



Contribution Plans and Planning Proposals

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Infrastructure contributions practice notes

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Best Practice: Contribution Plans and Planning Proposals

The purpose of this practice note is to:

- ensure planning for public amenity and public services is undertaken in conjunction with the preparation of a planning proposal to rezone land, which may give rise to increased demand for infrastructure generated by the future development;
- confirm the need for preparation of a draft Section 7.11 or Section 7.12 contributions plan (Draft Contributions Plan) at the commencement of the planning proposal process and before Gateway determination; and
- provide a best practice process for local councils and proponents of planning proposals to achieve the objective of ensuring that planning proposals and draft contributions plans are exhibited together, and without unduly delaying the determination of a planning proposal.

Legislative requirements

Section 9.1 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021 provides the Minister for Planning and Public Spaces (Minister) with broad powers to give directions to councils and other planning proposal authorities about timing for carrying out their functions under the Act, their preparation of local environmental plans and policies to be given effect to when preparing planning proposals

The Minister has issued a Ministerial Direction, the *Environmental Planning and Assessment (Local Infrastructure Contributions – Planning Proposals) Direction 2022* to all councils requiring that, in certain circumstances, Draft Contributions Plans are to be exhibited at the same time as planning proposals (or as closely together as is practicable).

The NSW Productivity Commission's recommendation was to encourage the development of infrastructure contributions plans upfront in order to ensure there is a clear understanding and recognition of the

development needs, cost and likely development charge to inform a feasibility assessment or acquisition of land.

The objective of the Ministerial Direction is to encourage concurrent preparation of Draft Contributions Plans, where they are necessary, to accommodate increased demand for public amenities and public services as a result of a new planning proposal. This should enable the planning proposal and the Draft Contributions Plan to be exhibited together.

Policy

The Ministerial Direction requires councils, when considering development proposals, to also consider whether it is necessary to put in place a contributions plan, or to amend an existing plan, to support a proposed rezoning for development or other changes to planning controls that will allow intensification of development. Councils will need to decide whether their existing contributions plans are adequate to meet any increased need for public amenities and public services that is likely to result from the planning proposal under preparation, or whether there are other arrangements (such as planning agreements) that will ensure that any increase need is met.

If a council is of the opinion that a new contributions plan is necessary, the Ministerial Direction requires the council to endeavour to ensure that a Draft Contributions Plan is prepared in sufficient time to enable the plan to be exhibited at the same time as the planning proposal, or as soon as possible after the planning proposal is placed on exhibition, if the Minister determines that the planning proposal should proceed.

Please note that, in the event that the Gateway determination requires a minimum period of public exhibition of less than 28 days for the planning proposal, the Draft Contributions Plan must still be publicly exhibited for a period of at least 28 days.

Benchmark procedure and process - concurrent preparation and exhibition

While the requirement for the simultaneous exhibition of a Draft Contributions Plan with a planning proposal will be confirmed by a Gateway Determination, best practice dictates that preparation of the local contributions plan be made earlier in the process, so as not to unnecessarily delay the exhibition and finalisation of a planning proposal.

The need, availability and cost of infrastructure to support redevelopment or any new development should start when the initial concept, master plan or structure plan is being initiated. At this early stage, local and regional infrastructure capacity, the need for infrastructure and staging should be considered and assessed. This upfront planning for infrastructure should be undertaken by any proponent, council led planning process or even a state led precinct plan when catering for local infrastructure needs. Infrastructure need and potential feasibility, at these initial stages, can provide an early indication of likely infrastructure costs to the market and community, prior to the more formal planning proposal stage.

Where possible, a local council's contributions plans at either the precinct or council-wide level should be amended to accommodate the demand generated by the planning proposal for additional public amenities and public services, rather than a site specific contributions plan being prepared. This ensures councils can continue to use their contributions planning framework to coordinate the delivery of local infrastructure to a precinct under development (either renewal or greenfield).

Section 7.19(1) of the Act provides the Minister with power to direct a Council to “prepare, approve, amend, exhibit or repeal a contributions plan”, within a specified timeframe. In the event , a local council fails to progress a draft contributions plan, provide the necessary Advisory Communication to the proponent or collaborate with the proponent in preparing and finalising the draft contributions plan, the Minister may exercise this power to enable the planning proposal to proceed.

