenue Precincts:

Site	Description of works	Cost
1	Community Resource Hub Riverstone	
	Library	
	Children and Family Service Facilities	
	Youth Centre	
	Arts Centre Function	
	Informal Indoor Recreational Facility (Youth Centre 2)	
	Neighbourhood Centre	\$24, 392,000

Working Nexus for Floor Space square meterage

The following information provides background detail in relation to indicative functional space requirements used to identify floor space requirements.

Site	Description of works		Cost
1	Community Resource Hub Riverstone		
	Library	1920sqm	
	Children and Family Service Facilities	490sqm	
	Youth Centre / Arts Centre Function / District Level Community Centre Function and Shared space	1200sqm	
	Informal Indoor Recreational Facility	785sqm	
	Total	4395sqm	\$24, 392,000

Community Resource Hub (District community centre, youth and arts functions)		Library	Child and Family Services	Informal Indoor Recreation (Youth Centre 2)
1200 sqm (1020 + 180 shared)		2100sqm (1920+180 shared)	490sqm	785sqm
Shared Space 180m2:			2 Play Areas	
Foyer area 80m2 Gallery areas to be included in larger foyer areas			2 Children's and 1 staff toilet	
Toilets 60m2			Kitchen	
Internet Hub 20m2			Staff Room	
Janitor facilities 20m2			Laundry	
Lift well and lift			Office	
Shared Youth/CRH 810m2		Collection Area: Books & volumes on shelves, periodicals, non-print material, virtual & digital resources	Stores	
Reception/control desk/check-in 50m2		Reading and study areas: Meeting areas, study areas, Browsing, display, information	Cot Room	
Meeting room 80m2		Resource Areas: Catalogues, photocopiers etc.	Nappy Change	
Café 50m2		Staff areas: Service Desk, Staff work area, Storage		
Kitchen 50m2		Optional Additional Service Areas - below	Outdoor Play Area: Approx. 450 sqm	
IT Training room 30m2		Snack bar / kitchenette		
Hall 100m2		Children's storytelling area		
Storage areas 40m2		Young adult area		
Covered open craft space 50m2		Specialist genre collection area		
2 x Snack bar / kitchenette 15m2 = 30m2		Specialist room, local and family history		
Recording studio 50m2		Multipurpose, training, AV room		
Studio with stage 80m2		Toy library		
Auditorium with stage 100m2				
6 offices 16x6 100m2				
Youth 220 sqm	20 sqm			
Admin office space 20m2	Admin office space 20m2			
Teen room 50m2				
Multipurpose room/gymnasium 100m2				
Commons/game room 50m2				

Costings

The estimated cost is at \$5,500sqm includes a 10% Contingency, Design, Construction, Fit out (including furnishings, communications and IT equipment), Landscaping, Car parks and Site works (demolition).

This costing was informed through:

- Indicative Budget Estimates from Rider Levett Bucknall on initial indicative floor & functional space (note that these were not on the final square metreage included in the hub);
- Plumpton Neighbourhood Centre Final Costings;
- Ropes Crossing DA and QS; and
- The Ponds Indicative Design Brief.

Site 1

The site identified in the Riverstone Town Centre as most appropriate Site 1 Community Resource Hub Riverstone is Land block – Park St, West of George St, North of Market St and East of Pitt St. The land size of this block is 20,176.1 sqm (Council owns 15, 500.3 sqm with an existing Seniors Centre, Neighbourhood Centre and Childcare Centre located on part of this site). The land size required for the CRH is estimated at 13,400 with the estimated land acquisition of non Council land at 4675.8sqm. The following properties would need to be acquired:

- 35 Market St /Lot 23 DP 2158
- 2A George St / Lot 212 DP 863 585
- 23 Park St / Lot 19 DP 2158
- 32 Market St / Lot 24 DP 2158
- 18 Market St / Lot 10 DP 2158
- 36 Market St / Lot 22 DP 2158
- 25 Park Street / Lot 20 DP2158
- 2B George St / Lot 211 DP 863 585

Combined Precinct Facilities

These sites were identified as having the capacity to service a number of precincts within the North West Growth Centre and it was therefore proposed that the Community Resource Hubs not only service the Riverstone and Alex Avenue precincts but also service the newly announced Area 20 Precinct (4,200 people) and future Riverstone East precinct (10,000).

