

12 September 2018

1 What is the purpose of this paper?

IPART is seeking stakeholder views on which transport items should be included in local infrastructure contributions plans, and whether the cost of these items should be apportioned across all development subject to the relevant contributions plan.

This may be one of a number of issues related to contributions plans that we look to stakeholders to help inform our assessment.

Questions for stakeholders

- 1 Do you agree that it is reasonable for councils to include in a contributions plan the local transport infrastructure (land and/or works) that is required to facilitate development in the precinct where it:
 - a) adjoins public or non-developable land
 - b) provides a catchment-wide benefit, such as roads carrying a significant volume of through traffic (eg, sub-arterial roads), bridges and intersections, or
 - c) is required to provide access to individual lots but construction by individual developers is not feasible?
- 2 Do you agree that it is reasonable for a council to apportion the cost of roads that adjoin public or non-developable land ([category 'a' in question 1](#)) and infrastructure that provides a catchment-wide benefit ([category 'b' question 1](#)), across all development within the plan's catchment area?
- 3 How should a council apportion the cost of roads that provide access to individual lots but where construction by individual developers is not feasible ([category 'c' question 1](#))? Do the benefits outweigh the costs and complexity of accurately apportioning the costs?
- 4 What other information should IPART consider to inform our assessment of which local transport items should be included in contributions plans, and how the cost of these items should be apportioned across development subject to the relevant contributions plan?

For information on how to contact IPART's Local Infrastructure Contributions Team or make a submission on this paper, see page 6 of this paper.

Why is IPART considering these issues?

IPART assesses local infrastructure contributions plans that propose contributions above \$30,000 per lot or dwelling in identified greenfield areas and \$20,000 per dwelling in other areas. We must assess whether the contributions plan meets the criteria set out in the Department of Planning and Environment's *Local Infrastructure Contributions Practice Note* (Practice Note).¹

The Practice Note requires IPART to assess whether a contributions plan meets the seven assessment criteria. The criteria relevant to the issues in this paper are:

¹ Department of Planning and Environment, *Local Infrastructure Contributions Practice Note*, January 2018.

- ▼ **Nexus** - whether there is nexus between the demand or need for infrastructure arising from the new development and the land and capital works (for infrastructure) included in the plan. In assessing nexus, we consider which infrastructure items (and associated land) should be included in a plan.
- ▼ **Apportionment** - whether the contribution rates are based on a reasonable apportionment of costs. In assessing the apportionment of costs, we consider who should pay for the necessary land and works.

In our recent assessment of the Camden Growth Areas Contributions Plan (CGA-CP),² we found that the council's inclusion of the costs relating to only some collector roads in the plan is inequitable because it imposes different costs on developments adjoining collector roads within the same precinct. This could also be an issue in other contributions plans requiring IPART assessment.

2 Nexus: What transport infrastructure should be included in a contributions plan?

The cost of land and works for some transport infrastructure (eg, some local roads), or portions of this infrastructure, are often excluded from contributions plans because they are expected to be funded by developers as a condition of their development consent. The rationale for this is usually that the road, or a portion of it, is servicing a specific development (ie, a specific lot or lots) rather than the broader development area covered by the whole plan or precincts within the plan.

Our preliminary position is that it is reasonable for councils to include in a contributions plan the transport infrastructure (land and/or works) that is required to facilitate development in the precinct where it:

1. adjoins public or non-developable land
2. provides a catchment-wide benefit, such as roads carrying a significant volume of through traffic (eg, sub-arterial roads), bridges and intersections, or
3. is required to provide access to individual lots but construction by individual developers is not feasible.

Each of these categories is explained in more detail below. While there is no uniform definition of categories for roads in contributions plans, the generally accepted hierarchy of roads that we adopt in this paper, in order of low traffic volume to high traffic volume, is as follows:

- ▼ local roads
- ▼ collector roads
- ▼ sub-arterial roads
- ▼ arterial roads.

² IPART, *Assessment of Camden Council's Camden Growth Areas Contributions Plan (CGA-CP) – Final Report*, May 2018.

