

Our reference: 18/14-10

Contact Matthew Edgerton
T (02) 9290 8414
E matthew_edgerton@ipart.nsw.gov.au

12 June 2020

Luke Walton
Executive Director, Planning Policy
Department of Planning, Industry and
Environment
Locked Bag 5022
Parramatta NSW 2124

Dear Luke

Submission to *Improving the infrastructure contributions system*

Thank you for the opportunity to respond to the Department's proposed improvements to the infrastructure contributions system.

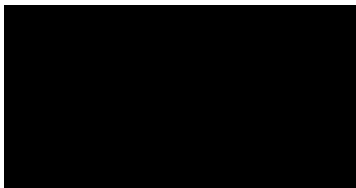
IPART is the independent economic regulator in NSW for water, public transport and local government. We are also the licence administrator for water, electricity and gas utilities and the scheme administrator and regulator for the Energy Savings Scheme.

We have assessed local infrastructure contributions plans since 2011 under terms of reference from the Premier and in accordance with the Practice Note issued by the Department of Planning.

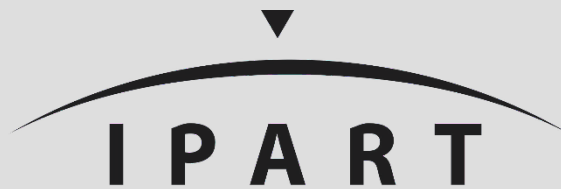
Our submission has been approved by our Local Government Committee and is attached. It addresses four of the five elements of the Department's proposals that are most pertinent to IPART's current role and responsibilities.

Should you require further information, IPART's contact officer for this submission is Matthew Edgerton, Executive Director, available on (02) 9290 8414.

Yours sincerely



Liz Livingstone
Chief Executive Officer



Independent Pricing and Regulatory Tribunal
New South Wales

Submission to the Department of Planning, Industry and Environment

Improving the Infrastructure Contributions System

Local Government

June 2020

© Independent Pricing and Regulatory Tribunal (2020)

With the exception of any:

- (a) coat of arms, logo, trade mark or other branding;
- (b) third party intellectual property; and
- (c) personal information such as photos of people,

this publication is licensed under the Creative Commons Attribution-NonCommercial-NoDerivs 3.0 Australia Licence.



The licence terms are available at the Creative Commons website:
<https://creativecommons.org/licenses/by-nc-nd/3.0/au/legalcode>

IPART requires that it be attributed as creator of the licensed material in the following manner: © Independent Pricing and Regulatory Tribunal ([Year of Publication]).

The use of any material from this publication in a way not permitted by the above licence or otherwise allowed under the *Copyright Act 1968* (Cth) may be an infringement of copyright. Where you wish to use the material in a way that is not permitted, you must lodge a request for further authorisation with IPART.

Disclaimer

IPART does not guarantee or warrant, and accepts no legal liability whatsoever arising from or connected to, the accuracy, reliability, currency or completeness of any material contained in this publication.

Information in this publication is provided as general information only and is not intended as a substitute for advice from a qualified professional. IPART recommends that users exercise care and use their own skill and judgment in using information from this publication and that users carefully evaluate the accuracy, currency, completeness and relevance of such information. Users should take steps to independently verify the information in this publication and, where appropriate, seek professional advice.

Nothing in this publication should be taken to indicate IPART's or the NSW Government's commitment to a particular course of action.

The Independent Pricing and Regulatory Tribunal (IPART)

IPART provides independent regulatory decisions and advice to protect and promote the ongoing interests of the consumers, taxpayers and citizens of NSW. IPART's independence is underpinned by an Act of Parliament. Further information on IPART can be obtained from IPART's website: <https://www.ipart.nsw.gov.au/Home>.

Committee Members

The Committee members for this review are:

Ms Deborah Cope, Chair

Ms Nicola Gibson

Ms Pamela Soon

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

Matthew Edgerton (02) 9290 8414

Julia Williams (02) 9290 8457

Contents

Committee Members	iii
1 Introduction and Executive Summary	1
2 Thresholds that trigger the review process	2
2.1 The aim of IPART review	2
2.2 Which contributions plans should be reviewed by IPART?	3
2.3 Application of the Practice Note to plans reviewed by IPART	4
2.4 Impact of a threshold triggering IPART review of plans below the threshold	5
2.5 The IPART review process	5
3 The IPART terms of reference and the importance of regular review of contributions plans	7
3.1 Targeted review of plans may result in sub-optimal development outcomes	7
3.2 Councils should regularly review and update contributions plans	8
3.3 IPART consultation through a draft report affords procedural fairness to affected stakeholders	10
4 Removing existing exemptions	13
5 Removing re-exhibition requirements	14
6 Special infrastructure contributions draft guidelines	15
7 Planning agreements draft policy framework	16
7.1 Some planning agreements use early stage cost estimates with high contingency allowances	16
7.2 Planning agreements do not limit IPART review	16
8 Amendments to the EP&A Regulation	18
9 Other opportunities for improvement of the current system	19

1 Introduction and Executive Summary

IPART is the independent economic regulator in NSW for water, public transport and local government. We are also the licence administrator for water, electricity and gas utilities and the scheme administrator and regulator for the Energy Savings Scheme.