The total costs for the two Community Resource Hubs have therefore been apportioned over the four precincts of Riverstone, Alex Avenue, Riverstone East and Area 20. 75.6% of these costs are attributed to the Riverstone and Alex Avenue Precincts as shown below.

Precinct	Population	%
Riverstone	24,000	41.2%
Alex Avenue	20,000	34.4%
Riverstone East	10,000	17.2%
Area 20	4,200	7.2%
Total	58,200	100

Traditional Model

The following is indicative costings based on the traditional model of community facility delivery and the same source nexus identified by the GCC Riverstone and Alex Ave Precincts Demographic Profile and Community Infrastructure Report (Macroplan Draft 3).

The traditional model has been based around benchmarks set for neighbourhood and district level provision. Neighbourhood level services (4,000 – 10,000 people). They would include neighbourhood centres, child care centres or youth centres. District level services and facilities (about 15,000 – 50,000 people) and include District Community Centre / halls and Libraries.

While the GCC Riverstone and Alex Ave Precincts Demographic Profile and Community Infrastructure Report (Macroplan Draft 3) was focused on the Riverstone and Alex Avenue Precincts, the 'Location and Catchment Context' (Page 30) used to develop the community infrastructure and opportunity assessment includes a 5km investigation buffer (mapping boundary) that included the Riverstone East and Area 20 Precincts.

Using the demographic profiling and benchmarking work within the above mentioned report, as well as the traditional approach of Blacktown City Council, you could draw an assumption that would propose for the Riverstone and Alex Avenue Precincts the following:

Precinct	Community Facility Works	Land sqm	Estimated Cost	Servicing a Population
Riverstone	Site 1 Neighbourhood Centre	2250	\$2.2	12,000
	Site 1 Childcare centre	2250	\$2.1	" "
	Site 2 Neighbourhood Centre	2250	\$2.2	12,000
	Site 2 Childcare centre	2250	\$2.1	" "
Alex Avenue	Site 3 Neighbourhood Centre	2250	\$2.2	10,000
	Site 3 Childcare centre	2250	\$2.1	" "
	Site 4 Neighbourhood Centre	2250	\$2.2	10,000
	Site 4 Childcare centre	2250	\$2.1	" "
Riverstone / Alex Avenue Precincts	1 Branch Library	4500	\$9.4	44,000
Riverstone / Alex Avenue Precincts	1 District Level Community Centre	4500	\$3.3	44,000
Total		27,000sqm	\$29.9	

In addition using the traditional model the following community facilities might be proposed for Riverstone East and Area 20 precincts.

Precinct	Community Facility Works	Land sqm	Estimated Cost	Servicing a Population
Riverstone East	Site 1 Neighbourhood Centre	2250	\$2.2	10,000
	Site 1 Childcare centre	2250	\$2.1	
	Site 2 Neighbourhood Centre	2250	\$2.2	
	Site 2 Childcare centre	2250	\$2.1	
Area 20	Site 1 Neighbourhood Centre	2250	\$2.2	4,200
	Site 1 Childcare centre	2250	\$2.1	
Total		13,500	\$12.9	14,200

This would mean a total of some \$42.8 million over the four precincts with a land size of 40,500sqm.



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26 February 2010

Our ref: BLA00210

The General Manager
Blacktown City Council
PO Box 63
BLACKTOWN NSW 2148

Email

Attention: Dennis Bagnall

Dear Sir

Advice re Contributions in Respect of Council Owned Land - Draft Section 94 Contributions Plan No. 20 Riverstone & Alex Avenue Precincts