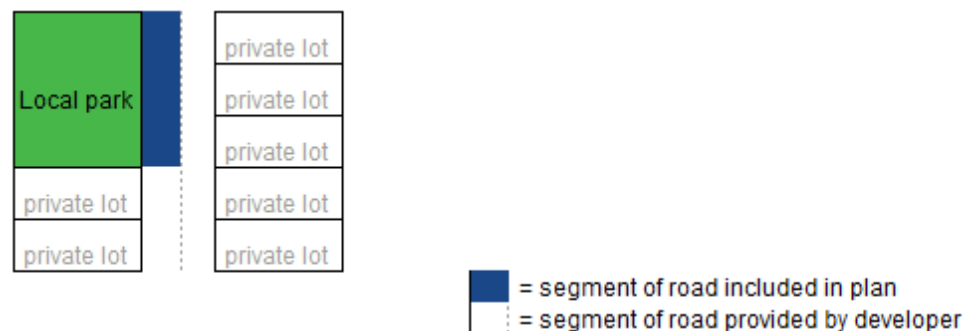
Category 1: Infrastructure adjoining public or non-developable land

Some segments of roads within a plan's catchment area are likely to front land for open space, stormwater management or other public purposes such as schools.

As a condition of development consent, a developer may reasonably be required to construct the half width of road between their development and the land to be used for a public purpose. However, it may not be reasonable for a council to require a developer to construct the full width of the road between the developer's lot and the land to be used for a public purpose, as a condition of development consent. Therefore, councils typically include the half-width cost of road construction (and any associated costs of acquiring land) in a contributions plan (see Figure 2.1).

A similar situation arises when a road fronts land where the existing use of the land will be maintained, ie non-developable land.

Figure 2.1 Example of road adjoining public land



Category 2: Infrastructure providing a catchment-wide benefit

Roads above a 'collector' level in the road hierarchy typically do not provide access to individual lots:

- ▼ Sub-arterial roads typically provide linkages within a plan's catchment area. Some major collector roads may also serve this function.
- ▼ Arterial roads provide regional linkages, often between areas subject to different local infrastructure contributions plans.

Other infrastructure items that do not provide access to individual properties include bridges, roundabouts and signalised intersections.

It's likely to be unreasonable to require a developer to dedicate land for, or construct, such roads or facilities as a condition of development consent. This is because the infrastructure serves the broader development catchment, not their individual lot.

Where the need for the road or infrastructure item arises from development *within* the plan's catchment area, including the full cost in the plan would likely be reasonable. Where the need

for the road or infrastructure item arises from development *outside* of the plan's catchment area, only part of the cost should be included in the plan.³

Category 3: Infrastructure required for individual lot access but construction by individual developers is not feasible

To date, we have identified several reasons why it might not be feasible for developers to construct the roads that provide access to their properties as a condition of their development consent. To overcome coordination difficulties, councils are likely to be best placed to deliver a road where there is fragmented ownership of land fronting the road, and:

- ▼ there are changes in the vertical alignment of the road from existing levels
- ▼ there are changes in the horizontal alignment of the road from any existing roads, and/or
- ▼ a required upgrade of an existing road in segments would require costly temporary works.

Camden Council included only the design costs for collector roads in category 3 in one of its contribution plans (Leppington North in the CGA-CP), rather than the full construction costs. This is because it considered that providing the road design to developers along these roads overcame the coordination difficulty in delivering these roads. As conditions of development consent, Camden Council will require developers to deliver the adjoining collector roads in accordance with the council's design.

3 Apportionment: Who should pay for the transport infrastructure in a contributions plan?

In assessing who should pay for the transport infrastructure in a contributions plan there is a trade-off between equity and simplicity/ transparency.

In most plans we have assessed, transport costs are apportioned across all development within the plan's catchment area.

Our preliminary position is that this is reasonable for roads that adjoin public or non-developable land and infrastructure that provides a catchment-wide benefit, such as roads carrying a significant volume of through traffic and intersections.

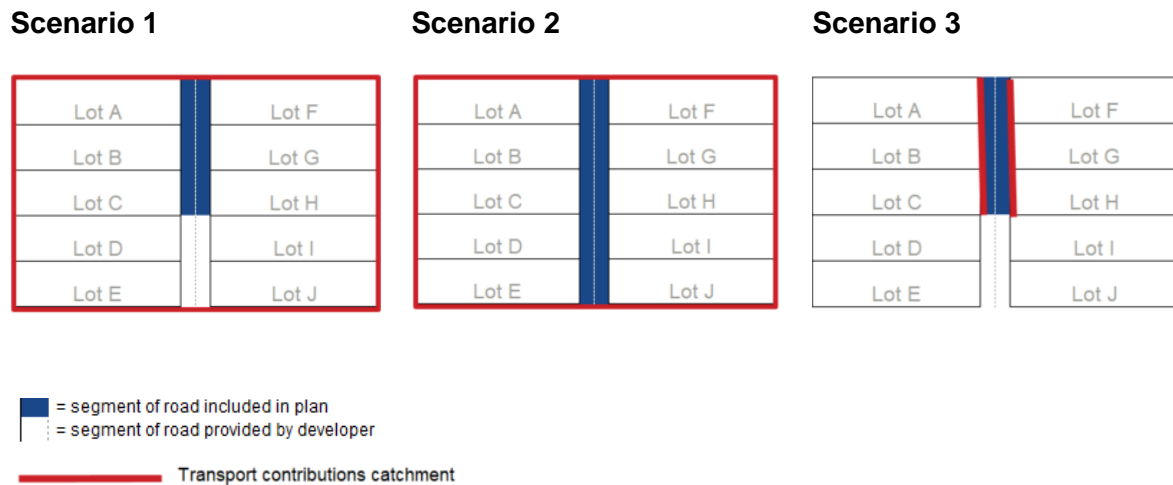
However, it is more difficult to assess the reasonable means of apportioning the cost of roads that provide access to individual lots but construction by individual developers is not feasible. If the costs of these roads are included in contributions plans, it could mean that:

