Department of Planning and Environment

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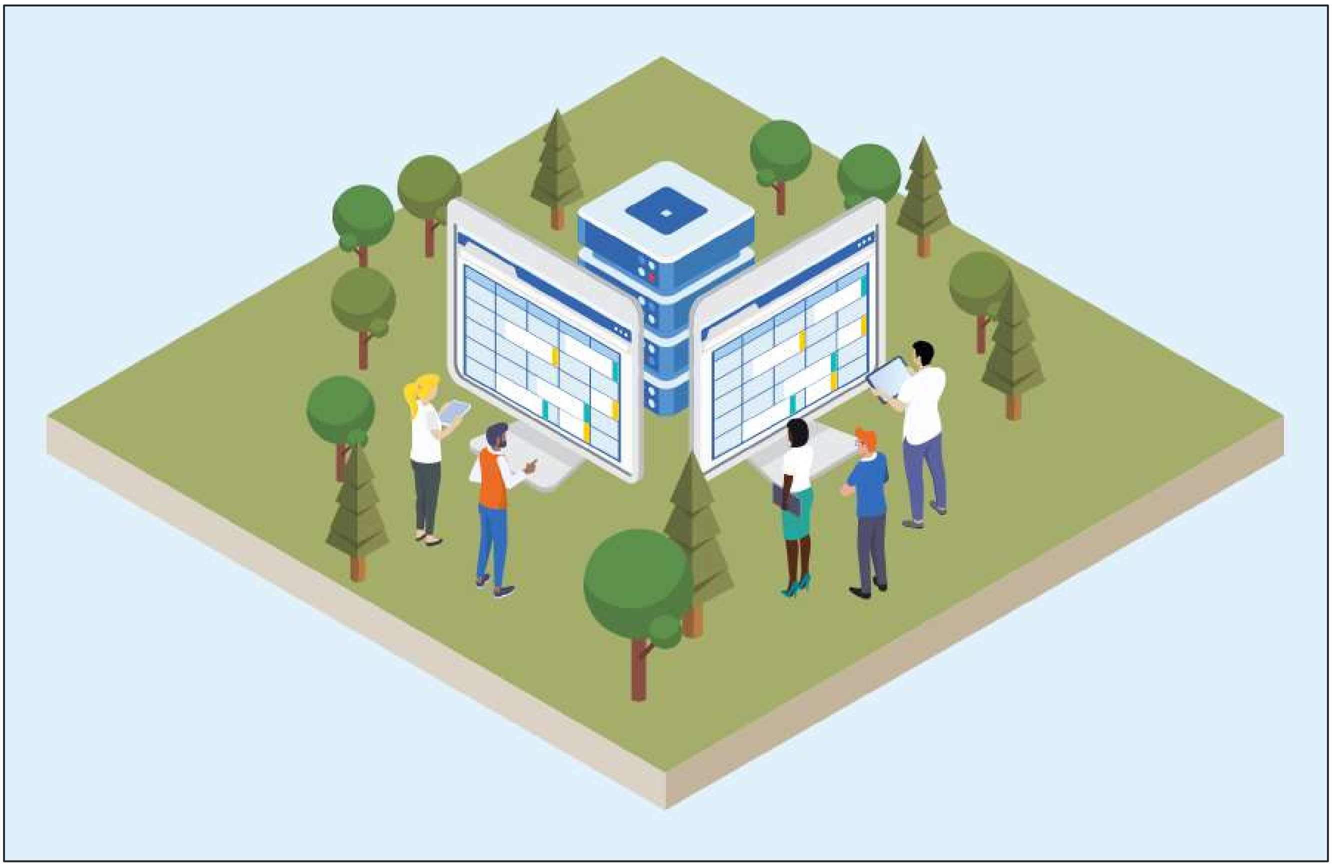
DRAFT FOR EXHIBITION - Administering contributions

Practice note

December 2023



Acknowledgement of Country

The Department of Planning and Environment acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and we show our respect for Elders past and present through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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More information

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Contents

Updates to this practice note

This practice note was first published on XX date and will be periodically updated. It replaces the *Development contributions practice notes 2005*.