Introduction & background

- 1 I refer to Dennis Bagnall's emails dated 1 and 3 February 2010.
- 2 The Council's *Draft Section 94 Contributions Plan No. 20 Riverstone & Alex Avenue Precincts (Draft CP)* specifies monetary contribution under s94 of the *Environmental Planning and Assessment Act 1979* (the **Act**) rates for four broad categories of works to be carried out in conjunction with the expected future development of land in the Riverstone & Alex Avenue Precincts.
- 3 I am instructed that the Council currently owns over 200 allotments of land within those precincts that have come into Council's ownership through different means over many years (**Council Land**). For example, where rates have not been paid and the owner has disappeared, land has been auctioned and Council has acquired it. The Council Land has been acquired to benefit all of the ratepayers in the City of Blacktown as an investment.
- 4 I understand that all of the Council Land and other land to be acquired under the CP is zoned *Public Recreation—Local* under *State Environmental Planning Policy (Sydney Region Growth Centres) 2006 (SEPP Growth Centres)*.
- 5 In the Draft CP, the Council applies an average land acquisition cost per square metre for any land that it proposes to acquire and provide for a public purpose specified in the plan. This rate is also applied to the provision of the Council Land for public purposes notwithstanding that it has already been acquired. I am instructed that over \$300 million worth of this category of land acquisition is proposed by the Draft CP.
- 6 The Department of Planning objects to the Draft CP on the basis that Council proposes to levy s94 contributions to fund the provision of the Council Land for the

lindsaytaylorlawyers

Level 7, 1 O'Connell Street, Sydney NSW 2000, Australia

T 02 8235 9700 • F 02 8235 9799 • W www.lindsaytaylorlawyers.com.au • E mail@lindsaytaylorlawyers.com.au
ABN 15 695 894 345

public purposes specified in the plan beyond the cost to the Council of acquiring the Council Land.

- 7 If the Department's objection were to be cast in the terminology of s94, presumably it is that the Draft CP seeks to recoup through s94 contributions an amount for the Council Land that exceeds a lawful recoupment amount, being that which is permitted under s94(3) of the Act (ie. the indexed historic cash cost incurred by the Council in respect of the Council Land together with the cost of any borrowings).

Advice required

- 8 You have asked for my advice on whether Council's approach in the Draft CP to levying monetary s94 contributions towards the cost of providing the Council Land for the public purposes specified in the Draft CP is legally sound and reasonable?

Advice

- 9 In my opinion, subject to some minor amendments to the text of the Draft CP to properly reflect its approach in relation to the Council Land (see paragraph 25), the Council's approach is lawful and reasonable.

How s94(1) and s94(3) operate

- 10 Section 94 of the *Environmental Planning and Assessment Act 1979 (EPA Act)* enables the Council to require developers to make monetary contributions towards the cost of public amenities and public services that:
- 10.1 will be provided in the future to meet new development (s94(1)); or
 - 10.2 have been provided in the past in anticipation of future development which benefits from that provision (s94(3)).
- 11 The Council's authority to levy contributions under s94 relates to the provision of public amenities and public services by the Council.
- 12 In order to answer the Council's question, it is important to differentiate the proper fields of operation of ss94(1) and 94(3) of the Act.
- 13 In relation to public amenities and public services that have been provided in the past, relevantly, before a contributions plan comes into force, a consent authority is limited to recouping the indexed historic cash costs of the past provision together with the cost of borrowings under s94(3): see *Allsands Pty Ltd v Shoalhaven City Council* (1993) 78 LGERA 94 and clause 25I of the *Environmental Planning and Assessment Regulation 2000 (EPA Reg)*.
- 14 However, for public amenities and public services that are to be provided after a contributions plan comes into force, the consent authority is authorised to levy contributions under s94(1).
- 15 Section 94(1) does not contain the same restrictions as s94(3) on the amount that can be levied. The only limitation on an amount levied under s94(1) is that it is a reasonable contribution towards the provision, extension or augmentation of public amenities and public services (see s94(2)).

Application of s94 to the Council Land

- 16 The key point in relation to this advice is that whilst the Council acquired the Council Land in the past, it has not yet provided the Council Land for the public purposes specified in the Draft CP,
- 17 Therefore, s94(1), not s94(3), applies to the provision of the Council Land in accordance with the Draft CP.

