

Independent Pricing and Regulatory Tribunal  
New South Wales

October 2020



**LOCAL GOVERNMENT**  
**2019–20**  
**ANNUAL REPORT**

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### The Independent Pricing and Regulatory Tribunal (IPART)

We make the people of NSW better off through independent decisions and advice. 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>.

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# 1 Overview

The NSW Government has delegated various functions related to local government to the Independent Pricing and Regulatory Tribunal of NSW (IPART).

The NSW Government requires IPART to report on these functions to the Minister for Local Government and the Minister for Planning and Public Spaces by 31 October each year. This report on the 2019-20 financial year covers:

- ▼ Functions delegated to IPART under the *Local Government Act 1993* (the LG Act), regarding:
  - Setting of the 'rate peg', which determines the maximum annual change in councils' general income
  - Assessment of special variation applications from councils, where councils seek to increase their general income by more than the rate peg
  - Assessment of applications from councils to increase their minimum rates
  - Domestic waste management charges levied by councils.
- ▼ IPART's assistance to the Minister for Planning and Public Spaces in reviewing local infrastructure contributions plans, under the *Environmental Planning and Assessment Act 1979* (EP&A Act).

IPART's functions under the LG Act are based on terms of reference issued by the Premier in 2010 under section 9 of the *Independent Pricing and Regulatory Tribunal Act 1992* (IPART Act), and the delegation of various powers under the LG Act by the Minister for Local Government. The terms of reference and delegation are in Appendix A.

The current terms of reference for reviewing contributions plans was issued by the Premier in 2018, and is in Appendix B.

In addition, we undertook a review of local government election costs during 2019-20, under a terms of reference issued by the Premier under section 9 of the IPART Act. Our final report was released by the NSW Government in September 2019. The terms of reference is in Appendix C.

A list of the reports and papers we have published during 2019-20, related to our local government functions, is in Appendix D.

In preparing this annual report, we recognise that this year has presented a number of challenges for local government, through drought, bushfires and COVID-19. Where possible, we have taken these impacts on councils and stakeholders into consideration, for example through providing an extended period for completion of our local government cost index survey for the rate peg, and allowing for longer consultation periods in our reviews. We also seek to continually improve and streamline all our processes, in order to better meet the needs of our stakeholders, councils and ratepayers, and to improve the efficiency of our local

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government functions. This annual report presents our functions in 2019-20 in this broader context.

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## 2 Variation of councils' general income (the rate peg)

The Minister for Local Government delegated to IPART the power under section 506 of the LG Act to specify the percentage by which councils' general income<sup>1</sup> for a specified year may be varied. The percentage change is known as the rate peg.

We set the rate peg each year to assist ratepayers in getting good value for the rates they are paying, while ensuring councils have sufficient income to provide the services needed and wanted by ratepayers.

IPART announced a rate peg of 2.6% for 2020-21 on 12 September 2019.<sup>2</sup> The rate peg for 2020-21 is similar to the rate peg in recent years, which was 2.7% in 2019-20 and 2.3% in 2018-19.

The calculation of the 2020-21 rate peg was based on an increase in the Local Government Cost Index (LGCI) of 2.6%. We published a Fact Sheet on this decision on our [website](#).

### 2.1 The Local Government Cost Index

The LGCI measures the changes in prices over the past year for a basket of goods and services, materials and labour used by an average council.<sup>3</sup> The basket is made up of 26 components, covering councils' operating and capital costs. The cost components represent the purchases made by an average council to undertake its typical activities.

We constructed the LGCI in 2010 based on a survey we undertook of NSW councils' expenditure. Our 2015 cost survey updated the expenditure weightings to ensure the relativities of the cost items within the LGCI remained accurate. We used this updated LGCI to calculate the rate peg for 2020-21.

To measure the change in prices of almost all components, we use price data from the most relevant Australian Bureau of Statistics (ABS) consumer, producer or wage price index. To calculate the change in the cost of the emergency services levy (ESL) component of the LGCI we used data from Revenue NSW.

Appendix E sets out the LGCI components, their weights and the percentage change in prices, and their overall contribution to the LGCI.

In November 2019 we invited councils to complete a cost survey (similar to the 2015 cost survey) to update expenditure weightings in the LGCI. We revise the expenditure weightings about every four years to ensure they remain accurate. We published a Fact Sheet on our

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<sup>1</sup> General income mainly comprises income from council rates, but also includes certain other annual council charges.

<sup>2</sup> IPART, *Media Release – 2020-21 rate peg for NSW local councils*, 12 September 2019. An order to this effect, signed by the Chair of IPART and dated 12 September 2019, was published in the NSW Government Gazette: *Government Gazette of the State of New South Wales*, 20 September 2019, number 109, p 4157-4158.

<sup>3</sup> More detail on the LGCI is in IPART, *Information Paper - Local Government Cost Index*, December 2010.

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[website](#) in May 2020 that presented the findings of the cost survey. The updated expenditure weights will apply from the 2021-22 rate peg onwards.

### **2.1.1 Emergency Services Levy (ESL)**

The ESL is a component of the LGCI, which reflects changes in contributions by councils to Fire and Rescue NSW, the Rural Fire Service and the State Emergency Service. As the cost of the ESL has increased in recent years, we modified our approach to incorporating this component.

For the 2020-21 rate peg, we changed the way we measure councils' contributions to the ESL by moving from a two-year lag to a one-year lag. This involved a move away from using actual data, which we previously preferred as it reduced the uncertainty associated with forecasts.

We found that Treasury's forecasts, lagged by one year, are sufficiently robust for use in the index. We used forecasts for 2019-20 to calculate the price change in the ESL component of the LGCI for the 2020-21 rate peg, and will maintain this approach going forward.

This change to our process occurred in response to feedback from councils that more timely compensation for rising ESL costs would be beneficial. We note that the NSW Government contributed \$13.6 million to assist councils in funding the increase in the ESL in 2019-20, and we have adjusted for this contribution in the 2020-21 rate peg.

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### 3 Determining councils' applications for special variations and Crown land adjustments

The Minister for Local Government delegated to IPART functions to approve increases to general income that exceed the rate peg (a special variation). The LG Act provides for two types of special variation:

- ▼ A single year increase under section 508(2) (either permanent or for a fixed number of years)
- ▼ Successive, annual increases (for between two and a maximum of seven years) under section 508A.

Increases to council general income due to a Crown land adjustment are also approved under section 508(2).<sup>4</sup>

We assess special variation applications from councils against criteria in guidelines set by the Office of Local Government (OLG), which were published in October 2019.<sup>5</sup>

The special variation process is an important complement to the rate peg, as it allows councils to raise their general revenue above the rate peg where councils make a sufficient case and follow the required process as set out in OLG's guidelines.

We are continually looking at ways to improve and streamline our special variation assessments. This is to better meet the needs of councils and ratepayers, as well as improve the efficiency of our process. To assist ratepayers in engaging with our reviews, we have created an online feedback form. To enhance clarity and assist councils in preparing their special variation applications, we have also released a number of fact sheets.<sup>6</sup>

It is important that councils carefully consider and address OLG's criteria while preparing their applications. This helps to ensure that the impact of proposed special variations on ratepayers is considered by the council, and reduces the risk that councils are required to amend their application and re-apply the following year. The re-application process requires new consultation on the amended plan, which costs councils time and resources. Recognising this, we recommend that councils seeking to make an application for a special variation engage with us early to discuss the information requirements for their particular circumstances.

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<sup>4</sup> Crown land adjustments allow councils to increase their general income to reflect additional rate revenue from land that was previously Crown land becoming rateable through sale to private individuals or transfer to particular State Owned Corporations. OLG assesses councils' requests for Crown land adjustments and makes recommendations to IPART about the appropriate percentage increase to general income. Crown land adjustments are not subject to the standard criteria for a special variation application.

<sup>5</sup> Office of Local Government, *Guidelines for the preparation of an application for a special variation to general income*, October 2019.

<sup>6</sup> See: [www.ipart.nsw.gov.au/Home/Industries/Local-Government/For-Councils/Apply-for-a-special-variation-or-minimum-rate-increase](http://www.ipart.nsw.gov.au/Home/Industries/Local-Government/For-Councils/Apply-for-a-special-variation-or-minimum-rate-increase).

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Demonstrating financial need is one of the criteria in OLG’s guidelines and a key component of the special variation application process. We encourage councils to carefully consider their need to apply for special variations. Councils should consider and provide information on productivity and efficiency measures, in line with the OLG guidelines, as alternatives to a special variation or to reduce the size of the special variation sought. This would reduce the burden on ratepayers, or spread the impact out over time.

We recognise there are circumstances where a council may propose a special variation to fund expenditure to meet the particular needs or preferences of its community,<sup>7</sup> rather than to fund core infrastructure or services. In these cases, we encourage councils to demonstrate ratepayer support through a willingness to pay study. In order to meet the criteria, it is important that any process carried out to demonstrate willingness to pay clearly informs ratepayers of the context, including the financial position of the council, appropriately describes the proposed project, and involves a representative sample of ratepayers.