Table 1: A summary of updates to this practice note

Edition	Publish date	Updates
First edition	XX Date	-

Terminology

The following terminology is used to convey key concepts across all practice notes:

- local infrastructure is the term used to describe the *public amenities and public services*
- capital costs is the term used to describe the *provision, extension or augmentation* of the local infrastructure.

Using this practice note

The local infrastructure contributions practice notes are issued by the Planning Secretary for the purposes of sections 211(3) and 203(7) of the Environmental Planning and Assessment Regulation 2021, which require councils to consider practice notes when using contributions plans or planning agreements.

The practice notes have been written primarily to assist councils. Other planning authorities and organisations can consider these practice notes, but they should always refer to the relevant legislation for any additional requirements that may not have been covered.

Borrowing, pooling contributions and forward funding infrastructure

Infrastructure is often needed before councils have collected enough contributions to fund it. It can also be cheaper to deliver infrastructure earlier before the price of materials or land increases overtime. Borrowing and forward funding allows councils to provide the infrastructure before they have received the contributions to fund the item in full.

Borrowing refers to any form of debt incurred where there is an obligation to repay the funds to the source they came from. This guidance addresses:

- internal sources of finance within councils such as borrowing from general revenue or pooling contributions within and between plans
- external sources of borrowing where funds are sourced from NSW Treasury Corporation (TCorp) or another financial institution.

Legislative requirements

Forward funding infrastructure is not mandatory, but it can be a useful tool. Councils can forward fund infrastructure through borrowing or pooling contributions funds.

Table 2: A summary of legislative requirements

Forward funding and pooling requirements	Legislation
Councils can recoup the cost of forward funded infrastructure identified in a contributions plan.	Section 7.11(3) EP&A Act Section 7.12(3) EP&A Act
Councils can pool contributions funds and apply them progressively to facilitate the provision of infrastructure.	Section 7.3(2) EP&A Act
Councils should endeavour to pool contributions to progressively provide infrastructure identified in contributions plans.	Environmental Planning and Assessment (Local Infrastructure Contributions – Pooling of Contributions) Direction 2020
Councils should ensure they are satisfied that pooling will not prevent them from delivering, within a reasonable time, the infrastructure for which the contribution was originally collected.	Section 212(6) EP&A Regulation

Forward funding and pooling requirements	Legislation
Contributions plans should detail the council’s priorities when delivering infrastructure using pooled funds.	Section 212(1)(h) EP&A Regulation

Any external borrowing is subject to general local government requirements

Although the contributions system is implemented under the EP&A Act, any external borrowings related to the contributions plan are subject to the same requirements as other council borrowings and are governed by the Local Government Act and associated regulations. They are also subject to guidance and circulars issued by the Office of Local Government.

Policy positions

Councils should consider borrowing and forward funding to deliver infrastructure

Contributions plans identify infrastructure that is required for development to occur as well as infrastructure that can be delivered alongside growth. This means that councils incur expenditure ahead of when contributions are received. Councils should consider borrowing in these situations, such as when:

- infrastructure will enable development, and this development will ultimately contribute to the cost of the infrastructure. This often applies to stormwater and traffic management infrastructure
- infrastructure is needed by a specific time, as identified in the schedule of works, but the council has not yet received enough contributions to fund the item
- the council needs to fund the land or works ‘out of sequence’ with the works schedule, such as when the council must acquire land under the hardship provisions of the *Land Acquisition (Just Terms Compensation) Act 1991*.

Councils can recoup the cost of forward funding infrastructure identified in a contributions plan, including the cost of borrowing. Interest costs associated with borrowing for infrastructure in a contributions plan can be collected through the plan.