We have assessed local infrastructure contributions plans since 2011 under terms of reference from the Premier and in accordance with the Practice Note issued by the Department of Planning.¹ To date, we have completed 23 reviews of 14 different contributions plans from seven councils and have two current assessments.

With the closing of the Local Infrastructure Growth Scheme (LIGS) on 30 June 2020, a review of the local infrastructure contributions system in NSW is timely. We note that the Department of Planning, Industry and Environment's (DPIE's) package of reforms is targeted at improvements to the current system and that the NSW Productivity Commission's current review of the infrastructure contributions system may recommend wider reforms. We consider that some of the matters raised in DPIE's discussion paper on local infrastructure contributions should also be considered by the Productivity Commission and that the outcomes of both reviews should be considered before making any significant changes to the current system.

We would like to thank DPIE for the opportunity to provide a submission in response to its package of reforms. This submission includes our feedback on four of the policy documents:

- ▼ Improving the review of local infrastructure contributions plans
- ▼ Draft Special Infrastructure Contributions (SIC) guidelines
- ▼ Draft planning agreements policy framework
- ▼ Proposed amendments to the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation).

We have also identified a number of other opportunities for improvement of the current local infrastructure contributions system that could be considered by DPIE in a second stage of improvements and by the Productivity Commission.

We would be happy to discuss our response with DPIE further, if that would assist.

¹ Department of Planning and Environment, Local Infrastructure Contributions Practice Note, January 2019 (Practice Note).

2 Thresholds that trigger the review process

DPIE has proposed to:

- ▼ Increase the value thresholds that trigger the review process
- ▼ Implement an indexation mechanism for thresholds triggering the review process, based on CPI.

These proposals are based on a premise that the current thresholds are too low and need to be increased without consideration of the purpose of the thresholds and of IPART review of contributions plans more broadly. A review of the purpose of the thresholds and IPART review is timely, and is likely to form part of the NSW Productivity Commission's review of infrastructure contributions. We consider that it would not be appropriate to make significant changes to thresholds that trigger the IPART review process until the Productivity Commission has completed its review.

To support the broader discussion, this section addresses the aim of IPART review, the plans that should be reviewed by IPART, the application of the Practice Note and implications of the threshold.

2.1 The aim of IPART review

Broadly, our assessments are intended to bring greater transparency and accountability to setting local development contributions. More specifically, in conducting the assessment and making our recommendations, we aim to ensure the plan reflects the reasonable costs of providing necessary local infrastructure to support the new development.

If costs in the plan are too high (ie, higher than the reasonable costs of infrastructure with a nexus to the development), the NSW Government (when LIGS funding was in place) or new development (in the absence of LIGS funding) will pay too much for local infrastructure. Development could be unduly impeded, particularly when the caps on contributions are removed entirely (ie, from 1 July 2020 onwards). On the other hand, if costs in the plan are too low (ie, lower than the reasonable costs of infrastructure with a nexus to the development), then the new development would effectively be subsidised by the council's ratepayers or the infrastructure provided may be inadequate.

Contributions that reflect the reasonable costs of local infrastructure provision are important for reasons of both efficiency and equity. Cost-reflective contributions are necessary to:

- ▼ Signal the costs of developing different areas – which, in turn, can assist in ensuring that development occurs where it should (ie, where the benefits of the development are greater than its costs)
- ▼ Ensure that other parties (such as a council's ratepayers) do not have to fund any shortfall between the actual costs of providing local infrastructure and the revenue received from development contributions.

In conducting our assessments, we aim to minimise delay, ensure our analysis is suitably proportionate and targeted, and maximise transparency to stakeholders. Our assessments are generally completed within six to seven months from receiving a completed application form and contributions plan from a council. We publish:

- ▼ Draft Reports to seek stakeholder feedback on our draft assessments
- ▼ Final Reports for each assessment
- ▼ Consultant reports that we commission as part of our assessments, to the extent they do not contain information that is commercial-in-confidence
- ▼ Fact Sheets and Information Papers on key elements of our process and review methodology to aid understanding and transparency.²

We consider an infrastructure contributions system should aim for cost-reflective developer charges for reasons of economic efficiency and equity, while also seeking to ensure the process for setting and reviewing contributions charges is transparent, timely and provides reasonable levels of certainty to all stakeholders.