### **3.1 Determination of the applications received in 2019-20**

In February 2020, IPART received an application from one council (Lismore City Council) for a special variation to apply from 1 July 2020. However, on 21 April 2020 we received a letter from the council notifying us that it had resolved to withdraw its application.

We approved Crown land adjustments to general income for two councils under Section 508(2). These are outlined in Appendix F.

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<sup>7</sup> Previous applications have included projects such as environmental programs, community sporting developments and town beautification projects.

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## 4 Minimum council rates

Section 548 of the LG Act provides for a council to set a minimum amount of a rate. Where a council sets a minimum rate, ratepayers in that rating category pay at least the minimum amount, regardless of the value of their land. There is a statutory limit on the minimum amount of a rate a council may impose. This statutory limit is different for ordinary rates and special rates.<sup>8</sup>

The Minister for Local Government delegated to IPART powers to specify the statutory limit on the minimum amount of an ordinary rate. The statutory limit on the minimum amount of an ordinary rate is changed by amending clause 126 of the *Local Government (General) Regulation 2005*.

In 2019-20, IPART recommended that the statutory limit for the minimum amount of an ordinary rate should increase in line with the 2.6% rate peg increase for 2020-21, increasing the statutory limit from \$540 to \$554. Clause 126 of the *Local Government (General) Regulation 2005* was amended, effective from 1 July 2020.<sup>9</sup> This approach is consistent with previous years, and ensures an even spread of the rating burden by keeping minimum rates and average ad valorem rates growing at the same rate. However, we consider that councils may need to actively align rates through a minimum rate application in situations where the growth in the minimum rate and average ad valorem rate have diverged over time.

Councils seeking to increase the minimum amount of a rate above the statutory limit for the first time, or increase a minimum rate that is above the statutory limit by more than the applicable rate peg or special variation percentage, must apply to IPART for approval. We did not receive any applications for 2020-21.

Where appropriate, we note the importance of councils submitting a minimum rate application in conjunction with their application for a special variation. In preparing a minimum rate application, councils are required to consider the gap between the rates paid by ratepayers on the minimum rate (typically apartments) and ad valorem ratepayers (typically standalone dwellings), and the impact of low minimum rates on the ad valorem rates. In the absence of a minimum rate application, an increase in the council's general income (eg, via a special variation) could result in a disproportionate increase in ad valorem rates. This can be particularly relevant for councils that have a high proportion of apartments.<sup>10</sup>

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<sup>8</sup> *Local Government Act 1993*, ss 548(3) and 548(8).

<sup>9</sup> *Local Government (General) Regulation 2005*, cl 126, notified on the NSW legislation website on 22 November 2019.

<sup>10</sup> Council rates are based on unimproved land value, which means that apartment owners are often only charged the minimum rate.

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## 5 Domestic waste management charges

The Minister for Local Government delegated to IPART powers to specify how councils can vary their annual charges for domestic waste management (DWM) services and to impose conditions with respect to the variation of these charges.<sup>11</sup> Councils must set DWM service charges that do not exceed the reasonable cost of providing the services.<sup>12</sup>

IPART did not impose any limitation on the amount by which councils could vary annual charges for DWM services in 2020-21.<sup>13</sup> This is consistent with our decisions in previous years, based on costs being independently audited by OLG each year, and many councils outsourcing DWM services through a competitive tender process. We had therefore been satisfied that DWM service charges were likely to be both reasonable and efficient, and that the cost of additional regulation would likely outweigh the benefit.

In June 2019, OLG informed IPART that its process of auditing the reasonable cost basis of DWM service charges had been suspended. OLG intends to enter into a wider audit arrangement with the Auditor General, and DWM service charges may be included, but there is no definite plan or timeframe.<sup>14</sup>

In November 2019, IPART commenced a review of NSW local council DWM service charges. The review will consider the pricing principles used to guide councils on setting these charges, and potential regulatory or oversight options.

While we have previously decided not to regulate waste charges, we now need to consider whether this is the right approach going forward. We have some evidence that domestic waste management service charges may not be delivering good value for ratepayers and there may be challenges for Councils trying to purchase and price these services.

IPART's review of councils' DWM charges will seek feedback on whether stakeholders consider that there are any issues with the prices charged for waste management services and, if so, how IPART should respond. Given the broader context for local councils, we note that caution is needed and prescriptive regulation of DWM charges may not be appropriate compared with other approaches, such as benchmarking, and sharing best practice guidance to help councils and ratepayers to get good quality services at a fair price.<sup>15</sup>

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<sup>11</sup> Under sections 507 and 508(7) of the *Local Government Act 1993*.

<sup>12</sup> *Local Government Act 1993*, section 504(3).

<sup>13</sup> An order to this effect, signed by the Chair of IPART and dated 12 September 2019, was published in the NSW Government Gazette: *Government Gazette of the State of New South Wales*, 20 September 2019, number 109, p 4157-4158. Note, prior to the delegation of this function to IPART, Ministers did not customarily exercise their powers under the LG Act in relation to charges for domestic waste management services.

<sup>14</sup> Advice provided at OLG – IPART quarterly meeting, 12 June 2019

<sup>15</sup> See: <https://www.ipart.nsw.gov.au/Home/Industries/Local-Government/Reviews/Domestic-Waste-Management-Service-Charges/Review-of-domestic-waste-management-service-charges>

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## 6 Local infrastructure contributions plans

During 2019-20, we assisted the Minister for Planning and Public Spaces by reviewing local infrastructure contributions plans (contributions plans).

We are continually looking at ways to improve and streamline our assessments of contributions plans, to minimise the time, cost and complexity of the plan-making process and enhance certainty for councils and other stakeholders.

### 6.1 Reviews of contributions plans

IPART is required to assess councils' section 7.11 contributions plans<sup>16</sup> in accordance with a Direction by the Minister for Planning and Public Spaces issued under section 7.17 of the EP&A Act.<sup>17</sup> The criteria for assessment is set out in DPIE's Practice Note.<sup>18</sup>

For each 'Reviewable Contributions Plan', the criteria require us to assess whether:

1. The public amenities and public services in the plan are on the essential works list.
2. There is a reasonable nexus between the proposed public amenities and public services outlined in the plan and the development.<sup>19</sup>
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 of costs.
6. The council has conducted appropriate community liaison and publicity in preparing the contributions plan.
7. The plan complies with other matters we consider relevant.

We also assess whether the plan contains the information required by Clause 27 of the *Environmental Planning and Assessment Regulation 2000*.

Under the terms of reference, we are required to provide the Minister for Planning and Public Spaces and the relevant council with a report on our review and publish the report on our website.

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<sup>16</sup> Section 7.11 (formerly s94) of the EP&A Act enables consent authorities (usually councils) to levy developer contributions, as a condition of development consent, towards the cost of providing local public infrastructure and facilities required as a consequence of development.

<sup>17</sup> Minister for Planning, *Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2012*, 21 August 2012, as amended. The Direction was amended most recently in June 2020.

<sup>18</sup> Department of Planning and Environment (DPE), *Local Infrastructure Contributions Practice Note*, January 2019 (Practice Note).

<sup>19</sup> Nexus ensures that there is a connection between the land and facilities in a contributions plan and the demand or need for them arising from the new development.

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A Reviewable Contributions Plan is one that proposes contributions above \$30,000 per lot or dwelling in identified areas and \$20,000 per dwelling in other areas.

Until 30 June 2020, an 'IPART-reviewed contributions plan':

- ▼ Entitled councils in specified transition areas to levy up to a capped amount (up to \$45,000 per lot or dwelling in greenfield areas and \$30,000 per lot or dwelling elsewhere) and apply for Local Infrastructure Growth Scheme (LIGS) funding for the amount of any contribution which is above the cap.
- ▼ For other areas, entitled the council to levy the full contribution amount under the plan.

Both LIGS funding and caps on local infrastructure contributions concluded on 30 June 2020,<sup>20</sup> but IPART will continue to assess contributions plans that propose residential contribution amounts above the threshold amounts.

## 6.2 Contributions plans reviewed in 2019-20

During 2019-20, IPART reviewed seven contributions plans. We finalised our assessment of five plans, commenced assessing one plan, and continued the assessment of a plan that was put on hold last year. Details of the plans and the timetables for reviewing them are in Appendix G. A summary of IPART-recommended adjustments to costs in the plans is in Appendix H.

It is important that costs in contributions plans reflect the reasonable cost to the council of providing local infrastructure for the new development. If costs are too high, developers could pay too much for local infrastructure and development could be unduly impeded.<sup>21</sup> If costs are too low, ratepayers would effectively subsidise the new development, or councils may not be able to provide the infrastructure needed to support the new development. Cost-reflective developer contributions are also important to ensure that development only occurs where the benefits of development exceeds its costs.