- 18 Without the restrictions on the amount that can be levied imposed by s94(3), the only relevant question is the reasonableness of the contributions to be levied under s94(1).
- 19 It seems to me that there are good public policy reasons why monetary contributions for the Council Land based on recovery of market value would be reasonable in this case.
- 20 In particular, the Council is not obliged to provide the Council Land for the public purposes specified in the Draft CP. It could elect to continue to apply the land for other purposes and receive a commercial return for the community.
- 21 Further, it would be lawful for the Council to acquire other land at market value and fund that cost through the Draft CP. If the Council took this course, the resulting contribution rate would presumably be the same or even higher than is proposed because the Council would need to acquire that other land at its current market value.
- 22 It is evident that s94 establishes a user-pays regulatory regime for funding local public infrastructure. Whilst the requirement that contributions under s94(1) must be reasonable ensures that consent authorities cannot enrich themselves, there is no warrant to interpret that requirement or the section generally so as to disadvantage the consent authority.
- 23 Thus, when determining a reasonable cost for the purposes of levying monetary contributions under s94(1), it is lawful, in my opinion, for the Council to determine a contribution rate relating to the provision of the Council Land for the public purposes specified in the Draft CP that takes into account commercial returns to the community from other uses of the land foregone as a result of providing it in accordance with the Draft CP.
- 24 Provided the contributions levied by the Council in respect of the Council Land by this method are reasonable, the contributions will be lawful under s94(1). An example of when a contribution would be unreasonable, in my opinion, is if the contribution were to be calculated to fund an amount exceeding the fair market value of the Council Land.

Suggested amendment to Draft CP

- 25 In relation to my comments at paragraph 9 above, to properly reflect what the Council proposes to do in relation to the Council Land, and to ensure that the Draft CP establishes a basis for levying monetary s94 contributions for the Council Land under s94(1), the Draft CP should refer to the Council providing previously acquired land for the public purposes specified in the plan rather than, as is currently the case, to the Council acquiring the Council Land for those purposes.
- 26 I trust this advice is of assistance.

Yours sincerely,



Dr Lindsay Taylor

Direct: 8235 9701

Fax: 8235 9799

Mobile: 0417 997 880

Email: lindsay.taylor@lindsaytaylorlawyers.com.au



10 May 2011

Our ref: BLA00810

Your ref:

The General Manager
Blacktown City Council
PO Box 63
BLACKTOWN NSW 2148

Email

Dear Sir

Advice re CP 20 - Riverstone and Alex Avenue Precincts

Background

- 1 I refer to Dennis Bagnall's email dated 5 May 2011.
- 2 JBA Planning has provided a report to IPART in respect of Council's application dated 28 January 2011 for priority infrastructure funding (PIF) in relation to CP 20.
- 3 The PIF sought is the amount by which contributions authorised by CP 20 exceed the \$30,000 cap in the Minister's s94E direction, the most recent version of which is dated 3 March 2011.
- 4 Section 7.2 of the JBA report contains the following advice to the IPART.

Land Valuations

The land identified for acquisition in the relevant planning instruments for Alex Avenue and Riverstone were valued by Council's valuer based on market valuations in accordance with the Land Acquisition (Just Terms Compensation) Act 1991.

The land valuations and methodology used in CP No.20 have been subject to a review prepared by MJ Davis Valuations on behalf of the NSW Department of Planning dated 26 February 2010. The review concludes that the valuation approach/methodology "appear reasonable", and recommends the rates be reviewed every six months in addition to being adjusted according to CPI.

However, Council advises that it already owns 46 hectares of land on which some of the infrastructure in CP No.20 will be located. CP No.20 identifies this land for acquisition at current market rates with the acquisition cost to be met through contributions. We recommend that CP No.20 be amended to include the actual purchase price for this land that is already in Council ownership as a methodology that is, in our opinion, more reasonable if less than market rates used by Council.

lindsaytaylorlawyers
Level 7, 1 O'Connell Street, Sydney NSW 2000, Australia
T 02 8235 9700 • F 02 8235 9799 • W www.lindsaytaylorlawyers.com.au • E mail@lindsaytaylorlawyers.com.au
ABN 15 695 894 345

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- 5 JBA recommend at Section 8.4 that IPART advise that Minister that CP No.20 needs to be reviewed on grounds of reasonableness amongst other things by:
the inclusion of the actual purchase price for land that has already been acquired by Council for the infrastructure if less than the market rates used by Council, and consequent reduction in contribution rates.
- 6 I understand that the 46ha of land to which JBA refers relates to some 200 allotments of land that came into Council's ownership through different means over many years. For example, where rates were not paid land was auctioned and the Council acquired the land. The land was, however, acquired as an investment for the benefit all of the ratepayers in the City of Blacktown.
- 7 Of this land, some 14.7705 hectares is zoned for a public purpose (SP2 Infrastructure, E2 Environmental Conservation and RE1 Public Recreation) under *State Environmental Planning Policy (Sydney Region Growth Centres) 2006 (SEPP Growth Centres)*. The relevant land is limited to the land zoned *Public Recreation—Local* under the SEPP, not the 46 hectares to which JBA refers (Council Land).
- 8 In the CP, the Council applies an average land acquisition cost per square metre for any land that it proposes to acquire and provide for a public purpose specified in the plan. This rate is also applied to the provision of the Council Land for public purposes notwithstanding that it has already been acquired.