2.2 Which contributions plans should be reviewed by IPART?

The levels of the current and recent thresholds have meant that plans with high land values have been the most likely to require IPART review. With the exception of the *West Dapto Contributions Plan* and the *Rockdale Contributions Plan 2016 – Urban Renewal Area*, these plans have been for development in the North West and South West Growth Areas of Sydney.

The objective of the current review thresholds is for high value plans to be independently assessed against criteria set out in the Practice Note. This system was designed while LIGS and previous funding arrangements were in place. However, the effect and apparent objective of an IPART review differs between when LIGS is in place to when it is not in place (post 1 July 2020):

- ▼ With LIGS, IPART is providing assurance to the NSW Government that its funding of local infrastructure above the contributions cap is reasonable
- ▼ Without LIGS, IPART is effectively providing assurance to developers and the councils' rate payers that the contributions reflect the reasonable costs of infrastructure required to service the new development:
 - If contributions exceed these costs, developers pay too much and development could be unduly impeded
 - If contributions are below these costs, the councils' rate payers may have to fund the shortfall or the infrastructure may not be delivered.

Without LIGS, cost-reflective contributions (ie, contributions that reflect the reasonable costs of infrastructure required to service a new development) also signal the costs of developing different areas, which helps ensure that development occurs where its benefits exceed its costs.

² These are all available on our website: www.ipart.nsw.gov.au.

The policy objective(s) of an IPART review should determine what types of plans are reviewed by IPART, and hence the threshold or trigger for an IPART review. Consideration should be given to the range of options, and the best way, to provide the above-mentioned assurances to developers and rate payers in a 'post LIGS world'. For instance, IPART could review plans above a certain dollar threshold ('high value plans'), IPART could review a mix or sample of plans across a range of values, or IPART could review plans on an 'exception basis' – eg, in response to concern from developers or other parties that a council has not followed a reasonable methodology in developing its contributions plan.

Depending on the objective, there are a range of options DPIE and the Productivity Commission could consider, including:

- ▼ Maintaining the current focus for IPART to review high value plans
- ▼ Different monetary thresholds for metro and regional areas
- ▼ Monetary thresholds applying only to works costs (excluding land costs)
- ▼ Determining plans for IPART review based on:
 - The existence of unresolved issues or concerns identified by the affected parties, and/or
 - Referral from a panel of industry experts.

We would welcome the opportunity to discuss these options further.

While these and other options for reform are being considered, we recommend that the thresholds be indexed by CPI from the current financial year until the reforms are implemented. Indexing by CPI is widely used by councils and in the SIC system and should be used as an interim measure only.

2.3 Application of the Practice Note to plans reviewed by IPART

The exclusive application of the Practice Note to contributions plans that are reviewed by IPART effectively sets a different standard for these plans.

The most significant difference arises from the application of the essential works list. We understand that the objective of the essential works list is to:

- ▼ Ensure that all development is provided with the necessary 'base level' of local infrastructure
- ▼ Prevent 'gold-plating' of local infrastructure, and thereby minimise contribution rates.

These are sound objectives for all contributions plans, however the essential works list currently only applies to plans reviewed by IPART (which, to date, have been higher value plans).

The difference in the treatment of plans subject to the essential works list is seen most clearly in relation to open space and community services. For example, plans subject to IPART review may include land for community services (such as libraries and community centres) but not the capital costs associated with providing these services. For open space, these plans may only provide 'base level' open space embellishment that is defined to exclude items such as

skate parks and BMX tracks. Plans that are not subject to IPART review may include the capital costs for these items.

All stakeholders require certainty about the rules and processes that will apply to a certain development. If a different standard applies to plans there should be a clear policy rationale for the difference and any change to these standards (eg, through changes to thresholds or triggers for IPART review) should be phased in over a reasonable time to allow for adjustment in the industry.

2.4 Impact of a threshold triggering IPART review of plans below the threshold

To date, IPART has not reviewed an existing plan where contribution rates have moved from below the threshold to above the threshold because of an increase in costs. This is likely to be largely because of the application of the essential works list to plans subject to IPART review, which means plans previously not subject to IPART review would have to remove any infrastructure items not on the essential works list if they became subject to IPART review. It may also reflect that the IPART review process is an additional step for councils to undertake.

Without indexation of thresholds for IPART review, the threshold may have acted as an efficiency dividend, whereby councils find ways to deliver infrastructure against contributions that have fallen in real terms. Councils have had the option to apply to levy contributions above the threshold, but may have considered that this is not worthwhile given the requirement to comply with the essential works list and to be subject to IPART review.