Where costs in the plan are not reasonable, we recommended adjustment of these costs in our assessments. Our assessments have most commonly recommended adjustments to the cost of land and/or works in a contributions plan where the essential works, nexus or reasonable cost criteria are not met. We may also recommend adjusting the apportionment of costs in the plan, either across different types of development or sub-catchments within the contributions plan, or between the plan and development in areas outside the catchment of the plan.

The recommendations in our completed assessments ensure the plans reflect the reasonable cost of providing infrastructure:<sup>22</sup>

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<sup>20</sup> Except for in The Hills and Blacktown local government areas, where a Ministerial Direction dated 18 June 2020, which amends the *Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2012*, introduced an interim cap on contributions of \$50,000 for development consents granted between 1 July 2020 and 31 December 2020.

<sup>21</sup> With the conclusion of LIGS funding and caps on local infrastructure contributions, developers in most areas will pay the full costs of local infrastructure to service their developments.

<sup>22</sup> The reasonable cost of land and works in each contributions plan is estimated in the base period of the plan. These values are not directly comparable between plans.

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- ▼ Our assessment of The Hills Shire Council's *Contributions Plan No. 12 Balmoral Road Release Area* identified a reasonable cost of land and works in the plan of \$200.98 million (compared with \$209.58 million in the plan submitted) and recommended cost reductions for transport works, stormwater management works and strata space for community facilities.
  - ▼ Our assessment of Blacktown City Council's *Contributions Plan No. 24 for Schofields* identified a reasonable cost of land and works in the plan of \$241.16 million (compared with \$262.58 million in the plan submitted). Our overarching recommendation was for the council to undertake a comprehensive review of the plan and infrastructure required.
  - ▼ Our assessment of Hawkesbury City Council's *Vineyard Precinct Section 7.11 Draft Contributions Plan* identified a reasonable cost of land and works in the plan of \$153.95 million (compared with \$165.27 million in the plan submitted), with key recommendations including a reduction in land costs and an increase in works costs.
  - ▼ Our assessment of The Hills Shire Council's *Contributions Plan No.17 – Castle Hill North* identified a reasonable cost of land and works in the plan of \$70.02 million (compared with \$79.02 million in the plan submitted), which mostly reflects a reduction in works costs relative to the plan submitted.
  - ▼ Our assessment of Wollongong City Council's *West Dapto Contributions Plan 2020* identified a reasonable cost of land and works in the plan of \$944.31 million (compared with \$972.04 million in the plan submitted). Our key recommendations included changes to the council's approach to apportioning costs amongst development within the plan's area.

In several assessments, we have noted the importance of councils regularly reviewing their plans (eg, at least every five years). This would help ensure contributions plans include the essential local infrastructure required for the new development, and that the contributions collected under a plan match as closely as possible the reasonable cost to the council of providing the infrastructure.

### **6.3 Refinements to our assessment process**

During 2019-20 we refined our assessment processes through a revised land cost assessment information paper, an information paper on indexation of contribution rates and a revised contributions plan application form. The changes are intended to increase transparency about how we conduct our reviews, and to streamline the assessment process.

#### **6.3.1 Revised land cost assessment information paper**

In April 2018 we published an information paper on our process for assessing the cost of land in contributions plans. In June 2020 we revised this information paper to outline the valuation advice that a council should provide to IPART where it considers that constrained land has a higher acquisition cost than undevelopable land such as riparian land.

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### **6.3.2 Indexation of contribution rates information paper**

In July 2019, we released an information paper which explains how IPART assesses the provisions for indexing contribution rates in local infrastructure contribution plans that are submitted to us for review. As part of our assessment of reasonable cost, we consider whether the council's proposed method of indexing contribution rates is reasonable. Our information paper provides general guidance for councils on indexation methods and considerations for the indexation of contributions for works and land costs.

### **6.3.3 Revised application form**

In February 2020, we consulted with stakeholders on our contributions plan application form, and released a revised version of the application form in June 2020. The revised form includes requirements for councils to document evidence establishing the need for the infrastructure and the reasonable cost of the infrastructure, to explain changes to revised plans in greater detail, and to provide maps to facilitate our assessment of land costs.

The revision is intended to improve the quality and completeness of information councils provide to IPART with an application. This should reduce the number of requests for further information we make throughout our assessment process and result in reduced assessment timeframes. Councils have indicated that this change will require more time and resources to complete the application form. However, we consider that it will save council resources over the course of the assessment process, particularly if councils ensure they collect this information over the course of developing their contributions plan.

## **6.4 Opportunities for councils in preparing contributions plans**

The contributions plans we assess often include costs that do not meet the Practice Note criteria. Recommending adjustments to these costs through our assessment process adds to the time and complexity of the plan-making process and may increase uncertainty for councils.

As noted in section 6.3, we have sought to improve elements of our assessment process to assist councils in preparing contributions plans. We consider that the following would also help to ensure that more of the costs submitted to us in contributions plans are reasonable:

- ▼ Early engagement with IPART when preparing a contributions plan can reduce the time and uncertainty of our assessment process for councils. Early engagement can support councils in meeting the Practice Note criteria, for example, ensuring they provide the necessary information to establish nexus for land and works in the plan, and to demonstrate that costs are reasonable. This can reduce our requests for further information and streamline the assessment process.

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- ▼ Comprehensive stakeholder engagement during exhibition of the contributions plan will assist councils in ensuring the land and works in the plan, and their associated costs, are reasonable from the perspective of developers and other stakeholders. It is important that stakeholders are informed of, and given an opportunity to provide comment on, estimated costs, proposed works and contributions rates, and that councils respond to issues raised by stakeholders. This will reduce uncertainty in the assessment process.
  - ▼ The use of up-to-date population data ensures that a council is accurately forecasting its infrastructure needs and calculating contributions. For example, where population forecasts increase in a precinct, contributions rates should fall (for a given level of infrastructure). Where incorrect population estimates are used, there may be implications for the total contributions collected by the council under the contributions plan, as well as equity implications between current and future development.<sup>23</sup> Adjustments will be required which can add to the time and complexity of the assessment process.
  - ▼ Similarly, regular reviews of contributions plans<sup>24</sup> ensure that the costs of land and works in the plan are more likely to reflect the reasonable cost of providing necessary local infrastructure. This can reduce the time required to assess a contributions plan.
  - ▼ Early investment in land and infrastructure could reduce the costs in contributions plans, the reliance on cost estimates, the impact of contingency allowances on overall costs, and additional costs of constructing temporary works to facilitate development.<sup>25</sup> Where 'actual' costs, reflecting competitive tendering processes, are included in a plan, they are more likely to be reasonable and reliable than cost estimates. The use of 'actual' costs in a plan can reduce the complexity and uncertainty of the IPART assessment process.

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<sup>23</sup> All else being equal, if population estimates are too low, per person contributions will be higher than they should be. If councils collect at this higher rate under the plan, future contributions will need to be lower so that the council does not over-collect for the land and infrastructure in the plan. The reverse is true if population estimates are too high.

<sup>24</sup> We recommend a review at least every five years.

<sup>25</sup> This may include temporary access roads, detention basins and other stormwater management works.

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## 7 Assistance to the Minister for Local Government

IPART conducts special reviews ('section 9 reviews') on request from the NSW Government under section 9 of the IPART Act. In 2019-20 we undertook one section 9 review relating to local government election costs, and DPIE concluded consultation on three of our previous section 9 reviews on the local government sector.

### 7.1 Section 9 review of the costs of conducting local government elections

In August 2019 we completed a review of the costs of conducting local government elections, under a terms of reference issued by the Premier under section 9 of the IPART Act. The terms of reference is in Appendix C.

Our Final Report recommended a costing methodology to be applied in determining the amount the NSW Electoral Commissioner (NSWEC) charges councils for local government election services. We also made a number of recommendations to promote competition in the supply of election services and hence greater choice for councils – including that the Government provide a subsidy direct to councils rather than the NSWEC.

Our Final Report was released on 18 September 2019, and is available on our website.

### 7.2 NSW Government response to the review of the local government rating system

In December 2015 the NSW Government asked IPART to review the local government rating system in NSW under a terms of reference issued by the Premier. The purpose of the review was to develop recommendations to improve the equity and efficiency of the rating system, in order to enhance councils' ability to implement sustainable fiscal policies over the long term.

The Office of Local Government (OLG) released our Final Report and an accompanying NSW Government interim response in June 2019. At the same time, we also placed our Final Report on our website. After release of our Final Report, OLG conducted consultation on the report between June and September 2019, and produced a submission summary and analysis in February 2020. In June 2020, the NSW Government released a further response to the review.<sup>26</sup>

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<sup>26</sup> The NSW Government response is available at: <https://www.olg.nsw.gov.au/wp-content/uploads/2020/06/IPART-Rating-Review-Government-Response.pdf>

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### 7.3 Consultation on previous section 9 reviews

In June 2019 OLG also released two of our other previous section 9 reviews on the local government sector for consultation:

- ▼ *Review of reporting and compliance burdens on Local Government*, which focussed on reducing burdens placed on local government by the State
- ▼ *Local government compliance and enforcement*, which related to reducing costs imposed by local government on business and the community.<sup>27</sup>

We also placed these two Final Reports on our website.