Best practice guidance

Determining an acceptable rate of borrowing

The rate of acceptable borrowing will differ between councils and can be influenced by:

- rates of growth and community demand for infrastructure as identified in the contributions plan
- existing and projected future operating costs relative to revenue as shown in the long-term financial plan
- the council's willingness and capacity to raise additional revenue if required
- the council's ability to service the debt and the cost associated with this.

Councils must report all external borrowings as part of their annual financial statements, including borrowing used for the provision of infrastructure.

Considering the debt servicing ratio

Any borrowing for the forward funding of infrastructure is included in the council's debt servicing ratio. This ratio is not currently offset by contributions received because contributions are held as a restricted asset. Councils should be aware that external borrowings for infrastructure can impact their ability to borrow for other operational matters.

Options for internal sources of finance

Pooling funds between and within contributions plans and from planning agreements

Pooling contributions involves borrowing within and between contributions plans or accounts to fund infrastructure identified in a plan. It is a good way to fund infrastructure without having to wait for contributions to build up before an item is delivered.

Pooling enables contributions to be treated as a single bucket of money from which infrastructure can be funded. It represents a low risk and efficient funding approach for a council. Pooling funds allows councils to spend contributions as needed and demonstrates the council's commitment to the ongoing implementation of the plan.

For section 7.11 and section 7.12 plans, contributions pooling is permitted, though council can also specify pooling in the plan to provide greater clarity and transparency. To further increase transparency, councils should have well-defined works schedules that identify what infrastructure will be given funding priority and should assess their ability to deliver on the other infrastructure within a reasonable time.

Forward funding from internal sources

Internal borrowing is when a council uses general revenue to fund infrastructure and later repays this when it receives contributions. Councils cannot borrow from contributions funds, which are a restricted asset, to pay for anything that is not identified in a contributions plan.

Internal borrowing is typically managed through a council's operational plan and budget process. Councils that use internal borrowing to forward fund infrastructure should:

- ensure the infrastructure is identified by the works schedule within the contributions plan
- keep accurate records of the internal borrowings
- incorporate this borrowing into the council's long-term financial plan.

Options for external sources of finance

NSW Treasury Corporation finance

NSW Treasury Corporation (TCorp) is the central borrowing authority for the State of NSW. One of the functions of TCorp is to provide loan facilities to local councils that are considered 'financially sustainable'. Guidelines on the provision of such loans are available from TCorp.

Loan facilities are available for approved community infrastructure that form part of a council's annual capital expenditure program, such as roads, buildings and stormwater drainage.

The loans cannot be used for components that compete with private sector infrastructure. For example, if a council is upgrading an aquatic centre that contains a café, TCorp can provide a loan for the aquatic centre upgrade except for the component that contains the café.

TCorp has revised its **lending criteria** for councils seeking to forward fund infrastructure identified in a contributions plan. Funds collected through the contributions plan, along with any capital grants applied to the relevant infrastructure project, will be included in determining a council's liquidity capacity. TCorp at its discretion, can also include these contributions as one off adjustments to a council's debt servicing ratios on a case by case basis.

Low Cost Loan Initiative

The Low Cost Loan Initiative is a partnership between the Department of Planning and Environment, Office of Local Government and TCorp that aims to provide subsidised finance to councils to encourage new housing supply. Office of Local Government reimburses 50% of the interest rate cost of a maximum 10-year loan for infrastructure that enables new housing supply.

Bank loans

Bank loans are offered by commercial banking institutions and are usually for a period of up to 10 years at commercial interest rates. These interest rates are generally higher than those offered by TCorp and a bank loan should only be considered when a TCorp loan is not available. Councils will generally have existing arrangements with banking institutions and the council's finance team will be able to advise on the approach if a bank loan is required.

Councils should closely monitor the risks and benefits of forward funding

Borrowing can be both a source of risk and a means of managing risks within a contributions plan. Councils should consider both the risk and the benefits when deciding whether to use borrowings as a means of funding the provision of infrastructure.