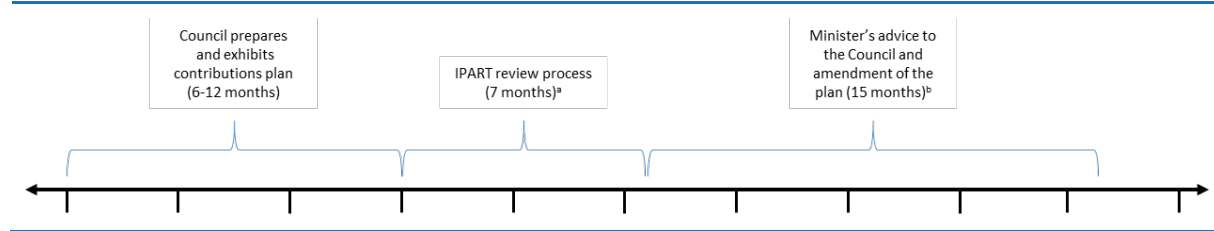
However, where reduced real contributions lead to a funding shortfall as costs increase, this may result in some councils not being able to deliver essential infrastructure to meet the needs of growing communities or to the cost of infrastructure being borne by ratepayers of the local government area.

2.5 The IPART review process

DPIE identifies the increasing length of the IPART review process as a key rationale for process improvement in infrastructure contributions. We note that DPIE's representation of the timeframe for typical reviews, at page 4 of the Discussion Paper, may be misleading. Over the past nine years, IPART's assessment has taken an average of seven months. Since June 2016, advice from the Minister to a council following IPART's final report has taken an average of 15 months.³ This is shown in Figure 1.1. The recent appointment of a Minister's nominee has been an important development that is likely to reduce the time between IPART finalising its review and providing it to the Minister and his nominee, and the Minister or his nominee then providing their advice to a council.

³ This is when Ministerial advice to councils was first published. Prior to this date, the Minister's advice was provided only to the relevant council.

Figure 1.1 Contributions plan timeline



- a** Average review time for all completed assessments (excluding when plans are 'on hold', pending further information from the council). This has not increased over time, despite an increase in the number of plans submitted to IPART and additional stakeholder consultation since 2019 with the release of a draft report.
- b** Average number of months between IPART final report and receipt of advice from the Minister, for all assessments finalised after June 2016. This does not include the time taken by councils to action recommendations and adopt the plan.

Source: IPART estimates.

We also note that councils are likely to complete IPART's application form for assessment of their plans by IPART either in preparation for public exhibition or during the period of exhibition of a plan. This should add very little time to the overall timeframe for a review.

3 The IPART terms of reference and the importance of regular review of contributions plans

DPIE has proposed to review the IPART terms of reference to:

- ▼ Clarify its purpose and remove duplications with the Practice Note
- ▼ Consider introducing a targeted review of additional information to facilitate quicker review
- ▼ Simplify consultation requirements so that IPART is only required to consult with the relevant council
- ▼ Modernise and clarify wording, references and definitions.

We agree with DPIE's proposals to clarify the purpose of the terms of reference, remove duplications with the Practice Note and to modernise and clarify wording, references and definitions. We also consider that councils should regularly review and update their contributions plans (eg, every 3 to 5 years, depending on stage of development).


However, we have concerns with DPIE's proposals for targeted reviews, on the basis that we consider that any review should be symmetric and not just review what has changed in the plan but also what should have changed. We consider that councils should regularly review and update contributions plans to ensure they reflect up-to-date planning assumptions and infrastructure requirements and that the estimated costs in a plan are still reasonable.

We also have concerns with DPIE's suggestion that IPART would not consult with all stakeholders on our draft report, as this would not be consistent with principles of procedural fairness or best practice regulation.

3.1 Targeted review of plans may result in sub-optimal development outcomes

A targeted review may allow councils to focus on areas of a plan where costs have increased, while ignoring other elements that could reduce contribution rates, such as increased population projections. We are concerned that the option of targeted review could lead to an asymmetric approach to review of contributions plans and sub-optimal outcomes for the residents of development areas.

We consider that any review of a contributions plan should be symmetric, in that it looks at both what the council has changed since the last review as well as what it should have changed – given changing circumstances and the latest available information. We note that a review of a plan can be holistic (and hence symmetric), while still drawing on information and analysis of an earlier review where it is still relevant – thus minimising the time and information required to undertake the review.