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<sup>27</sup> Office of Local Government, IPART Local Government Reports, <https://www.olg.nsw.gov.au/programs-and-initiatives/ipart-local-government-reports-consultation-2019/>, June 2019.

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## 8 Submissions to external reviews

In 2019-20 we contributed to the broader policy context of our local government functions through making submissions to two discussion papers, one published by the NSW Productivity Commission and the other by DPIE. Both of these papers related to productivity and system improvements in NSW.

### 8.1 NSW Productivity Commission discussion paper *Kickstarting the productivity conversation*

In November 2019 we made a [submission](#) to the NSW Productivity Commission on its discussion paper identifying priority areas to boost productivity in NSW.

The local government component of our submission supported reforms and improvements to the developer contributions system that would provide greater certainty, consistency and transparency around cost-reflective developer contributions. Our submission also supported enhanced performance monitoring and benchmarking of local councils, to assist in driving improvements in councils' performance and ensuring their costs and rates are reasonable.

### 8.2 Department of Planning, Industry and Environment discussion papers on *Improving the infrastructure contributions system*

In June 2020 we made a [submission](#) to DPIE on its proposed improvements to the infrastructure contributions system in NSW. Our submission responded to DPIE's proposals related to the review of local infrastructure contributions plans, providing feedback on:

- ▼ Improvements to the review of local infrastructure contributions plans
- ▼ Proposed amendments to the IPART terms of reference
- ▼ The importance of regular review of contributions plans
- ▼ The removal of existing exemptions (grandfathered contributions plans)
- ▼ Draft Special Infrastructure Contributions (SIC) guidelines
- ▼ Proposed amendments to the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation).

In our submission, we also identified a number of other opportunities for improvement to the current local infrastructure contributions system.<sup>28</sup>

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<sup>28</sup> We attached this submission to an August 2020 submission to the NSW Productivity Commission's Issues Paper, *Review of the infrastructure contributions in New South Wales*.

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## 9 Impacts of COVID-19

The COVID-19 pandemic impacted the functioning of local government and the broader economy in 2019-20. The NSW Government response to COVID-19 included changes to the LG Act to support councils and ratepayers, including an amendment enabling councils that do not apply the full percentage increase of the rate peg (or any applicable special variation) in a certain year to set rates in any one or more of the next 10 years to return it to the original rating trajectory. This amendment will affect our special variation functions in coming years.<sup>29</sup>

We have considered the impacts of COVID-19 on our special variation application process. The Minister for Planning and Public Spaces also announced the Planning System Acceleration Program support package to reduce the impact of COVID-19 on councils and the development industry, with implications for our assessments of contributions plans.<sup>30</sup>

### 9.1 Special variation and minimum rate increase applications for 2021-22

We recognise that challenges posed by the COVID-19 pandemic may impact on councils' abilities to fully meet some of the criteria set out in the OLG guidelines for special variations and minimum rate increases.

We have recommended that councils intending to apply for a special variation or minimum rate increase for 2021-22 should submit an application addressing the criteria to the fullest extent possible, and should get in touch with IPART early to discuss their plans and any potential issues they may face due to COVID-19.

We have requested that affected councils provide evidence of relevant impacts of COVID-19 in special variation and minimum rate applications for 2021-22, including measures taken to effectively consult with ratepayers under social distancing requirements, which we will take into consideration in our assessment.

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<sup>29</sup> A number of other amendments were made to the LG Act as part of *COVID-19 Legislative Amendment (Emergency Measures-Miscellaneous) Act No.2*. These do not impact on IPART's functions relating to local government.

<sup>30</sup> We note that the Minister for Planning and Public Spaces also announced a series of directions and determinations temporarily deferring the timing of infrastructure contributions payments as a response to the COVID-19 pandemic, however these were announced after 30 June 2020 and do not directly affect IPART's responsibilities.

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## 9.2 Accelerated Infrastructure Fund and interim caps on contribution rates

In April 2020, the Minister for Planning and Public Spaces announced the Accelerated Infrastructure Fund (AIF) as part of the Planning System Acceleration Program, as a support measure for the construction industry during the COVID-19 crisis. The AIF will provide \$75.9 million of State Government funding, in addition to \$70 million from local infrastructure contributions in Blacktown City Council and The Hills Shire Council, to support the delivery of 14 identified community infrastructure projects.

A Ministerial Direction was released alongside the AIF announcement, applying an interim cap of \$50,000 per lot/dwelling on contributions in the Blacktown and The Hills LGAs. This amendment applies to all developments in these two LGAs with consents granted between 1 July 2020 and 31 December 2020, and contributions paid on, or prior to, 30 June 2021.

The AIF is not intended to overlap with infrastructure funded through the contributions plans which we assess. The interim cap on contributions will have implications for contributions rates charged in these two councils, following the adoption of IPART-reviewed contributions plans.

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## 10 IPART's structure for undertaking local government functions

### **The Independent Pricing and Regulatory Tribunal (the Tribunal)**

During 2019-20 members of the Tribunal, appointed by the Premier, performed IPART's delegated rate-setting functions under the LG Act. Membership of the Tribunal during 2019-20 was:

- ▼ Dr Paul Paterson, Chair
- ▼ Ms Deborah Cope, Tribunal Member and Acting Chair (from 29 October 2019 to 17 December 2019)
- ▼ Mr Ed Willett, Tribunal Member (until 6 December 2019)
- ▼ Ms Sandra Gamble, Tribunal Member (from 9 December 2019)
- ▼ Ms Anna Brakey, Tribunal Member (from 29 October 2019 to 17 December 2019).

### **Committee of the Tribunal (the Committee)**

As in previous years, a Committee of the Tribunal exercised IPART's functions of reviewing local government contributions plans under delegation from the Tribunal.<sup>31</sup> During 2019-20 membership of the Committee comprised:

- ▼ Ms Deborah Cope, Presiding Tribunal Member
- ▼ Ms Nicola Gibson, independent adviser on planning matters
- ▼ Mr Brett Everett A/Executive Director, Energy and Transport (from 1 July 2019 to 19 July 2019)
- ▼ Ms Fiona Towers, Executive Director, Energy and Transport (from 20 July 2019 to 7 April 2020)
- ▼ Ms Pamela Soon, Executive Director, Regulation and Compliance (from 8 April 2020).

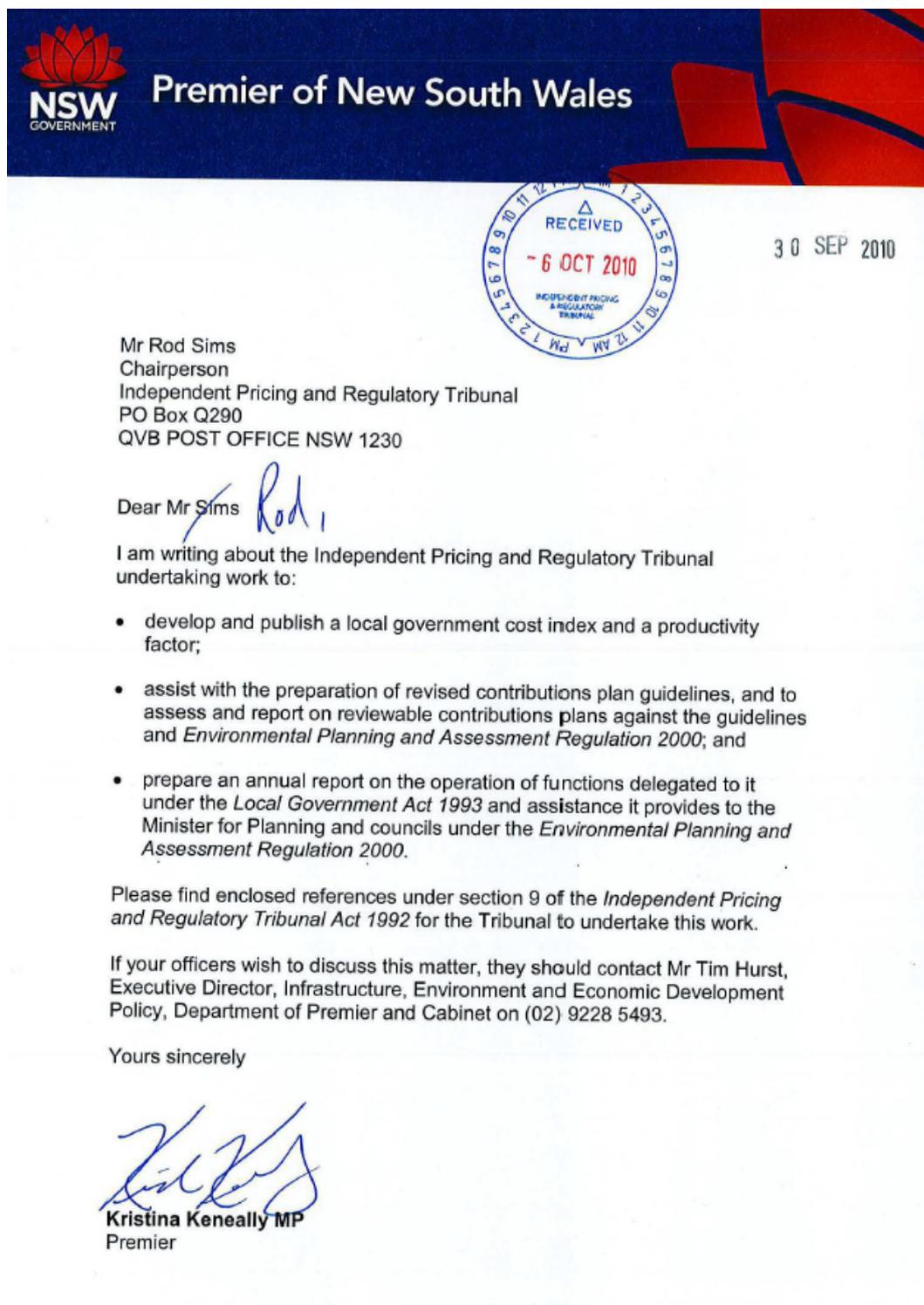
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<sup>31</sup> Section 10 of the IPART Act allows the Tribunal to delegate its functions to a Committee comprising a Tribunal Member and other persons.