Advice required

- 9 You have asked whether there is further information that could be presented to IPART in support of Council's position that the cost attributed to the provision of the Council Land in the CP is reasonable?

Advice

- 10 In my view, recovery on the basis of the market value of the Council Land is reasonable in the circumstances.
- 11 The JBA Report actually offers no reasoning in support of the conclusion that this is not reasonable other than to say that a lower contribution based on the lower of the acquisition price and market value would be 'more' reasonable than that which is proposed in CP 20.
- 12 In my view, however, JBA's position takes no proper account of the fact that the public object of s94 is to ensure that new development meets the reasonable cost of the public infrastructure it requires. If that is the object, it is certainly not a truism that the most reasonable result is the result that brings about the lowest contribution.
- 13 It actually seems to me that there are good public policy reasons why monetary contributions for the Council Land should be based on the recovery of the market value.
- 14 In particular, the Council is not obliged to provide the Council Land for the public purposes specified in CP 20. It could elect to continue to apply the land for the existing purposes for which it is currently used and receive a commercial return on that land for the community.
- 15 Further, it would be lawful for the Council to acquire other land for public recreation at market value and fund that cost through CP 20. If the Council took this course, the resulting contribution rate would presumably be the same or even higher than is proposed because the Council would need to acquire that other land at its current market value.

- 16 Whilst the requirement that contributions under s94(1) must be reasonable should ensure that a council cannot use s94 to enrich itself, there is no warrant to interpret the requirement or the section so as to generally disadvantage the council and the community (on behalf of whom the Council holds its assets) for a direct private benefit to new development.
- 17 It follows in my view that when determining a reasonable cost for the purposes of levying monetary contributions under s94(1), it is lawful and reasonable in my opinion, for the Council to determine the contribution rate relating to the provision of the Council Land for the public purposes specified in the CP taking into account the commercial returns to the community from other uses of the land that are foregone as a result of providing the land for public purposes to address the needs of new development.
- 18 An example of when a contribution would be unreasonable, would be if the contribution were calculated based on a land value that exceeds the fair market value.
- 19 I trust this advice is of assistance.

Yours sincerely,



Dr Lindsay Taylor

Direct: 8235 9701

Fax: 8235 9799

Mobile: 0417 997 880

Email: lindsay.taylor@lindsaytaylorlawyers.com.au

Response to Cardno Alex Avenue and Riverstone Precincts Section 94 Engineering Review Dated June 2010 Job Number 600264

The Cardno review consisted of the following main tasks:

1. *Review of Trunk Drainage Strategy.*
2. *Review of Trunk Drainage Concept Designs*
3. *Consideration of Alternative Uses of Excavated Material.*
4. *Review and Comment on BCC's Standards for Basins*
5. *Review Preliminary Road Designs*
6. *Review of Cost Rates*

Based on the Cardno investigations the following categories were identified with the potential for cost savings:

- Revisiting the base assumptions and policies driving the strategy and the concept design (i.e. the strategy and design brief)
- Considering possible changes to the layout of the drainage facilities that may result in more efficient outcomes
- Testing some of the technical assumptions made as part of the development of the strategy and concept designs
- Further investigating the likely costs of disposal of excess material and identifying alternative options

Cardno recommended the following tasks be undertaken by the precinct planning agencies:

Blacktown City Council:

- Consider limitations to fill extents and depths and planning mechanisms which could facilitate a solution which integrates drainage works and filling
- Consider and advise on steepening of batter slopes, particularly above the active water level and for stepped basins
- Consider reducing the adopted impervious fraction
- Investigate alternative fill disposal options available

GHD on behalf of Department of Planning:

- Test the impact of a on-line storage First Ponds Creek
- Test the impact of reconfiguring / relocating / stepping basins F51, E27a, E8, F40a, F28, E20, F9, E31 as it considers appropriate
- Test on a few large basins the effects on volumes of optimising discharge arrangements such that Q100 (post-developed) closely match Q100 (pre-developed) flows
- Test the effects of extended detention and biofilter outflows on a one or two of the large basins

Department of Planning:

- Investigate the effects of current legislation with respect to EPA landfill levies

Council was not privy to the formal instructions issued by DoP to GHD and therefore cannot confirm which of the Cardno recommendations GHD were employed to investigate.

