

5 April 2018

## 1 Land costs in a contributions plan

This Information Paper sets out IPART's approach to assessing land costs in local infrastructure contributions plans that councils submit for review.

### Why does IPART assess land costs?

The NSW Government has asked IPART to review certain local infrastructure contributions plans which propose contribution rates above a threshold amount.<sup>1</sup> IPART reviews these plans in accordance with criteria set out in the *Local Infrastructure Practice Note*, January 2018.<sup>2</sup>

The Practice Note requires us to assess whether the proposed development contributions are based on reasonable estimates of the costs of proposed public amenities or public services (public infrastructure). These costs include the costs of acquiring land for the proposed infrastructure.

Land costs represented around 40% of the assessed costs in the plans IPART assessed between October 2011 and December 2017. These costs can include:

- ▼ the actual costs of land already acquired by a council, indexed by the CPI
- ▼ the estimated costs of land yet to be acquired
- ▼ any just terms compensation that has been or is likely to be paid in association with land acquisition, and
- ▼ any conveyancing costs associated with the land acquisition.

Land costs do not include:

- ▼ administrative costs incurred by a council in connection with land acquisitions, such as valuations and project management costs (these are recovered through the allowance for plan administration costs), and
- ▼ works costs associated with the land, such as demolition, fencing and other temporary works (as these are recovered through the associated infrastructure works for transport, stormwater and open space).

### What land can a council include in a contributions plan?

The land for public infrastructure in a contributions plan may comprise:

- ▼ land that is already owned by the council and was acquired for the provision of public infrastructure required for new development, and
- ▼ land that has yet to be acquired for public infrastructure.

<sup>1</sup> Minister for Planning, *Environmental Planning and Assessment (Local Infrastructure Contributions) Amendment Direction 2017*, 17 July 2017. From 1 March 2018 the provisions applying to the contributions plans we assess are found in section 7.11 of the *Environmental Planning and Assessment Act 1979* and the provisions applying to Ministerial Directions concerning contributions plans are in section 7.17

<sup>2</sup> Department of Planning and Environment, *Local Infrastructure Practice Note*, January 2018.

## 2 How do we assess the cost of land already owned?

The cost of land that the council **already owns and has acquired for public infrastructure** may not exceed the acquisition cost, indexed by the CPI (All Groups) for Sydney.<sup>3</sup> The acquisition cost is the amount the council actually paid when it acquired the land.

IPART will assess whether the council has included in the plan any land it already owns and it acquired for public infrastructure at the indexed acquisition cost.

Blacktown City Council's CP20 for Riverstone and Alex Avenue includes the cost of some land the council owned prior to its rezoning for public infrastructure. It acquired this land as 'operational land' and was not intending to use it for public infrastructure at the time of purchase. Our 2015 assessment concluded that this land could be included at the market value at the time the contributions plan was created (being the time the land was rezoned or public infrastructure), indexed to the base year of the plan.

## 3 How do we assess the cost of land yet to be acquired?

For **land that is yet to be acquired**, we take the following steps in assessing a council's proposed land acquisition costs in a contributions plan:

1. Assess the council's proposed method of determining land costs (for example, based on average values or on valuations of individual properties).
2. Assess:
  - ▽ the proposed values for each underlying zoning or constraint (where average values are used), or
  - ▽ the market valuation for each acquisition (where individual valuations are provided).
3. Assess the council's application of proposed values in circumstances where average values are used, including the council's assumptions about underlying/adjoining zonings and the extent of any constraints.
4. Assess the value of any proposed just terms compensation.
5. Assess the value of any other proposed costs, including conveyancing costs.

This assessment process, and the information councils should provide to facilitate it, are outlined in the following descriptions of each step and in Figure 1.

### Step 1: Assessing the council's method

This first step involves assessing the council's method of estimating the cost of land yet to be acquired.

Estimates may be based on:

- ▼ individual valuations
- ▼ average values per square metre, or
- ▼ a combination of individual valuations and average values.

<sup>3</sup> *Environmental Planning and Assessment Regulation 2000*, cl 251.

Ideally, estimates of land costs would be based on individual valuations of the lots specifically zoned for public infrastructure purposes. However, when a local infrastructure plan is prepared, we acknowledge that councils may not have sufficient information or resources to obtain large numbers of individual valuations, particularly for plans that apply to greenfield areas. For this reason, we consider that it is reasonable to estimate land costs based on average values per square metre for the underlying zonings and constraints (eg, flooding or transmission easements) in the plan.

Councils may also propose to include additional costs in the plan (eg, for just terms compensation and conveyancing).

## Step 2: Assessing the individual valuations or average values

The council should provide IPART with a recent valuation report from an independent qualified valuer as evidence that the individual valuations or average values are reasonable.

If a council is considering using different evidence to support the reasonableness of land cost estimates, it should discuss its proposal with IPART when it is preparing the plan.

The valuation should be based, where possible, on direct comparison with recent relevant sales data and should include the information outlined in the box below.

### Information to be included in a valuation report

A valuation providing **average values** should include:

- ▼ an average value for every relevant underlying zoning (eg, R2 low density residential and B4 mixed use) and grouping of constrained land (eg, riparian corridors and transmission easements)
- ▼ the range of values per square metre for each of the above zonings demonstrated by relevant comparison sales, and
- ▼ justification for the valuer's advice on appropriate average values (including consideration of the particular land to be acquired for public infrastructure, the nature and extent of any constrained land, and any relevant development potential).