The current terms of reference requires IPART to review a whole plan against the Practice Note and EP&A Regulation on receipt of an application. However, when reviewing a plan that we have previously reviewed, we make sure our analysis is proportionate, with a greater focus on those elements of a plan that have changed or should have changed since we last reviewed the plan. For other elements of the plan, we may consider our previous analysis, and determine that the previous analysis remains relevant (eg, for aspects of a plan that have not changed and are not impacted by changes to underlying planning assumptions such as expected population). We followed this approach in our assessment of The Hills Shire Council's Contributions Plan 15 for Box Hill (CP15) in 2018, which took four months to complete.

It is also unclear under DPIE's proposal whether councils would be required to publicly exhibit a targeted revision of a contributions plan. We consider that, to afford procedural fairness to affected stakeholders, all revisions to a contributions plan should be subject to the consultation requirements under clause 28 of the EP&A Regulation.

3.2 Councils should regularly review and update contributions plans

We consider that councils should regularly review and update contributions plans to ensure they reflect up-to-date planning assumptions (including population projections) and infrastructure requirements and that the estimated costs in the plan are still reasonable. We have consistently recommended that councils regularly review their contributions plans for this reason, based on the stage of development:

- ▼ For plans with development in its **early stages**, we consider councils should review and update the plan **every three years**
- ▼ For plans in **later stages**, where the infrastructure needs are more certain and a council has obtained detailed designs and cost estimates, review should occur **every five years**.

These timeframes are intended as a guide only. Earlier review may be desirable if significant development has occurred or planning assumptions change.

The consequences of failing to regularly review a contributions plan are highlighted by The Hills Shire Council's Contributions Plan 13 for North Kellyville (CP13), as outlined in Box 3.1.

Box 3.1 Issues arising from infrequent review of a contribution plan

CP13 was first assessed by IPART in 2011. The council next reviewed the plan in 2018 and submitted it to IPART for assessment in late 2018. The draft plan submitted to IPART and the council's updated information provided through our assessment reflected:

- ▼ Significant changes to planning assumptions (the expected population in the North Kellyville Precinct increased by 5,030 people (32.3%) between our 2011 and 2018 assessments of CP13)
- ▼ Significant changes to the scope of infrastructure (including an \$18.42 million (87.7%) increase in the cost of delivering two major sporting fields)
- ▼ New design and costing information, including actual costs for works delivered, and site-specific estimates. For transport works, the council provided revised costs, reducing transport costs by \$2.64 million (2.9%).

The time between review and the significant changes to CP13 highlights a number of issues:

- ▼ **Differences in contribution rates over time:** Significant changes to planning assumptions and/or costs that are not addressed in a timely fashion through amendments to a plan, may result in large differences in the contribution rates paid by developers in early stages compared with the rates paid by developers in later stages of the development.^a
- ▼ **Infrastructure may not meet the needs of development:** Changes to planning assumptions will change the demand for infrastructure. Therefore, these changes should be a trigger for the review of plans to ensure councils can provide the necessary infrastructure. In the case of land for open space in particular, if review of a plan does not occur in response to changes to planning assumptions, then councils may not be able to acquire additional land to meet the needs of an increased population.
- ▼ **Potential for inefficient costs.** Regular review of a plan allows for early-stage cost estimates to be replaced with actual costs or site-specific estimates, as they become available. When early-stage estimates are not regularly updated, these estimates (and in some cases, significant allowances) are retained in the plan. These costs are passed on to development.

^a To date, the impact of intertemporal inequality has been minimal because contributions above the cap (currently set at \$45,000 per residential dwelling) have been funded by the State Government through the Local Infrastructure Growth Scheme and not by developers.

Regardless of the stage of a plan, we consider there are elements of every plan that should be updated at each review:

- ▼ Underlying planning assumptions (including expected population)
- ▼ Actual costs incurred by the council to acquire land and deliver infrastructure
- ▼ The average values used to estimate the cost of land that is yet to be acquired
- ▼ The timing of infrastructure delivery, based on the needs of development to date and anticipated development.

Failure to regularly review and update these elements of a plan can lead to sub-optimal outcomes, as shown by the example of CP13. For example, where there has been an increase in population in a precinct, we assess whether the infrastructure in the plan meets the needs of the additional anticipated population. This is particularly important in relation to the

provision of transport infrastructure and open space. If this review and assessment does not occur, the infrastructure provided may not meet the needs of the future population.

Once the infrastructure needs of a development have been assessed against its updated population projections, it is also important to update the contribution rates. For a given level of infrastructure costs, a higher population estimate will result in lower contribution rates (and vice-versa), as most contribution rates are determined on a per person basis.

3.3 IPART consultation through a draft report affords procedural fairness to affected stakeholders

The current terms of reference require IPART to consult with DPIE, the relevant council and any other person IPART considers appropriate.

For plans submitted since December 2018, we have published a draft report and invited comments from stakeholders. As DPIE notes at page 13 of the local infrastructure contributions plans discussion paper, IPART's consultation through a draft report provides an opportunity for the community to provide input on our draft recommendations.