The Cardno investigation results and response to the main tasks and issues are presented in the table below.

Cardno Item	Cardno Issues	Council Response
2.1.1 Revisiting the base assumptions and policies		
a. Raising Basin Levels	<p>Cardno identified the large amount of surplus material as a major impact on costs. They identified two main issues as the depth of excavation and the configuration and location of the basins.</p> <p>Cardno recommend disposal of surplus material on adjoining developable land and consider the 900mm fill limit adopted by Council as overly restrictive. Allowance should also be made for filling land adjacent to watercourses. Cardno suggest enforcing planning control mechanisms to facilitate this outcome in the fragmented landownership present in the precincts such as imposing development</p>	<p>Council agrees that the large amount of surplus material has a major cost impact in providing the necessary stormwater management infrastructure. The fragmented landownership restricts possible solutions.</p> <p>Council cannot legally impose conditions of consent that force developers into a commercial arrangement with Council, which is what the Cardno recommendation would require in order to provide certainty in relation to S94 CP costs. While it may be possible, subject to extensive negotiation with landowners, to prepare and adopt a fill plan to achieve a better outcome for the earthworks balance, there is still no guarantee that developers would choose to accept fill from Council infrastructure works.</p>

	<p>conditions, possibly providing S94 Credits and including the acquisition, filling and resale of land in the S94 CP.</p> <p>Cardno consider the “worst case” assumption regarding disposal of fill as potentially benefiting some developers at the expense of others through works in kind agreements.</p> <p>Cardno also considers that the filling of developable land may have benefits in relation to possible future climate change impacts on flooding to facilitate future raising of basin walls if required.</p>	<p>There could be commercial benefits to the developer by accepting fill from other developer owned sites or other sources. Therefore, while Council would benefit from higher basin levels in terms of earthworks balance with the infrastructure land, it still cannot rely on placing fill on private developable land. Council has already accepted a certain level of risk by assuming up to 900mm of fill will be agreed to by adjoining owners and sees no reason why a higher level of risk should be accepted. Basin levels have been raised where possible to this level and earthworks within the infrastructure land have been calculated on this basis. As demonstrated by the current concept designs, solutions are available to implement the proposed precinct planning outcomes without the need to place excessive fill on development land. There could also be instances where existing dwellings could be retained as part of land development, however, imposing a fill requirement would require their removal and attract compensation payments. There are also issues with existing roads in the vicinity of the basins. These would then also require raising, which would attract significant additional costs and have property access issues as well as impacts on utilities. These costs and any compensation cost would then need to be added into the CP. Filling land adjacent to watercourses is also at the developer’s discretion. In this case most of the flood prone land is zoned for public purposes and therefore there are likely to be limited fill requirements for adjoining development which could be met from cut to fill on site. The notion of including effectively land development work in the S94 CP is not in keeping with current directions and regulations and therefore cannot be accepted. Neither the acquisition of land nor the works could be justified as being works for a public benefit for a demand generated by the proposed development. There are also no guarantees that the owners would sell the required land to Council.</p> <p>Timing for implementation is another key issue in that</p>
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		<p>development would occur at different times. One developer may wish to move ahead of others and others may wait until after basins are funded. This would make efficient delivery of the fill to development and construction of basins implausible. Some developers may require fill even before the land for the basin is acquired, while others could be denied natural drainage rights once a basin is built at higher levels. The notion of obtaining material from other Council sites is also not considered realistic as the majority of Council land is held for public purposes. Therefore, earthworks on existing sites would diminish their intended use for the community and attracts additional management and maintenance costs for unknown periods depending on CP funds being received.</p> <p>Council is not obliged to enter into works in kind agreements and as such the argument that certain developers may benefit at the expense of others is not valid. Given the cap on contributions, it is unlikely that works in kind agreements would be entered into for works in this CP. Depending on the proposed arrangements, giving credits or incentives to certain landowners/developers may give them a commercial advantage over others. Therefore, in equity terms, applying the same standard to all developers is the fairest outcome.</p> <p>In relation to climate change, the most effective way to manage potential impacts is through planning controls. For the scenario of raising basin walls, if this is to be adopted, the important control is the flood planning level. The flood planning level should then be set to the post climate change flood levels and this will set fill and floor levels. It is acknowledged that fill levels above the minimum currently required may be prudent, however this is again at the discretion of the individual developer and they are free to obtain fill from sites or other sources. The issue of climate change could</p>