An unexpected increase in the costs of providing infrastructure is one of the key risks associated with contributions plans. It can lead to a shortfall in contributions. Councils can borrow to purchase land and construct infrastructure earlier, saving money through early delivery. This also increases certainty, as the amount spent becomes the actual cost to be included in the contributions plan.

Funds borrowed to forward fund infrastructure are repaid by income received through contributions plans as development occurs. This is reliant on the certainty of the full development potential occurring and income being received to repay borrowings. Councils should consider the risk of development occurring quicker or slower than anticipated, or at a higher or lower density, as this will impact the overall contributions received.

Cash flow analysis can help forecast when external borrowing may be required

Councils should do a cash flow analysis to forecast patterns of income and expenditure over the life of a plan. This can then identify pinch points in funding, for example where the pooling of funds isn't sufficient and when borrowing might be required.

Councils should also note that if infrastructure is forward funded in advance of demand on site, they bear the cost of maintaining that infrastructure until the anticipated community arrives and pays rates. Councils should aim to strike a balance so that infrastructure is constructed just before the projected community arrives.

Borrowing must be included in a council's reporting requirements

Councils must report on contributions income and expenditure including details of pooled and borrowed contributions.

Councils are not required to report internal borrowings in the note to the annual financial statements, as they are reported in the general expenditure components of these statements. However, councils should monitor these borrowings when accounting for contributions. When contributions are received for items that have been paid for using internally borrowed funds, these contributions are essentially the repayment of an internal loan.

Councils must report external borrowings for contribution plans as part of their overall borrowings within the annual financial statements.

Councils should consider multiple factors when deciding on the most appropriate source of funding

There are likely to be a variety of factors that need to be considered and a variety of funding sources used for a specific item. Refer to the table below.

Table 3: Risks and benefits associated with different funding sources

Consideration	Pooling funds between plans	Forward funding from internal source	TCorp	Low Cost Loan Initiative	Bank loan
Infrastructure delivery	• Priority infrastructure delivered in the short to medium term as funds accumulated across plans • Lower priority infrastructure at risk of delay or non-delivery because funds are diverted	• Immediate delivery of infrastructure • Increases risk that the infrastructure provided won't align with population need	• Immediate delivery of infrastructure • Increases risk that the infrastructure provided won't align with population need	• Immediate delivery of infrastructure • Increases risk that the infrastructure provided won't align with population need	• Immediate delivery of infrastructure • Increases risk that the infrastructure provided won't align with population need
Financial risk	• Low risk as funds still provided from contributions • Risk that some lower priority items will be unfunded	• Low risk as funds come from existing council sources • Risk that eventual contributions may not recoup full costs	• Medium risk as loan is supported by State Government • High risk if funds can't be recouped in full from contributions, requiring loan to be repaid from general operating budget	• Medium risk as loan is supported by State Government • High risk if funds can't be recouped in full from contributions, requiring loan to be repaid from general operating budget	• High risk as loan is through a private bank • High risk of fluctuating interest rates • High risk if funds can't be recouped in full from contributions, requiring loan to be repaid from general operating budget

Consideration	Pooling funds between plans	Forward funding from internal source	TCorp	Low Cost Loan Initiative	Bank loan
Broader council impact	• No impact to other council operations	• Medium impact to other council operations as funds diverted from general operating budget • Medium impact if funds can't be recouped in full from contributions and put back into general operating budget • High impact having to maintain facilities prior to new population coming in	• Medium impact on council financial score/ability to borrow for other purposes • High impact having to maintain facilities prior to new population coming in • High impact on other council operations if repayments from contributions default, requiring input from general operating budget	• Medium impact on council financial score/ability to borrow for other purposes • High impact having to maintain facilities prior to new population coming in • High impact on other council operations if repayments from contributions default, requiring input from general operating budget	• High impact on council financial score/ability to borrow for other purposes • High impact having to maintain facilities prior to new population coming in • High impact on other council operations if repayments from contributions default, requiring input from general operating budget
Prior considerations	• For transparency, infrastructure prioritisation should be addressed in the contribution plans	• Requires accurate record keeping and reference of this internal borrowing in council long-term financial plan	• Council has to meet criteria to secure loan through TCorp • The loan can't be used on infrastructure that is commercial in nature	• Council has to meet criteria to secure loan through the Low Cost Loan Initiative	• Council has to meet criteria secure a private loan