## Appendices

## A Terms of reference delegating functions to IPART



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## TERMS OF REFERENCE

I, Kristina Keneally, Premier of New South Wales approve the provision of services by the Independent Pricing and Regulatory Tribunal (IPART) under section 9 of the *Independent Pricing and Regulatory Tribunal Act 1992 (IPART Act)* to the Minister for Local Government (Minister) for the development of a local government cost index in accordance with the following terms of reference.

### Background

Since 4 June 2010, the NSW Government has announced changes to local council charges on new housing development. The changes will lower the cost of new housing construction and provide certainty, transparency and fairness to councils, landowners, developers and the community.

At the same time the Government announced that in future the amount by which councils could increase their rating income will be determined by IPART having regard to the movements of the Local Government Cost Index and Productivity Factor. These functions are to be delegated to IPART by the Minister for Local Government.

### Terms

In providing the services, IPART must:

- (a) develop a local government cost index (**Local Government Cost Index**);
- (b) develop a productivity factor (**Productivity Factor**); and
- (c) publish the Local Government Cost Index and the Productivity Factor on IPART's website.

In developing the Local Government Cost Index and the Productivity Factor, IPART is to have (where relevant) regard to the following matters (in addition to any other matters IPART considers relevant):

- (a) the change in prices of goods and services composing the typical expenditure of Councils to reflect the annual change in underlying costs of ordinary council operations;
- (b) the findings and recommendations of IPART's final report on the local government review titled "Revenue Framework for Local Government";
- (c) the identification of appropriate price indices that would reflect the movement in component costs over time;
- (d) the estimation of the relevant weights to apply to the components of the index; and

- 
- (e) the scope for productivity improvements across the community and in comparable sectors of the economy and the achievable productivity improvements by Councils.

### **Definitions**

Council has the meaning given to that term under the EP&A Act.

EP&A Act means the *Environmental Planning and Assessment Act 1979*.

### **Interpretation**

- (a) A reference to a law or statute includes regulations, rules, codes and other instruments under it and consolidations, amendments, re-enactments or replacement of them.
- (b) A reference to an officer includes a reference to the officer who replaces him or her, or who substantially succeeds to his or her powers or functions.
- (c) A reference to a body, whether statutory or not:
- a. which ceases to exist; or
  - b. whose powers or functions are transferred to another body,
- is a reference to the body which replaces it or which substantially succeeds to its powers or functions.
- (d) Words importing the singular include the plural and vice versa.

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## TERMS OF REFERENCE

I, Kristina Keneally, Premier of New South Wales approve the provision of services by the Independent Pricing and Regulatory Tribunal (IPART) under section 9 of the *Independent Pricing and Regulatory Tribunal Act 1992 (IPART Act)* to the Minister for Planning and the Councils for the review of Reviewable Contributions Plans in accordance with the following terms of reference.

### Background

Since 4 June 2010, the NSW Government has announced changes to local council charges on new housing development including:

- (1) imposing a cap of \$20,000 per lot for council imposed charges on new development on land in established areas and a cap of \$30,000 per lot for council imposed charges on new development on land determined by the Minister for Planning as being within Greenfield areas; and
- (2) requiring IPART to review certain council Contributions Plans.

The changes will lower the cost of new housing construction and provide certainty, transparency and fairness to councils, landowners, developers and the community.

The Department of Planning, in conjunction with the Division of Local Government and IPART (overseen by the Land and Housing Supply Coordination Taskforce) are to develop guidelines for preparing Contributions Plans. Councils with contributions within their Contributions Plans that exceed the relevant cap will be required to submit them to IPART for review unless otherwise exempt by the Minister for Planning. Further, when Councils conduct a review of their Contributions Plans, they will be required to submit them to IPART for review prior to finalising those plans if the contributions within those plans exceed the relevant cap. The Minister may also refer to IPART for review any Contributions Plan that is below the relevant cap, where changes are proposed to that plan that the Minister considers merit having an independent assessment. Once IPART receives those plans, IPART is to assess them against the Guidelines and the Regulation and report to the Minister for Planning and Councils on the compliance of those plans.

### Terms

In providing the services, IPART must:

- (a) assist with the preparation of revised contributions plan guidelines;
- (b) conduct an assessment of the Reviewable Contributions Plan against the Guidelines and the Regulation. As part of that assessment, IPART should consider whether:
  - (i) the infrastructure listed in the plan is essential infrastructure
  - (ii) the costs in the plan are reasonable
  - (iii) the Contributions Plan complies with the Guidelines and the Regulation;

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(c) provide a report to the Minister for Planning and the relevant Council on IPART's assessment of the Contributions Plan under paragraph (a); and

(d) publish a copy of the report in paragraph (b) on IPART's website.

In conducting the assessment under paragraph (a), IPART is to:

- (a) consult with the Department of Planning (NSW);
- (b) consult with the relevant Council and any other person IPART considers necessary; and
- (c) consider any criteria set out in the Guidelines (in addition to any other matters IPART considers relevant).

### **Definitions**

Cap means:

- (a) the \$20,000 cap per residential dwelling or per residential lot on land in established areas; or
- (b) the \$30,000 cap per residential dwelling or per residential lot on land determined by the Minister for Planning as being within Greenfield areas.

Contributions Plan means a contributions plan prepared and approved by the relevant Council under Part 4, Division 6 of the EP&A Act.

Council has the meaning given to that term under the EP&A Act.

EP&A Act means the *Environmental Planning and Assessment Act 1979*.

Guidelines means the current guidelines or practice notes (as the case may be) issued by the Department of Planning on Contributions Plans under Part 4, Division 6 of the EP&A Act.

Regulation means the *Environmental Planning and Assessment Regulation 2000* relating to the Contributions Plan.

Reviewable Contributions Plan means either:

- (a) a Contributions Plan which has a contribution that exceeds the relevant Cap, other than a Contributions Plan for which a Council, as at 31 August 2010, has received (in aggregate) development applications for at least 25 per cent of potential development within that existing Contributions Plan; or
- (b) a Contributions Plan which the Minister for Planning determines from time to time should be subject to review by IPART.

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## Interpretation

- (a) A reference to a law or statute includes regulations, rules, codes and other instruments under it and consolidations, amendments, re-enactments or replacement of them.
- (b) A reference to an officer includes a reference to the officer who replaces him or her, or who substantially succeeds to his or her powers or functions.
- (c) A reference to a body, whether statutory or not:
  - a. which ceases to exist; or
  - b. whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions.
- (d) Words importing the singular include the plural and vice versa.
- (e) Explanatory notes do not form part of the terms of reference, but in the case of uncertainty may be relied on for interpretation purposes.

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## TERMS OF REFERENCE

I, Kristina Keneally, Premier of New South Wales approve the provision of services by the Independent Pricing and Regulatory Tribunal (IPART) under section 9 of the *Independent Pricing and Regulatory Tribunal Act 1992* (IPART Act) to the Minister for Planning and the Minister for Local Government for the preparation of an annual report on the operation of IPART's delegated functions under the LG Act and IPART's assistance to the Minister for Planning and the councils in relation to the EP&A Act in accordance with the following terms of reference.

### Background

Since 4 June 2010, the NSW Government has announced changes to local council charges on new housing development. The changes will lower the cost of new housing construction and provide certainty, transparency and fairness to councils, landowners, developers and the community.