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		also be addressed by accepting a lower level of service and would then not be relevant in relation to disposal volumes.
b. Steepening Batter Slopes	Cardno recommend steepening batter slopes from 1 in 6 to 1 in 4 or steeper subject to addressing safe egress points and maintenance requirements	Council has conducted an internal design standard review with relevant staff responsible for design, planning, construction and maintenance of assets to assess the extent to which current standards could be varied. The outcome of the review is that cut batters that are landscaped can be steepened to 1 in 4. Fill batters will need to remain at 1 in 6 to comply with safety and mowing requirements as tree planting and general landscaping is generally not permitted on basin walls under Dam Safety Committee requirements. Council has conducted an assessment of potential cost reduction for steepening batters and has included this (in order of \$5m) in the current CP20.
c. Online Storage on First Ponds Creek	Cardno recommend that the effectiveness of online basins be modelled and their implementation negotiated with DECCW as applicable.	GHD state in their post exhibition report that online basins on First Ponds Creek have been modelled and DoP have obtained in principle support from DECCW for these. Council has used online basins in the costing for CP20. Therefore, this item has been included. Council has, however, not received any hydrologic modelling that demonstrates the effectiveness of these basins.
2.1.2 Possible Changes to the Layout	<p>Cardno recommend that consideration should be given to reconfiguring, relocating or stepping basins to improve efficiency with priority for basins with greatest level differences and excavation relative to storage volume.</p> <p>Cardno also suggest that steps in basins could be steepened or even vertical.</p>	Council agrees that changes to layout can result in savings to the CP. GHD did investigate changes to basin locations, shapes and stepping. However, desired planning outcomes specified by DoP restricted the extent to which some of these could be implemented (for example maintaining a general rectangular grid road pattern irrespective of existing topography). The reconfiguring and relocation of basins generally proposed by GHD has been adopted, however, the stepping options generally have not been adopted. Council's design standard review does not support vertical walls for stepping basins (in the order of 3m high) as these introduce unnecessary hazards for the public and maintenance staff and have other operational issues with them including graffiti.

2.1.3 Testing Assumptions on Strategy and Concept Designs	Cardno have identified several assumptions which they believe result in conservative outcomes and suggest that the level of “conservatism” be reduced to lower overall costs	The DoP instructed GHD on the options to be investigated. Council’s response is based on the works presented in the GHD Post Exhibition Report
a. Attenuation of Q100 Flows	Cardno have reviewed the GHD model results and identified that the post development 5 year ARI peak flows generally match pre development flows while the post development 100 year ARI flows are generally lower than pre development 100 year ARI flows	Based on the hydrologic modelling received in March 2010, the Cardno observation in terms of flow attenuation is correct. Council does not have any information on the final hydrologic modelling for the precincts including online basins. Therefore, Council cannot confirm whether this issue has been addressed by GHD. While the available modelling results may appear to be conservative, the modelling does not include assessment of cumulative impacts from other development precincts. Therefore, until a coordinated whole of growth centres stormwater assessment is conducted, the degree of any “conservatism” cannot be quantified.
b. Biofilter Outflows	Cardno believe that by including the base flow through the biofilter in the modelling may reduce storage volumes by up to 10%. This is based on the premise that discharging flows earlier will reduce storage volumes through an effect similar to high early discharge.	Based on the hydrologic modelling received in March 2010, this issue does not appear to have been investigated by GHD and therefore has not been included in the CP. In theory, it may be possible to obtain a reduction in overall storage volumes, however, this reduction is expected to be minor (less than 10%). This possible minor saving in volume, would result in a lesser reduction in cost. A 10% reduction in volume does not equate to a 10% reduction in cost as the size of the basin footprint would not reduce by 10%. This issue is best addressed as part of the detail design of the basins and when accurate designs are prepared to suit site and planning constraints.
c. Impervious Fraction	Cardno recommend that the modelled impervious fraction for residential development be reduced from the adopted 75% to between 65 and 70% based on their experience at Kellyville Ridge and estimate a saving in storage volume in the order of 5-10%. They consider it overly conservative to assume that all development will develop to its ultimate potential.	Council in its responsibility for flooding, must implement strategies that support the full development potential of the land being rezoned and released. Otherwise, additional planning controls need to be implemented. As these additional planning controls are not included in the Environmental Planning Instruments applying to the precincts, the reduction in impervious fraction for sizing of stormwater infrastructure cannot be accepted.