Security for contributions and planning agreements

Security can minimise financial risk for councils and help ensure developers satisfy their contribution obligations. These obligations include paying money, providing land, delivering works through a works in kind agreement, or delivering on planning agreements.

Security can include:

- linking the issuing of certificates to meeting obligations
- requiring financial security prior to contributions being paid
- registering planning agreements on the land title.

This module provides guidance for councils on using security with infrastructure contributions.

Legislative requirements

Councils are not required to use a particular form of security or a specific amount of security. However, if a council chooses to use security, it must meet certain requirements. These requirements are provided in the EP&A Act as well as the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 (EP&A (DCFS) Regulation).

Table 4: A summary of legislative requirements

Requirements related to security	Legislation
Consent authorities can link the issuing of construction, subdivision or occupation certificates to payment of contributions or successful delivery of works or land.	Part 3, Part 4 and Part 5 EP&A (DCFS) Regulation
A planning agreement can provide for security (such as a bond or bank guarantee) for the performance of obligations specified in the agreement.	Section 7.4(3) EP&A Act
A planning agreement can be registered to run with land so that future owners of the land will be bound to the agreement.	Section 7.6 EP&A Act

Policy positions

Councils should address their policy on security in the contributions plan or planning agreement

Security is needed to reduce the risks and consequences of contributions or land not being provided or of works being delayed, left incomplete or not completed to an acceptable standard.

Security can take many forms and there is scope to vary how and when it is required. Councils should prepare a policy that sets out preferred arrangements for using securities with infrastructure contributions, in line with legislative requirements. This policy should be detailed in each contributions plan or planning agreement. This will improve certainty for applicants as well as provide transparency and consistency about how securities are applied.

For planning agreements, councils should provide for different types of security so an amendment to the planning agreement isn't required if things change. For example, a planning agreement might include provisions for requesting financial security if a developer seeks to postpone delivery or seeks the release of a certificate before meeting its obligations. An amendment to the planning agreement would ordinarily be required in such circumstances unless the planning agreement already makes provision this.

Restricting the issuing of certificates is useful for monetary contributions, planning agreements and works in kind agreements

Tying the performance of developer obligations to issuing construction, subdivision or occupation certificates is a useful form of non-monetary security. Restricting the issuing of certificates means that if a developer does not pay its contributions, complete works in kind obligations or deliver on planning agreement obligations, it can be prevented from progressing with the development.

This form of security is only useful where the contribution obligations are due before relevant certificates are issued, so they can be withheld until the developer has completed its obligations.

If a council uses this form of security, it should be detailed in the condition of consent or in the planning or works in kind agreement.

Financial security is useful for planning agreements and works in kind agreements

Financial security can be appropriate for planning agreements or works in kind agreements where the developer is delivering works or dedicating land.

This form of security can work well:

- when the risk of non-performance is high
- where the timing of the works or dedication falls after the issuing of the relevant certificates
- during defect periods and where there is a risk that works that were not delivered up to standard would need to be remediated by council.

Financial security can be provided in the form of cash bonds, insurance bonds and bank guarantees. Council should seek appropriate legal and financial advice when requiring financial security for contribution obligations through a planning agreement or works in kind agreement.