### Terms

In providing those services, IPART must:

- (a) prepare an annual report for the previous financial year relating to:
  - (i) IPART's delegated functions under the LG Act including:
    - (A) variation of general income
    - (B) special variation applications including those rejected and approved by IPART
    - (C) minimum amounts
    - (D) domestic waste charges
  - (ii) the development and publication of the local government cost index and the productivity factor
  - (iii) IPART assistance to the Minister for Planning and councils in relation to the EP&A Act under section 9 of the *Independent Pricing and Regulatory Tribunal Act 1992* including reviews of the contributions plans;
- (b) forward to the Minister for Planning and the Minister for Local Government the report in paragraph (a) by 31 October each year; and
- (c) publish the report in paragraph (a) on IPART's website.

### Definitions

EP&A Act means the *Environmental Planning and Assessment Act 1979*.

LG Act means the *Local Government Act 1993*

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## Interpretation

- (a) A reference to a law or statute includes regulations, rules, codes and other instruments under it and consolidations, amendments, re-enactments or replacement of them.
- (b) A reference to an officer includes a reference to the officer who replaces him or her, or who substantially succeeds to his or her powers or functions.
- (c) A reference to a body, whether statutory or not:
  - a. which ceases to exist; or
  - b. whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions.
- (d) Words importing the singular include the plural and vice versa.



**THE HON. BARBARA PERRY MP**

Minister for Local Government,  
Minister for Juvenile Justice,  
Minister Assisting the Minister for Planning,  
and Minister Assisting the Minister for Health (Mental Health)

Ref:  
MIN:  
Doc ID: A219064

Mr Rod Sims  
Chairman  
Independent Pricing and Regulatory Tribunal  
PO Box Q290  
QVB POST OFFICE NSW 1230

6 SEP 2010

Dear Mr Sims

I am writing in response to the NSW Government Cabinet Minute 124-10 – Infrastructure Contribution Reforms to Support Land and Housing Release in New South Wales.

As you are aware, Cabinet's decision required me, as Minister for Local Government, to delegate to the Independent Pricing and Regulatory Tribunal responsibility for setting the annual Local Government Rate Peg and for assessing and determining local council's applications for Special Variations to their general income from rates under section 508 and section 508A of the *Local Government Act 1993*.

In order to carry out the necessary determinations I am delegating my authority under the following sections of the Act to the Tribunal:

- Section 506 - the authority to specify the percentage by which councils' general income for a specified year may be varied ie the rate pegging percentage.
- Section 507 - the authority to vary annual charges for domestic waste management services.
- Section 508(2), (3), (6), (7) - the authority to specify a percentage by which individual councils' general income may be varied for a specified year ie special variation with a single annual percentage increase.
- Section 508A - the authority to specify the percentages by which individual councils' general income may be varied for specified years ie special variation for multiple annual percentage increases.
- Section 548(3), (8) - the authority to approve the setting of minimum amounts of rates, above the statutory maximum, for specific councils,

Attached is a copy of my Instrument to effect the above delegation.

Yours sincerely

Barbara Perry MP  
Minister

**LOCAL GOVERNMENT ACT 1993**  
**DELEGATION UNDER SECTION 744**

I, **BARBARA MAZZEL PERRY MP**, Minister for Local Government, by this Instrument made under section 744 of the *Local Government Act 1993* ("Act"), hereby delegate to:

- (a) the Independent Pricing and Regulatory Tribunal of New South Wales ("IPART"); and
- (b) such members of IPART and other persons as are nominated for that purpose by IPART, and approved by the Minister, from time to time:
  - (1) all of my functions (as defined in the Act) under sections 506, 507, 508(2), 508(3), 508(6), 508(7), 508A, 548(3) and 548(8) of the Act (together the "Delegated Functions"); and
  - (2) such other powers under the Act and the *Local Government (General) Regulation 2005* which are necessary for IPART to perform the Delegated Functions.

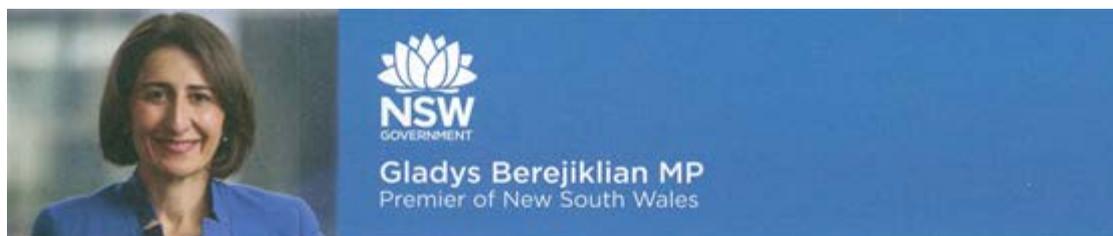
<b>Section 506</b>	<b>Variation of General Income</b>
<b>Section 507</b>	<b>Variation of Annual Charges for Domestic Waste Management Services</b>
<b>Section 508(2), 508(3), 508(6) and 508(7)</b>	<b>Orders under sections 506 and 507</b>
<b>Section 508A</b>	<b>Special Variation over a period of years</b>
<b>Section 548(3) and 548(8)</b>	<b>Minimum Amounts</b>

Dated this 6<sup>th</sup> day of September 20 10.



**The Hon Barbara Perry MP**  
**Minister for Local Government**

## B Revised terms of reference for reviewing contributions plans



Ref:A2339404

05 OCT 2018

Dr Peter Boxall AO  
Chair  
Independent Pricing and Regulatory Tribunal  
PO Box K35  
HAYMARKET POST SHOP NSW 1240

Dear Dr Boxall,

To date, IPART has reviewed councils' development contributions plans in specified circumstances in accordance with the Terms of Reference issued on 30 September 2010.

On 17 July 2017, the *Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2012* was amended to give effect to development contributions scheme reforms. These reforms were announced by the Government in June 2017 as part of the Housing Affordability Strategy and include a staged removal of caps on council contributions and the phasing out of the Local Infrastructure Growth Scheme program.

I am writing to request that, under section 9 of the *Independent Pricing and Regulatory Tribunal Act 1992*, IPART reviews council's contributions plans in accordance with the enclosed revised Terms of Reference, which have been amended to reflect the new Direction issued by the Minister.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Gladys Berejiklian'.

Gladys Berejiklian MP  
Premier

Enc.

CC. The Hon Anthony Roberts MP, Minister for Planning

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## INDEPENDENT PRICING AND REGULATORY TRIBUNAL ACT 1992

### TERMS OF REFERENCE

#### Reviewable Contributions Plans - *Environmental Planning and Assessment Act 1979*

I, GLADYS BEREJKLIAN MP, Premier, under section 9 of the *Independent Pricing and Regulatory Tribunal Act 1992* approve provision, by the Independent Pricing and Regulatory Tribunal (IPART), of services to the Minister for Planning with respect to reviewing Reviewable Contributions Plans, in accordance with the following terms of reference.



Premier

Dated: 14/11/15

#### Background

The *Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2012* contemplates that a Council may submit a Contributions Plan to IPART for review, where the Plan would (but for the Direction) authorise a contribution under section 7.11 of the EP&A Act that exceeds the maximum amount that the Direction allows to be imposed as a contribution in relation to residential development.

The Minister for Planning may also refer any contributions plan to IPART for review where the Minister considers there is merit in having an independent assessment.

#### Services

On and from the date that these terms of reference are issued to IPART, IPART is to review each Reviewable Contributions Plan submitted to it and provide the Minister for Planning and the relevant Council with a report on its review.

In providing the services, IPART must:

- (a) review the relevant Reviewable Contributions Plan in accordance with the assessment criteria set out in the Practice Note, including whether the public amenities and services to which the Contributions Plan relates are on the essential works list (if any) set out in the Practice Note;
- (b) consider, in its review of the Reviewable Contributions Plan, whether the estimate of the costs of providing those public amenities and services, as set out in the Plan, are reasonable;
- (c) publish a report of its review on its website; and
- (d) provide a copy of the report to the Minister for Planning and the relevant Council.

#### Consultation

In conducting a review under these terms of reference, IPART must:

- (a) consult with the Department of Planning and Environment (NSW);
- (b) consult with the relevant Council and any other person IPART considers appropriate; and
- (c) consider any criteria set out in the Practice Note (in addition to any other matters IPART considers relevant).

#### Definitions

**Contributions Plan** means a contributions plan or draft contributions plan prepared by the relevant Council for the purposes of imposing conditions under section 7.11 of the EP&A Act.

**Council** has the same meaning as it has in the *Local Government Act 1993*.

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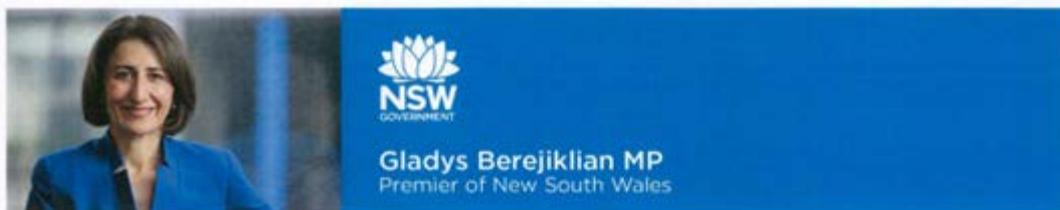
**EP&A Act** means the *Environmental Planning and Assessment Act 1979*.