<p>2.1.4 Investigating alternative disposal options</p>	<p>Cardno considers the cost rate of disposal to landfill as a realistic figure but considers disposal to landfill as a worst case outcome. Cardno recommends that other alternative disposal options be investigated such as using on other Council project or open space sites throughout the LGA and relying on contractor's ability to dispose of material to other sites. Timing issues could be addressed by double handling with possible interim excavation or storage on various sites.</p>	<p>Council has investigated alternative disposal sites as part of the post exhibition review. The concept designs prepared by GHD identified some areas proposed for acquisition where surplus material could be placed. Council reviewed these areas in terms of extents and suitability including issues such as maintenance and visual impact and allowed for placement of surplus material in its CP cost estimates on these sites.</p> <p>Given the land set aside for open space in the precincts is at the lower limit, there is little scope to place additional fill on these reserves as the extent of batters will need to be minimised. Other issues such as vegetation to be retained and interaction with adjoining land also needs to be considered to deliver effective usable open space. Where possible, playing fields have already been incorporated into drainage basins. Therefore, there is little scope to dispose of surplus material on recreation reserves within the precincts. This issue would require more detailed investigation which is beyond the scope of this initial assessment.</p> <p>Council also investigated other large open space reserves in the LGA that may be suitable to receive additional material. The only reserve that may be suitable is Whalan reserve. However, as the potential cost reduction from this reserve in the overall scheme is relatively minor, and Council does not currently have any formal disposal sites for surplus material, this site was not included for cost estimates in the CP.</p> <p>Given that Council does not have any available disposal sites, the reliance on contractor's ability to dispose of material at lower cost exposes Council to significant financial risk. Given the significant volumes and uncertainty on timing Council does not consider it appropriate to accept higher risk on disposal costs.</p> <p>The issues relating to timing and double handling have been included in item 2.1.1 a.</p> <p>Therefore this issue has been investigated and included to the extent considered appropriate by Council.</p>
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	Cardno also recommends that the effects of current legislation with respect to EPA landfill levies be investigated	DoP investigated this issue and advised that there were no cost benefits that could be included in the CP

Glossary

ABS	Australian Bureau of Statistics
Contributions plan	A plan that a council uses to impose a contribution on developers of a new development to help fund the cost of providing new public infrastructure and services to support that development
CPI	Consumer Price Index
CP20	Blacktown City Council's Contributions Plan No 20 – Riverstone and Alex Avenue Precincts
Greenfield	Undeveloped land that is suitable for urban development, usually located in the fringe areas of existing urban development and requiring significant provision of new infrastructure and services to facilitate development
IPART	Independent Pricing and Regulatory Tribunal
Practice Note	<i>Local Development Contributions Practice Note for the assessment of Local Contributions Plan by IPART, November 2010</i> (supplemented by advice from the Department of Planning and Infrastructure regarding base embellishment, 23 March 2011)
Priority Infrastructure Fund	A \$50m fund established by the Minister for Planning to enable councils to recover the difference (from the DP&I) between the contributions amount contained in a contributions plan (that is assessed as being reasonable by IPART) and the relevant cap
Special rate variation	The percentage amount by which a council is granted approval to increase its maximum general income in a single year (under section 508(2) of the <i>Local Government Act 1993</i>) and for 2 to 7 years (under section 508A of the Act)