Table 5: Three forms of financial security

Type of security	Details
Cash bond	The specified amount of financial security is held in a nominated bank account.
Bank guarantee	A bank guarantee can be an irrevocable agreement that a financial institution will pay a specified amount of money the council is owed if the developer defaults on its obligations. A developer will typically have to pay a fee and be required to hold the equivalent amount of cash with the bank that issues the guarantee.
Insurance bond	An insurance bond is similar to a bank guarantee, except the financial institution does not usually require the developer to hold the equivalent amount as cash. Instead, the financial institution may charge the developer an amount determined by assessing the risk of default and the bond being claimed.

Councils should ensure appropriate record keeping for financial security. Appropriate staff, such as the finance team, should be involved in any financial security actions, particularly when securing bank guarantees or insurance bonds. Councils should:

- obtain an original copy of any bank guarantee or insurance bond
- securely store these documents
- file any relevant security documents with the agreement and the associated development application
- maintain a register of all securities including details of the agreement and development they relate to, and the works or land being provided.

The security should be returned when the obligations have been met. For works, this can be done by partially releasing funds when the works are handed over, with the full security released at the end of an agreed defect period. Defect and maintenance periods ensure the works are delivered to the required standards.

Registering a restriction on title is useful for planning agreements

Registering a planning agreement on the land title is a form of security. It will inform people of the existence of a planning agreement affecting the land and allow a council to enforce that planning agreement should the land change ownership. Section 7.6 of the EP&A Act provides the requirements for registering a planning agreement on the title.

A planning agreement cannot be registered on title without the agreement of all parties with an interest in the land. The developer and the council must get a prior written agreement to the registration from each party during the negotiation stage of the planning agreement. This will avoid any complications when trying to register the agreement after execution.

Interested parties include:

- all landowners
- banks or financial institutions if there is a mortgage
- anyone with interests in the land such as leases or easements.

Planning agreement should include provisions for when an agreement can be removed from a land title. This might be when:

- all the obligations of the planning agreement have been met
- some obligations of the planning agreement for a part of the land have been met and the agreement can be removed from that part of the land
- the land is subdivided with new lot titles and the developer has complied with all relevant obligations of the planning agreement relating to the subdivision
- additional security for the planning agreement obligations is provided in exchange for removing the planning agreement from the title.

Best practice guidance

The risks and consequences of non-performance should inform the security needed

Councils should consider the risk of non-performance and the potential impact when considering the level of financial security needed. Not all infrastructure projects require the same level or type of security. The security should be appropriate for the level of risk the council is taking on.

Non-performance might include a developer not delivering works by the agreed timeframe, leaving works partially complete or not completed to the agreed standard. Council may be required to complete any undelivered infrastructure, carry out remedial works, rectify defects when works are not delivered to an acceptable standard, or take temporary measures such as safely securing a site while a solution is found.

Infrastructure that would require the council to spend general funds to complete the work has a higher risk profile.

Key considerations for council when determining the risk and consequences of developer non-performance

Table 6: Risks and consequences considerations

Considerations	Risks and consequences
What is the complexity and cost of works being delivered?	• More complex infrastructure will increase a council's financial risk if a developer fails to deliver and the council must complete the works. • More complex infrastructure will generally be more expensive, increasing the amount of financial security required. This will then increase the risk for the developer in completing the works.
When are the works being delivered?	• Where the works or land are to be delivered prior to the issuing of certain certificates then the risk to the council is low if they are the authority issuing the certificates. • Where a private certifier is issuing the certificates, council has no control the process and this can mean the risk to the council is higher. • Where the works or land are to be delivered following the issuing of certain certificates, then the risk to the council of developer non-performance will be higher.
Are the works being completed on council land or private land?	• The risk and consequences will generally be higher for a council when the works are taking place on council owned land. The council is responsible for ensuring the works and surrounding site are safe if the works are left incomplete. • This may be at short notice and require greater financial outlay that will increase the cost and the financial risk for the council. • For works on privately owned land, the council has more flexibility in how to respond to unfinished or unsatisfactory work, reducing the associated risks and consequences. • For example, partially complete infrastructure works on public land would likely need to be completed, while the same partially completed infrastructure on private land could instead be made safe and fenced off, at a much lower cost.