**Practice Note** means the “Revised Local Development Contributions Practice Note: For the assessment of Local Contributions Plans by IPART” issued by the Department of Planning and Environment and dated January 2018, as amended or replaced from time to time.

**Reviewable Contributions Plan** means a Contributions Plan submitted to IPART as contemplated by the *Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2012* or referred to it by the Minister for Planning.

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## C Terms of reference for reviewing the costs of conducting local government elections



Ref: A2850418

7 FEB 2019

Dr Peter Boxall AO  
Chair  
Independent Pricing and Regulatory Tribunal  
PO Box K35  
HAYMARKET POST SHOP NSW 1240

Dear Dr Boxall,

Please find enclosed terms of reference for the Tribunal to conduct a review of local government election costs pursuant to section 9 of the *Independent Pricing and Regulatory Tribunal Act 1992*.

Yours faithfully,

A handwritten signature in blue ink, appearing to be 'Gladys Berejiklian'.

Gladys Berejiklian MP  
Premier

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## Terms of Reference – Costs of Conducting Local Government Elections

I, Gladys Berejiklian, Premier of New South Wales, under section 9 of the *Independent Pricing and Regulatory Tribunal Act 1992*, approve the provision of services by the Independent Pricing and Regulatory Tribunal (IPART) to the Minister for Local Government with respect to the costs of conducting local government elections, in accordance with the following terms of reference.

### Background

In NSW, local government elections are generally conducted every four years, on the second Saturday in September. The next ordinary elections for councils are scheduled to be held in September 2020.

Under Part 6 of the *Local Government Act 1993* (the **Act**), councils may arrange for the NSW Electoral Commissioner (NSWEC) to administer their election, or the council's general manager may administer the election on the council's behalf. In practice, where the general manager of a council administers its election, the council will generally engage a commercial electoral services provider to assist the general manager with the conduct of the election.

In recent times, the vast majority of councils have engaged the NSWEC to conduct their elections. For example:

- in 2016, the NSWEC conducted 75 ordinary elections for councils, and 5 councils' elections were administered by their general managers
- in 2017, the NSWEC conducted 46 ordinary elections for councils; and 1 council election was administered by its general manager.<sup>1</sup>

Councils are required to meet the costs of conducting their elections. That is the case irrespective of whether an election is administered by the NSWEC or by the council's general manager. NSWEC services required for local government elections, such as enrolment and non-voting services, are, however, provided by the NSWEC at no cost.

In the case of NSWEC administered council elections, the NSWEC provides councils with an estimate of costs in advance of the council's election, so that the council may determine whether to use the NSWEC to conduct its election. Where an election is administered by the NSWEC, the council will be invoiced for the costs of its election by the NSWEC.

Councils using the NSWEC are generally required to enter an arrangement with the NSWEC for the election well in advance of the election.<sup>2</sup> An arrangement can, however, be entered into at any time before the election if the council has resolved to enter the arrangement and the Electoral Commissioner is satisfied there are exceptional circumstances that make it necessary or desirable for the Electoral Commissioner to administer the election.<sup>3</sup>

The NSWEC uses a comprehensive costing model to identify and allocate its costs to the relevant councils. The NSWEC's costing model for the most recent ordinary elections for councils in 2017 is summarised in its Report on the Local Government Elections 2017 and extracted at **Schedule A**.

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<sup>1</sup> Local government elections were conducted in two tranches in 2016 and 2017.

<sup>2</sup> Section 296(3) of the Act provides that an election arrangement for the Electoral Commissioner to administer all elections of a council can be entered into if: (a) the council resolves at least 18 months before the next ordinary election that such an arrangement is to be entered into; and (b) the arrangement is entered into no later than 15 months before the next ordinary election.

<sup>3</sup> Section 296(5) of the Act.

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### **Matters for consideration**

IPART is requested to provide a report to the Minister for Local Government recommending a costing methodology to be applied in determining the amount the NSWEC charges councils which use the NSWEC to administer their ordinary elections.

The purpose of the IPART's review is to ensure a robust methodology for determining costs is applied, in order to minimise the financial burden on councils and ratepayers and ensure local government elections are conducted efficiently and cost effectively.

In undertaking the review, IPART is to:

- review the NSWEC's existing methodology for determining the amount to be charged to councils which use the NSWEC to conduct their elections
- consider whether it is appropriate for the amount charged to be limited to the direct and unavoidable costs of conducting the council's election
- have regard to the market for electoral services in which the NSWEC operates
- have regard to any differences in the costs involved in conducting elections in metropolitan and regional areas
- have regard to any other matters it considers relevant.

### **Consultation**

IPART should consult with relevant stakeholders and NSW Government agencies as part of its review. It may also hold public hearings and publicly release a draft report.

### **Reporting**

IPART is to submit its final report to the Minister for Local Government by Friday 30 August 2019.

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## Schedule A – Extract from NSWEC Report on the Local Government Elections 2017<sup>4</sup>

### Financial and Funding Arrangements

#### Funding of Local Government Elections

Councils are required to meet the costs of conducting their elections. While the NSW Government does not provide direct funding for local government elections, some NSWEC services required for local government elections, such as enrolment and nonvoting services, are provided by the NSWEC at no cost.

For the second tranche of 46 councils, whose elections were conducted on 9 September 2017, the NSWEC issued budget estimates totalling \$20.87 million. The actual expenditure came in under budget, at \$19.17 million.

The election management fee, which had been estimated at \$7.62 per elector, was delivered at \$7.01 an elector. We charged a total of \$1.914 million in fees, down from the \$1.919 million estimate issued to councils. Independent accounting firm PriceWaterhouseCoopers was engaged to conduct a review of the level of NSWEC overhead, as applicable to the delivery of the LGE event.

The NSW Government has provided the NSWEC with additional funding of \$17.0 million to assist in conducting the 2016 and 2017 local government elections. This funding reflected the additional costs incurred in conducting the elections in more than one tranche.

#### Council Costing Model for the 2017 Local Government Elections

The NSWEC undertook a comprehensive budget estimation process, identifying and calculating estimated costs for individual council expenses. The broad process for developing the budget for the 2017 Local Government Elections and individual council budgets involved five major stages.

All 2017 Local Government Elections projects and associated activities were identified and quantified.

The budget estimates were then developed, using a 'zero based' or 'bottom-up' budget methodology that involved itemising volume and unit costs for each project, the tasks for each month and identifying the financial years 2016/17 and 2017/18 which were impacted.

Those costs which could be attributed to the council amalgamations activity and effort associated were quantified and charged to the state government appropriation.

We then undertook substantive testing of these budget items and their estimated costs, using the most reliable cost schedule available that is the 2016 Local Government Elections.

Finally, we allocated the costs for each project to individual councils using the applicable methodology for the activity involved in each project. The methodologies applied were either:

- cost per elector
- actual costs incurred in specific council areas and/or
- allocation for Regional Returning Officer based on elector numbers.

This enabled equitable sharing of overheads applicable to all councils separately from costs specific to each council.

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<sup>4</sup> NSW Electoral Commission's *Report on the Local Government Elections 2017*, page 21. A copy of the report is available on the NSW Electoral Commission's website at [www.elections.nsw.gov.au/About-us/Reports/Election-reports](http://www.elections.nsw.gov.au/About-us/Reports/Election-reports)

## D Reports and papers released during 2019-20

Table D.1 sets out the reports and papers related to our local government functions published by IPART during 2019-20.

This list does not include the numerous Fact Sheets and Media Releases on our activities in rate-setting and reviewing contributions plans.