In submissions to our draft assessment reports, development industry groups have identified that the opportunity for industry to engage in the IPART assessment process is welcome.⁴

The flexibility proposed by DPIE in requiring IPART to only consult with the relevant council, would not prevent us from consulting more broadly. If the terms of reference are amended in this way, we would continue to consult more broadly through a draft report to afford procedural fairness to affected stakeholders. We note that public consultation on our draft report occurs at the same time we consult the relevant council and therefore it does not delay our assessment process.

Table 1 shows the plans we have assessed since November 2018 and the breakdown of submissions we received on each draft report. We anticipate that the level of stakeholder interest in our reviews and our draft reports will increase with eligibility for LIGS funding closing on 30 June 2020.

⁴ For example, Urban Development Institute of Australia (UDIA) Submission to IPART Draft Report - *Assessment of Vineyard Contributions Plan*, 28 June 2019, Property Council of Australia Submission to IPART Draft Report – *Assessment of West Dapto Contributions Plan*, 27 March 2020.

Table 1 Submissions to our published draft reports

Contributions Plan	Submissions from				
	Council	Developers	Industry groups	Individuals	Total
Vineyard CP First Draft Report May 2019	1	2	1	6	10
Vineyard CP Second Draft Report September 2019	1	1	-	6	8
CP17 – Castle Hill North September 2019	1	-	-	3	4
West Dapto CP February 2020	1	3	4	12	20
Total submissions					42

Public consultation on a draft report is consistent with best practice regulation and affords procedural fairness to stakeholders who are affected by IPART's recommendations and the final decision of the Minister or Nominee – which is particularly important without LIGS funding. It allows us to seek comment on:

- ▼ Any new information submitted to us by the council during the review process (after public exhibition)
- ▼ Any consultant reports we have commissioned for assessment
- ▼ Our draft recommendations, and the reasoning, analysis and information underpinning them.

Our recent assessments demonstrate the extent of new information that is being provided by councils through our assessment process (see Box 3.2). In many cases, this new information would significantly impact costs and contribution rates in plans. Ideally, councils would not submit information through the IPART review process that was not available at public exhibition. To date, we have considered this information, but note that the provision of new information following public exhibition can undermine the public exhibition process and delay our assessment.

Without public consultation through our draft reports, stakeholders would not have an opportunity to comment on information that may affect their interests. There is a risk that this could amount to a failure to afford procedural fairness, and could give rise to a legal challenge of IPART's recommendations or report, or the Minister's or nominee's decision.

Consulting on our draft findings and recommendations is also consistent with best practice policy development and regulation, and hence is a common feature of IPART reviews across a range of other sectors.

Box 3.2 Recent assessments where councils provided extensive new information

Recent examples and implications include:

- ▼ **Vineyard Contributions Plan** – The council's submission to our Draft Report proposed revised cost estimates for land and works in the plan that were \$25.16 million (15.2%) higher than in the plan it originally submitted for assessment, with implications for total plan costs and contribution rates. Given the materiality of this information, we published a Second Draft Report taking into account this new information.
- ▼ **West Dapto Contributions Plan** – During our assessment, the council provided additional information including updated actual costs for land and infrastructure items in the plan, costs for four additional detention basins which were unintentionally omitted from the plan and updated information about council-owned operational land. The additional information increased costs in the plan by \$10.93 million (1.1%). We placed our assessment on hold while this information was collated, and the new information was publicly exhibited in our Draft Report.
- ▼ **Contributions Plan No. 13 North Kellyville Precinct** – The council's response to our draft assessment^a included extensive new information, including revised actual costs and detailed designs for transport works, and an \$18.42 million (87.7%) increase in the cost of embellishing two major sporting facilities. Given the stage of the plan, the extent of new information provided by the council, and the time since the plan was publicly exhibited, we considered that it was necessary to publish a Draft Report for public consultation.

^a The draft assessment was completed in May 2018 and provided to the council and the Minister only. Our practice of publishing draft reports commenced with plans received after December 2018.

4 Removing existing exemptions

DPIE has proposed to remove the list of grandfathered contributions plans from Schedule 1 of the *Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2012*.

We support a consistent and transparent approach to the regulation of local infrastructure contributions plans. As outlined earlier, we also support the regular review of contributions plans to ensure they reflect up-to-date planning assumptions and infrastructure requirements and that the estimated costs in the plan are still reasonable.

We note, however, that some of the grandfathered plans in Schedule 1 of the Ministerial Direction are likely to have contribution rates above the current thresholds and include infrastructure that would not be consistent with the essential works list. We consider that it would be reasonable to allow councils a period of time to review these plans and adjust the infrastructure included in them as necessary, where they are likely to be subject to the essential works list.