Applicants for planning proposals and the relevant local councils are encouraged to adopt the following benchmark practice. The benchmark process in Table 1 is aligned with the stages of a planning proposal process.

Table 1 - Best practice process to achieve simultaneous exhibition of a planning proposal and Draft Contributions Plan

| Planning proposal step | Best practice process and actions |
|--|--|
| Pre-lodgement of planning proposal to local council – where the planning proposal is proponent initiated | <p>Proponents should consult with the relevant local council as part of the pre-lodgement process, to determine whether the drafting of a new site specific contributions plan or an amendment to a contributions plan will be required to support a planning proposal.</p> <p>If the Council is undertaking a council led planning proposal it should also be considered, at this early stage, whether a contribution plan will be required.</p> <p>Council is to organise a meeting with the proponent and relevant representatives from the internal departments of the council to discuss key issues that could link between planning proposals and contribution plans, such as those outlined in Annexure A.</p> <p>The council may also wish to hold a second meeting and invite relevant State Government agencies to discuss the linkage between regional and local infrastructure.</p> <p>The council should communicate to the proponent for the planning proposal in writing (Advisory Communication) on whether a separate proponent prepared contributions plan is needed.</p> <p>Upon receipt of the Advisory Communication, the local council and the proponent are to meet to discuss who will prepare the first draft of the contributions plan which should include the timing of the provision of that first draft. It should also be clarified at this early stage (depending on the proposed development), and agreement reached with council, whether a Section 7.11 or 7.12 contributions plan is required.</p> |

Table 1 - Best practice process to achieve simultaneous exhibition of a planning proposal and Draft Contributions Plan

| Planning proposal step | Best practice process and actions |
|---|---|
| Proponent initiated or Council led prepares the planning proposal | <p>If it has been agreed that the proponent will prepare the first draft of the contributions plan, the proponent is to engage relevant consultants to prepare the draft contributions plan.</p> <p>The proponent and the local council are to work collaboratively to prepare the first draft including if the proponent requires clarification on any key issues identified as part of the initial Advisory Communication.</p> <p>If the local council is to prepare the contributions plan, it is to progress preparation of the first draft of the contributions plan and the engagement of any consultants as agreed with the proponent (noting this could be prior to lodgement of the planning proposal or after lodgement).</p> |
| Lodgement of a planning proposal | <p>If the proponent is preparing the draft contributions plan, it is preferable that the first draft of the plan is to be lodged with the planning proposal and supporting reports to council. The draft contributions plan should incorporate any requirements identified in the Advisory Communication.</p> <p>A proponent should lodge a local contribution's schedule that includes the local infrastructure items, proposed timing/staging of delivery, cost of land and infrastructure works, and assumptions with a Planning Proposal and supporting reports (as outlined above).</p> <p>The submission of a detailed schedule may be appropriate on large complex planning proposals.</p> |

Table 1 - Best practice process to achieve simultaneous exhibition of a planning proposal and Draft Contributions Plan

| Planning proposal step | Best practice process and actions |
|--------------------------------|--|
| Council assessment and liaison | <p>First draft of the contributions plan to be considered.</p> <p>The local council is to provide comments on the first draft of the contributions plan which will be communicated to the proponent and consultants engaged by either the proponent or the local council, as the case may be. Further refinement of the draft contributions plan is to occur in collaboration with the proponent, the local council and the consultants. The parties should agree a timeframe for finalisation of the draft and identify milestones to achieve in developing the final draft of the contributions plan.</p> <p>Council to liaise with State agencies, if required.</p> |
| Council resolution | <p>If the council resolves to support the planning proposal, that resolution should also:</p> <ul style="list-style-type: none"> ● include “in principle” support for the draft contributions plan, prior to the submission of the planning proposal to the Department for a Gateway determination. ● require that the draft contributions plan be exhibited concurrently with the planning proposal, should the planning proposal proceed past Gateway Determination. The local council may resolve to delegate that the General Manager, when satisfied, place the contributions plan on exhibition with the draft planning proposal. |