**Table D.1 Reports and papers publicly released by IPART during 2019-20 related to our local government functions**

Date	Report or paper
11 July 2019	<i>Final Report - Assessment of the Hills Shire Council's Contributions Plan 12 - Balmoral Road Release Area - July 2019</i>
26 July 2019	<i>Information Paper - Indexation of Contribution Rates - July 2019</i>
30 August 2019	<i>Final Report - Assessment of Blacktown City Council's Contributions Plan No. 24 - August 2019</i>
18 September 2019	<i>Final Report - Review of local government election costs - August 2019</i>
19 September 2019	<i>Draft Report - Assessment of The Hills Shire Council's - CP17 - Castle Hill North - September 2019</i>
20 September 2019	<i>Second Draft Report - Assessment of Hawkesbury Shire Council's Vineyard Contributions Plan - September 2019</i>
31 October 2019	<i>Annual Report - Report on IPART's functions in relation to local government in 2018-19 - October 2019</i>
29 November 2019	<i>Final Report - Hawkesbury City Council's Vineyard Contributions Plan - November 2019</i>
29 November 2019	<i>Final Report - Assessment of The Hills Shire Council's Contributions Plan 17 Castle Hill North - November 2019</i>
28 February 2020	<i>Draft Report - Assessment of West Dapto Contributions Plan 2020 - Wollongong City Council - February 2020</i>
15 May 2020	<i>Draft Report - Assessment of The Hills Shire Council's Contributions Plan No 13 - North Kellyville Precinct - May 2020</i>
15 May 2020	<i>Final Report - Assessment of Wollongong City Council's West Dapto Contributions Plan 2020 - May 2020</i>
23 June 2020	<i>Information Paper - Contributions plan assessment process for land costs - June 2020</i>

## E Components of the Local Government Cost Index

**Table E.1 The rise in the LGCI for the year ended June 2019**

Cost Items	Effective weight as at end-Jun 2018 (%)	Price change to end-Jun 2019 (% annual average)	Contribution to index change (percentage points)
Operating cost items			
Employee benefits and on-costs	41.6	2.6	1.09
Plant & equipment leasing	0.3	2.0	0.01
Operating contracts	1.0	1.1	0.01
Legal & accounting services	0.8	2.7	0.02
Office & building cleaning services	0.3	3.6	0.01
Other business services	6.0	0.8	0.05
Insurance	1.7	0.6	0.01
Telecommunications, telephone & internet services	0.4	-4.8	-0.02
Printing publishing & advertising	0.5	12.8	0.06
Motor vehicle parts	0.3	1.1	0.00
Motor vehicle repairs & servicing	0.6	2.0	0.01
Automotive fuel	0.8	5.5	0.04
Electricity	3.1	-0.9	-0.03
Gas	0.1	-0.9	0.00
Water & Sewerage	0.3	1.1	0.00
Road, footpath, kerbing, bridge & drain building materials	2.4	3.8	0.09
Other building & construction materials	0.5	3.7	0.02
Office supplies	0.2	2.0	0.00
Emergency services levies	1.4	1.4	0.02
Other expenses <sup>a</sup>	8.8	1.7	0.15
Capital cost items			
Buildings – non-dwelling	4.1	3.7	0.15
Construction works – road, drains, footpaths, kerbing, bridges	19.1	3.8	0.72
Construction works – other	1.9	3.8	0.07
Plant & equipment – machinery, etc	3.4	2.7	0.09
Plant & equipment – furniture, etc	0.1	2.3	0.00
Information technology & software	0.4	-4.4	-0.02
<b>Total change in LGCI</b>	<b>100.0</b>		<b>2.6</b>

<sup>a</sup> Includes miscellaneous expenses with low weights in the Index, eg councillor and mayoral fees.

**Note:** All component price (inflation) indexes except the ESL (see section 2.1.1) are sourced from the Australian Bureau of Statistics.

## F Summary of rate variations requested by councils and IPART's decisions

IPART received one application for a special variation for 2020-21. However, on 21 April 2020 we received a letter from Lismore City Council notifying us that it had resolved to withdraw its application.

IPART received no applications from councils seeking to increase the minimum amount of a rate above the statutory limit.

### Crown land adjustments

Two councils applied for a crown land adjustment under section 508(2) of the LG Act. IPART approved the requested increases in full:

- ▼ A 4.89% increase (including 2.6% rate peg) for Hay Shire Council, and
- ▼ A 2.76% increase (including 2.6% rate peg) for Wingecarribee Shire Council.

Table F.1 sets out the determinations by IPART to adjust general income for councils where Crown land has become rateable.

**Table F.1 Summary of Crown land adjustments for 2020-21 approved by IPART**

Council	Previous owner	CLA for 2020-21 (\$)	Permitted increase in general income for 2020-21		
			Increase for CLA (%)	Increase for rate peg/special variation (%)	Combined increase (%)
Hay Shire Council	▼ Water Administration Ministerial Corporation	55,467.20	2.29	2.60	4.89
Wingecarribee Shire Council	▼ Minister for Community Services	25,446.47	0.16	2.60	2.76

Note: CLA for 2020-21 – adjusted for rate peg/special variation

## G Contributions plans reviewed in 2019-20

Details about the seven contributions plans IPART reviewed during 2019-20 are in Table G.1.

**Table G.1 Contributions plans reviewed by IPART during 2019-20**

<b>Contributions Plan No 12 – Balmoral Road Release Area – CP12 (2018)</b>	
<b>Council</b>	The Hills Shire Council
<b>Catchment area</b>	Balmoral Road Release Area
<b>Review context</b>	Draft revised plan; CP12 was reviewed by IPART in 2011 so the council could apply for gap funding, but the 2006 adopted plan was not amended as a result of this review.
<b>Review commenced</b>	November 2018
<b>Final Report issued</b>	July 2019
<b>Contributions Plan No 24 – Schofields Precinct – CP24 (2018)</b>	
<b>Council</b>	Blacktown City Council
<b>Catchment area</b>	Schofields Precinct, North West Growth Area
<b>Review context</b>	<ul style="list-style-type: none"> <li>▼ Revised adopted plan, comprises two separate plans, CP24L – Schofields (Land) and CP24W – Schofields (Works)</li> <li>▼ First reviewed by IPART in 2014</li> </ul>
<b>Review commenced</b>	December 2018
<b>Final Report issued</b>	August 2019
<b>Vineyard Precinct Section 7.11 Draft Contributions Plan – Vineyard CP</b>	
<b>Council</b>	Hawkesbury City Council
<b>Catchment area</b>	Vineyard Precinct, North West Growth Area;
<b>Review context</b>	Draft Plan; first review by IPART
<b>Review commenced</b>	December 2018
<b>Final Report issued</b>	November 2019 <sup>a</sup>
<p><sup>a</sup> We published two draft reports on our assessment of the Vineyard CP, in May 2019 and September 2019. The Second Draft Report considered new information provided by the council and stakeholders in response to our First Draft Report that would materially change the plan's total costs and contribution rates. This extended the timeframe of our assessment.</p>	
<b>Contributions Plan No 17 – Castle Hill North – CP17</b>	
<b>Council</b>	The Hills Shire Council
<b>Catchment area</b>	Castle Hill North Precinct in North West Sydney
<b>Review context</b>	Draft plan; first review by IPART
<b>Review commenced</b>	May 2019
<b>Final Report issued</b>	November 2019

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### West Dapto Urban Release Area Draft Contributions Plan – West Dapto CP (2020)

<b>Council</b>	Wollongong City Council
<b>Catchment area</b>	West Dapto Urban Release Area
<b>Review context</b>	Draft plan; first reviewed by IPART in 2016
<b>Review commenced</b>	October 2019
<b>Final Report issued</b>	May 2020

### Contributions Plan No 13 – North Kellyville – CP13 (2018)

<b>Council</b>	The Hills Shire Council
<b>Catchment area</b>	North Kellyville Precinct, North West Growth Area
<b>Review context</b>	Draft revised plan; first reviewed by IPART in 2011
<b>Review commenced</b>	November 2018
<b>Draft assessment provided to council</b>	May 2019
<b>Draft Report issued</b>	15 May 2020 <sup>a</sup> ; for a four-week consultation period

<sup>a</sup>The council submitted significant new design and costing information to IPART in December 2019, requiring further consultation.

### Contributions Plan No 15 – Box Hill – CP15 (2020)

<b>Council</b>	The Hills Shire Council
<b>Catchment area</b>	Box Hill Precinct
<b>Review context</b>	Draft revised plan; fourth review by IPART, most recent review in 2018
<b>Review commenced</b>	March 2020
<b>Review on hold</b>	3 June 2020 to 27 July 2020
<b>Review recommenced</b>	28 July 2020

## H Summary of IPART-recommended adjustments to costs in councils' local infrastructure contributions plans

During 2019-20 we completed reviews of five contributions plans. A summary of our recommended adjustments is in Table H.1.

**Table H.1 Summary of IPART-recommended adjustments to costs in councils' local infrastructure contributions plans**

Council and plan	Total cost in plan submitted (for land, works and administration)	IPART-recommended cost	Difference	Percentage change
<b>Blacktown City Council</b>				
Contributions Plan No 24 – Schofields Precinct	\$262.58 million (\$Mar2018)	\$241.16 million (\$Mar2018)	\$21.42 million (\$Mar2018)	-8.2%
<b>Hawkesbury City Council</b>				
Vineyard Precinct Section 7.11 Draft Contributions Plan	\$165.27 million (\$Mar2018)	\$153.95 million (\$Jun2019)	\$11.32 million (\$Jun2019)	-6.8%
<b>The Hills Shire Council</b>				
Contributions Plan No 12 – Balmoral Road Release Area	\$209.58 million (\$2016-17)	\$200.98 million (\$2016-17)	\$8.61 million (\$2016-17)	-4.1%
Contributions Plan No 17 – Castle Hill North	\$79.02 million (\$2018-19)	\$70.02 million (\$2018-19)	\$9.00 million (\$2018-19)	-11.4%
<b>Wollongong City Council</b>				
West Dapto Urban Release Area Contributions Plan	\$972.04 million (\$Dec2018)	\$944.31 million (\$Dec2018)	\$27.73 million (\$Dec2018)	-2.9%