**Individual valuations** should provide justification for the valuer's recommended market value, including:

- ▼ total values and values per square metre indicated by relevant comparison sales
- ▼ the nature and extent of any constraints on the site, and
- ▼ any relevant development potential.

Where a council considers certain constrained land has a higher development potential, and therefore potentially a higher acquisition cost, it should present the relevant evidence to the valuer. The valuation report should explain whether or not any constrained land has development potential.

In assessing the individual valuations or average values, IPART will consider:

- ▼ the sample size of relevant comparison sales
- ▼ the date of relevant comparison sales
- ▼ whether any sales are for sites with uniform zoning and/or constraints (for example, all unconstrained R2 land, or all constrained land). These sites will provide the best indication of the reasonable rate per square metre for each zoning
- ▼ the valuer's justification for the recommended market values or average values, and
- ▼ any other relevant matters.

If IPART has outstanding queries about the individual valuations or average values, we may request additional information or obtain a second opinion from another valuer.

### **Step 3: Assessing the council's application of average values**

Where a council has proposed to use average values, IPART will assess how the council has applied the average values recommended by a valuer, including its assumptions about:

- ▼ the underlying zonings, and
- ▼ any constraints on the land to be acquired (eg, for flood-affected land).

### **Assessing the underlying zoning**

The **underlying zoning** is the zoning that is assumed would apply if the land were not zoned for public infrastructure in the contributions plan. The underlying zoning is determined based on detailed site specific planning information. We may have regard to the zoning that applies to adjoining land, where considered relevant. We may also have regard to the available information, such as the Indicative Layout Plan (ILP), flood mapping and other information provided by the council.

In assessing the appropriate zoning for each land acquisition, we assume that the underlying zoning represents the appropriate basis for valuing the land unless a council provides evidence otherwise.

### **Assessing the nature and extent of any constraints**

The land to be acquired in a contributions plan may be constrained for a range of reasons, including:

- ▼ the existence of a riparian corridor
- ▼ the land being flood-prone
- ▼ the land being encumbered with a transmission easement, and
- ▼ contamination.

For each acquisition we assess whether any of the land is constrained (eg, based on flood mapping and the ILP), and the proportion that is subject to a constraint. For example, an

acquisition may comprise 70% constrained and 30% unconstrained residential (R2) land, and it would be reasonable for the estimated value of the land to be based on these relative proportions.

#### **Step 4: Assessing the value of any proposed just terms compensation**

Councils may be required to pay just terms compensation under the *Land Acquisition (Just Terms Compensation) Act 1991* (LA Act) when acquiring land for local infrastructure in contributions plans. Therefore, where the costs of just terms compensation are likely to be incurred, councils may include these costs in contributions plans. IPART will assess the reasonableness of a council's estimate of just terms compensation costs.

The application of section 61 of the LA Act means that where the market value (highest and best use) of land is based on a rezoned potential use that can be achieved within a reasonable timeframe, the associated just terms compensation is likely to be limited to the following fixed items:

- ▼ disadvantage relating to relocation (previously known as solatium) – only paid for a principal place of residence, up to a statutory maximum of \$75,000
- ▼ legal fees, and
- ▼ valuation fees.

To facilitate our assessment of any just terms compensation costs, councils should provide details of the number of residences on the land they will acquire.

We prefer that any just terms compensation costs in contributions plans are based on fixed costs rather than a percentage of the proposed market value. This is because:

- ▼ the components of the likely compensation comprise mainly fixed costs, and
- ▼ market values can vary significantly, making a percentage approach less accurate.

If councils wish to include other just terms compensation costs, they should provide additional evidence that these costs are likely to be incurred and are reasonable, such as:

- ▼ the council's rationale for acquiring land before surrounding development is ready to occur, and/or
- ▼ legal advice that a certain amount of just terms compensation will be payable in particular circumstances.

#### **Step 5: Assessing the value of any other proposed costs (eg, conveyancing costs)**

Where councils include any other costs for land to be acquired in a contributions plan, we will assess these costs on a case-by-case basis with reference to the actual costs incurred by other councils for similar acquisitions.

## **4 How do we assess indexation of contribution rates?**

A contributions plan will include contribution rates based on the council's estimated land costs. Usually these will be a dollar amount 'per lot', 'per dwelling', 'per person' or 'per hectare of net developable area', or a combination of these.

The *Environmental Planning and Assessment Regulation 2000* allows councils to index contribution rates quarterly or annually using:

- ▼ readily accessible index figures adopted by the plan (such as a Consumer Price Index), or
- ▼ index figures prepared by or on behalf of the council from time to time that are specifically adopted by the plan.<sup>4</sup>

As part of our assessment of costs, IPART will assess whether the council's proposed method of indexing contribution rates is reasonable. This will include whether it has proposed a suitable index for the land component of the contribution rate.

IPART's Local Infrastructure Benchmark Costs report<sup>5</sup> noted that suitable indices may include the CPI (All Groups), the Established House Price Index – Sydney or a regional or Local Government Area (LGA) land value index based on data published by the Valuer-General. We will consider how cost reflective the proposed index is for the land included in the contributions plan.

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<sup>4</sup> *Environmental Planning and Assessment Regulation 2000*, cl 32(3)(b).

<sup>5</sup> IPART, *Local Infrastructure Benchmark Costs: Costing infrastructure in Local Infrastructure Plans*, Final Report, April 2014, pp 84-89.

**Figure 1** Process for assessing the proposed cost of land yet to be acquired