Examination of the current thresholds and the operation of the essential works list are matters that would be well-suited to the Productivity Commission's current review. We consider that a decision about removing the existing exemptions should be delayed until this review is finalised.

5 Removing re-exhibition requirements

DPIE has proposed to streamline the process following IPART review by removing the requirement for councils to re-exhibit a contributions plan following receipt of advice from the Minister or Minister's nominee.

We support this proposal. As DPIE notes, the community has opportunities to comment on a contributions plan through the council's public exhibition process and IPART's consultation on a draft report. A council must make the amendments requested by the Minister or Minister's nominee for a plan to be an IPART-reviewed plan, therefore there is sufficient incentive for a council to comply with the request. Re-exhibition of the amendments required by the Minister is not necessary.

We also support DPIE's proposal to amend the EP&A Regulation to require councils to publish contributions plans on their websites or on the NSW Planning Portal. This will provide transparency for the community and accountability for councils who are required by the Minister or Minister's nominee to make amendments to a contributions plan. We also recommend that DPIE consider requiring councils to publish contributions plans on both platforms, to provide consistency and certainty for stakeholders who operate across multiple Local Government Areas and to allow comparison of councils' contributions plans.

6 Special infrastructure contributions draft guidelines

We welcome the focus in the draft Special Infrastructure Contributions (SIC) Guidelines on strengthening the framework and principles governing SICs.

SICs should be regularly reviewed to ensure they cover the infrastructure required for regional development.

The key principles and framework outlined in the draft guidelines should identify which infrastructure should be funded through a SIC rather than a local infrastructure contributions plan, and clarify the role of each funding mechanism. We note that Principle 3 – The SIC will be reasonable and fairly apportioned – includes a statement that the SIC will not duplicate charges for infrastructure covered by local contributions. We consider this is a reasonable position, however greater clarity is required around how a decision is made about inclusion of an infrastructure item in a SIC rather than a contributions plan.

The funding of Boundary Road, on the border of The Hills and Hawkesbury Local Government Areas (LGAs), is an example that highlights the difficulties in determining the classification of a road and securing funding for infrastructure that transects LGA boundaries and may have regional benefits. The partial costs of Boundary Road are currently included in Hawkesbury City Council's Vineyard Contributions plan and The Hills Shire Council's Contributions Plan 15 – Box Hill. Both councils have experienced difficulties in achieving the certainty they require to coordinate the delivery of this road, including certainty about the classification of the road, its reasonable cost and the proportion that should be funded by each council. We consider that infrastructure that provides a regional or sub-regional benefit or is difficult to fund through other mechanisms should be considered for funding through a SIC.

We also observe that the contingency allowances outlined at page 11 of the draft guidelines are high compared with the allowances specified in IPART's 2014 Benchmark Report⁵ and compared with contingency allowances included in cost estimates prepared by councils and their consultants for contributions plans that have been submitted to IPART for assessment.

⁵ IPART, *Benchmark costs for local infrastructure contributions*, April 2014.

7 Planning agreements draft policy framework

Our comments on the draft planning agreements policy framework relate to our observations in assessing local infrastructure contributions plans, specifically:

- ▼ Planning agreements use early stage cost estimates with high contingency allowances from contributions plans
- ▼ There are timing issues associated with planning agreements and IPART review of contributions plans.

7.1 Some planning agreements use early stage cost estimates with high contingency allowances

We have observed that some planning agreements include early stage cost estimates from local infrastructure contributions plans. These early stage cost estimates include high contingency allowances, reflecting that further detailed design and costing work is required to provide greater certainty. It is appropriate for a council to include these cost estimates in the early stages of a contributions plan and to refine the design and cost estimate as planning progresses.


The use of early stage cost estimates in planning agreements locks the estimate in as the actual cost of an infrastructure item in a contributions plan. This is because, where a planning agreement is based on an early stage cost estimate that we have assessed as reasonable for that stage, we do not have an opportunity to reconsider our assessment of this cost. This precludes the council pursuing a more efficient cost through an open tender process. It also contrasts with the general procurement requirements that apply to councils under section 55 of the *Local Government Act 1993*. Section 55(1) requires councils to invite tenders before entering into specified contracts (although section 55(3) excludes certain contracts from the tendering requirements, for example contracts that involve an estimated expenditure or receipt of less than \$250,000).

We are concerned that this practice may inflate the costs of local infrastructure contributions and preclude the pursuit of more efficient costs.