Table 1 - Best practice process to achieve simultaneous exhibition of a planning proposal and Draft Contributions Plan

| Planning proposal step | Best practice process and actions |
|------------------------|---|
| Gateway | <p>A Gateway Determination under section 3.34(2) (a) of the EP&A Act may also require that the draft contributions plan is to be exhibited concurrently with the planning proposal.</p> <p>The Gateway determination may include a condition that requires the local council and proponent to provide regular updates on the progress of the making of the draft contributions plan to enable the Department to monitor the progress of the planning proposal and the associated contributions plan. The local council can request support/assistance from the Department or request mediation/resolution of disputes from the Department.</p> <p>For council-initiated planning proposal, the Gateway Conditions will be imposed under section 3.34(2)(g) of the EP&A Act.</p> |
| Post Gateway | <p>Council, proponent and if required, State agencies, should meet to further resolve and refine any issues in relation to the draft contributions plan.</p> <p>Council/proponent to finalise the draft contributions plan for the local council's review in readiness for exhibition.</p> |
| Post Exhibition | <p>Council and the proponent are to review any public submissions and meet to discuss and resolve any matters arising that relate to the draft contributions plan and planning proposal.</p> <p>If there is a significant change to the proposal, and therefore significantly impacting the contributions plan, the council should determine whether the rezoning should proceed, following liaison with the proponent.</p> |

Table 1 - Best practice process to achieve simultaneous exhibition of a planning proposal and Draft Contributions Plan

| Planning proposal step | Best practice process and actions |
|-----------------------------------|---|
| Council determination | Council to undertake a final review of the planning proposal and if finalised, the draft contributions plan. Council to resolve whether it will submit the LEP Amendment for finalisation and whether it will adopt the draft contributions plan. |
| Finalisation of planning proposal | It is preferable, and is the objective, for the draft contributions plan to be finalised as close to the making of the LEP Amendment as possible. The LEP Amendment can proceed to finalisation without the draft contributions plan having been adopted. |

In the exceptional case, under the infrastructure planning reforms, where a local contributions plan is referred to IPART, this process should be undertaken post exhibition of the local contributions plan and planning proposal.

Notes: Local Plan Making Guideline Update

An amendment to the “Guide to Preparing Planning Proposals” will be made to identify the additional studies, consultation and preparation that would be required if a draft contributions plan is to be prepared and progressed together with a planning proposal.

Update to this Practice Note

This practice note will be periodically updated. More detailed information or guidance on specific matters in this practice note may also be the subject of future separate practice notes. Note that this practice note is not intended to be a practice note for the purposes of clause 26 of the *Environmental Planning and Assessment Regulation 2000*.

Terminology

- **planning agreement** is a planning agreement under Subdivision 2, Division 7.1 of Part 7 of the EP&A Act.
- **planning proposal** has the same meaning as in the EP&A Act.

Annexure A

Linking planning proposals to contribution plan development

Council is to organise a meeting with the proponent and relevant representatives from the internal departments of the council to discuss key issues that could link between planning proposals and contribution plans, including:

- high level identification of the public amenities and public services required in connection with the planning proposal;
- scoping requirements for the public amenities and public services including any design or standards to be adopted;
- the timing for the delivery of the public amenities and public services and, if required, the staging of their provision;
- any planned public amenities and/or public services to be delivered by surrounding developments or that is already contemplated in the existing contributions plan that is likely to support or connect to the required additional public amenities and/or public services;

- the base assumptions to form part of the contributions plan including calculation methodologies, valuation methodologies, indexation and population/infrastructure ratios;
- the studies required to be prepared to support the contributions plan;
- the timeframe for the preparation of the contributions plan including milestones to achieve in relation to preparation of first drafts, internal approvals required, consultation with State agencies, exhibition timeframes, and adoption by the local council;
- contact points within the local council for the proponent in respect of various aspects of the preparation of the draft contributions plan; and
- the framework to be applied to appropriately cost the required public amenities and public services, for example, IPART costings, costings or tender costs (within the last 6 months); and
- the template to be adopted for the contributions plan including the preparation of any schedules and online template for contributions plans.



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