- ▼ Some developers pay the costs of roads providing access to their individual lots as a condition of their development consent AND contribute to a share of the costs of other such roads via developer contributions under the contributions plan.
- ▼ Other developers are not facing the costs of roads providing access to their individual lots as part of their development consent (eg, because construction by an individual developer is not feasible), but rather having these costs funded by all developers subject to developer contributions under the contributions plan.

³ Often the NSW Government (Roads and Maritime Services) is responsible for delivering and funding arterial roads. However, in the absence of state funding, it may be reasonable to include some of the costs for arterial roads in a local infrastructure contributions plan.

We are seeking stakeholders' views on the materiality of this issue. To guide stakeholder responses, this paper provides preliminary analysis of three possible scenarios for the inclusion and apportionment of a hypothetical road. The scenarios are illustrated in Figure 3.1.

Figure 3.1 Scenarios for apportionment of road costs



Note: These diagrams show a simplified plan where all lots are the same size and the number of lots in the plan is very small. In reality, lots would be various sizes and there would be a much larger area subject to the plan.

Scenario 1

In scenario 1, some segments of the road are in the plan and the cost of these segments is apportioned to all development:

- ▼ **Developer of lot A** (and developers of lots B, C, F, G and H) pays a contribution towards construction of the segments of the road in the plan
- ▼ **Developer of lot D** (and developers of lots E, I, J) pays a contribution towards construction of the segments of the road in the plan **AND** incurs the cost of constructing half the width of the road fronting their land as a condition of their development consent.

Developer D's costs are greater than Developer A's, even though they have the same length of land fronting the road.

Scenario 2

In scenario 2, all of the road is in the plan and the cost is apportioned to all development:

- ▼ Developers of all lots pay a contribution towards the construction of the road.
- ▼ No developers incur the cost of constructing the road segment fronting their land as a condition of their development consent.

The council has an obligation to provide the road. Developers of lots fronting the road may choose to provide the works as 'in kind' contributions, but the council **cannot require the developer to provide the works** as a condition of development consent. This is problematic because the provision of infrastructure may be delayed if council is unable to adequately

resource the construction works (because its employees or contractors are committed to other projects, or they do not have the funds at the time)

Scenario 3

In scenario 3, some road segments are in the plan and the cost of these segments is apportioned only to development fronting the identified segments:

- ▼ **Developer of lot A** (and developers of lots B, C, F, G and H) pays a contribution towards construction of the road segments in the plan. This is calculated by the length of the lot fronting the road segments (shown in red) multiplied by a per linear metre contribution rate.
- ▼ **Developer of lot D** (and developers of lots E, I, J) **does not** pay a contribution towards construction of the road segments in the plan, but incurs the cost of constructing half the width of the road fronting their land as a condition of their development consent.

Of the three approaches to apportionment, this is the most equitable. However, it is also the most complex. It is rare for contributions rates to be calculated on a per linear metre basis, and many stakeholders would be unfamiliar with this approach. It would require the council to accurately identify the affected properties in order to calculate a contributions rate during preparation of the plan, and ensure development assessment staff can also clearly identify affected properties when calculating contributions amounts payable for specific development.

4 How can you provide feedback?

We invite all interested parties to make submissions in response to this Discussion Paper, including the questions listed on page 1. The deadline for submissions is **Friday 5 October 2018**. We prefer to receive submissions electronically:

www.ipart.nsw.gov.au/Home/Consumer_Information/Lodge_a_submission

You can also send us an email: localgovernment@ipart.nsw.gov.au or call Sarah Blackwell, Director - Local Infrastructure Contributions on 02 9113 7763.