7.2 Planning agreements do not limit IPART review

We have also observed that some councils enter into planning agreements that include costs for infrastructure items before the relevant contributions plan has been submitted to IPART for assessment. This practice may lead to sub-optimal development outcomes for a community or a funding shortfall that would be met from a council's general revenue.

If a planning agreement includes infrastructure that does not meet the needs of new development, nexus would not be established for the infrastructure. We would recommend the council provide infrastructure to meet the needs of the new development, as required by the assessment criteria in the Practice Note. For example, a council may agree with a developer



that a roundabout be provided at an intersection when the relevant technical study recommends a higher cost signalised intersection. If the council has entered into the planning agreement before IPART review, the community may be faced with either the sub-optimal roundabout or the higher cost of providing the signalised intersection that is needed.

Similarly, if a contributions plan includes infrastructure at a cost that is not reasonable, we would recommend the council remove the unreasonable portion of the cost as required by the assessment criteria in the Practice Note. If we find that the costs in a planning agreement are higher than the reasonable cost, the developer would receive an offset greater than the value of the infrastructure in the plan. This may result in the council facing a shortfall in contributions.

To ensure that councils understand the risks of entering into planning agreements before the relevant contributions plan has been reviewed by IPART, we suggest the practice note clarifies that the provisions of a planning agreement do not limit IPART's assessment of a contributions plan under the criteria in the Practice Note.

8 Amendments to the EP&A Regulation

We support the proposed amendments to the EP&A Regulation to:

- ▼ Improve the reporting on contributions received through contributions plans and planning agreements
- ▼ Streamline the process to adopt a contributions plan following receipt of advice from the Minister or Minister's nominee.

We agree that the proposed amendments to require planning authorities to provide more detailed reporting on infrastructure contributions and planning agreements will provide greater transparency and accountability. We currently request some of this information from councils to inform our assessments of contributions plans and would not have to request the information if it is publicly available.

Our comments on DPIE's proposal to streamline the process for making a contributions plan following receipt of advice from the Minister or Minister's nominee are outlined in section 4 of our submission.

9 Other opportunities for improvement of the current system

We have identified a number of other opportunities for improvement of the current local infrastructure contributions system that could be considered by DPIE in a second stage of improvements and by the Productivity Commission. These include:

▼ Land costs in contributions plans

In recent assessments of land costs in contributions plans we have found:

- Variation in the quality of advice and adequacy of analysis provided by valuers engaged by councils
- Inconsistency in valuer advice across plans assessed by IPART
- Insufficient information provided by councils and valuers to support proposed cost allowances associated with land acquisitions.

These issues could be addressed through greater involvement of the NSW Valuer-General and/or the development of standard instructions for valuers who advise councils on average land values in contributions plans. These measures would address a number of the issues that arose in our assessment of land costs in Hawkesbury City Council's Vineyard Contributions Plan, where various registered valuers held different opinions on the average market values of land in this precinct.⁶

▼ Infrastructure items that are consistent with the essential works list

The essential works list explicitly excludes some items as not being consistent with base level embellishment, including skate parks, BMX tracks and multi-storey carparks. We consider that given changing recreation patterns and trends in higher density development, it is time to review the essential works list to ensure councils are able to provide the infrastructure needed by their communities.

▼ Certainty around planning assumptions (particularly population projections) to be used in contributions plans

Currently, there is a lack of clarity on the appropriate source of planning assumptions that underpin contributions plans. These assumptions, particularly population estimates, are critical for our assessment of contributions plans. Councils should have certainty about these assumptions before a plan is placed on public exhibition. Confirmation of the appropriate population estimate to use in a contributions plan should be provided to the relevant council by DPIE on request when the council prepares or reviews a plan.

⁶ See IPART, *Assessment of Vineyard Contributions Plan*, November 2019, Chapter 9.

▼ **Consultation by councils on contributions plans through public exhibition**

Council engagement with stakeholders could be greatly improved by providing access to all supporting information that would not be classified as commercial-in-confidence. With greater interest in contribution rates post-LIGS, there may also be opportunities to improve the presentation and accessibility of information about contributions plans for public exhibition across all councils. This could be achieved through the use of a template providing standard information about contributions plans and with improved mapping that allows stakeholders to identify the location of all land and works in a plan.

▼ **Development that is exempt from paying contributions**

The approval of the relevant Minister to the levying of contributions on Crown development is required but rarely granted and, in effect, Crown developments (particularly schools) are often exempt from contributions. This creates an issue for councils, as Crown development creates demand for infrastructure but it cannot recover costs from the State. This infrastructure is then funded through higher contributions from other development, or through general rates. Councils have adopted varied approaches to apportioning the costs associated with Crown development, with varying implications for stakeholders. Reform of the contributions system could provide a consistent approach to apportioning the costs of infrastructure required to meet the demands of Crown development.