Considerations	Risks and consequences
Is the development being delivered in stages?	• If the development and associated works are delivered in stages, the risks may be staggered. Councils can consider limiting the required security amount only to the value of works being delivered in a specific stage. • The risks and consequences for the council will be dependent on the approval and triggers within the conditions. Approval of a full development which is delivered in stages poses a higher risk than a development where each stage is subject to separate approval. • In situations where works are partially completed prior to issuing a subdivision or occupation certificate, the value of the security should only reflect the outstanding works.
What is the likelihood of the developer not delivering?	• The status and reputation of the developer may indicate the risk and impacts of non-performance. • If a developer has a history of delivering on works or an ongoing commitment to future development in the area, the risk of non-completion may be lower.
Is the impact of financial security on the feasibility of the development and works reasonable?	• Requiring a large financial security will increase councils own level of security but also increase the developer's financial outlay during development, which might impact on delivery. • For example, a bank guarantee can tie up project funds and impact a developer's ability to respond to issues that arise during construction. This can then increase the likelihood of non-performance. • Requiring the full value of the works can provide the lowest risk to councils as they will have complete financial security. But this can increase the risk to the developer and therefore increase the risk of non-performance because the developer has these funds tied up in a cash bond or bank guarantee. • Requiring a partial value of the works can increase the risk to councils, depending on the scale of works and certainty of delivery, but will decrease the risk for the developer. The risk of non-performance is generally decreased because the developer won't have to tie up as many funds in security. This can be appropriate when a council deems a particular type of work being delivered to be lower risk.
What are the conditions for different types of security?	• A bank guarantee could be unconditional or have an expiry date. • An insurance bond may be an option to reduce the risk to the developer and the council, as the developer may not be required to provide 100% of the value in security while still allowing council secure 100% of the value of works.

Financial management of contributions

Financial management is key to ensuring the effective and efficient use of contributions and the progressive provision of infrastructure. To be successful it should be undertaken in a whole of council context. Financial management should:

- provide certainty that council will deliver on financial commitments in the plan
- ensure funds will be available when and where they are needed
- assist in the efficient delivery of infrastructure
- provide transparency regarding the timing and funding of infrastructure.

This module highlights the key considerations a council must make when managing infrastructure contributions.

Legislative requirements

Infrastructure contributions are a restricted asset that must be held separately from all other council funds

Section 7.3 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) outlines the provisions that relate specifically to money received by a council through the contributions system.

- All contribution funds must be held for the purpose for which they were paid and must be applied towards that purpose within a reasonable time. This means contribution funds must be held as a restricted asset rather than as general funds. They can only be used to fund infrastructure under the relevant contributions plan or planning agreement.
- Any interest earned on contribution funds is also a restricted asset and must be included with those funds.

Infrastructure contributions are subject to the same financial management provisions that apply to all other local government income and expenditure

The principles of sound financial management under section 8B of the *Local Government Act 1993* should form the basis for all financial management decisions of councils.

Income and expenditure provisions applying to councils include requirements around accounting records, financial reports, auditing, loans, investments, the Integrated Planning and Reporting Framework and the principles of sound financial management.

More detail about these requirements can be found in the:

- Local Government Act 1993 – Accounting records, financial reports and auditing
- Local Government (General) Regulation 2021 – Management and accountability
- Office of Local Government's supplementary guidance relating to financial management.

Policy positions

Infrastructure contributions create a financial obligation on councils

Identifying infrastructure in a contributions plan and collecting contributions towards that infrastructure places an obligation on a council to provide the infrastructure. Councils should document projected funding obligations, potential risks of funding shortfall and mitigation strategies throughout the plan preparation to ensure transparency in the decision making process.

Before adopting a plan or entering into a planning agreement, councils should be aware of the associated financial obligations and have a plan to monitor and meet those obligations.

Table 7: Financial obligation considerations

Obligation	Considerations
Plan development	• **Infrastructure costs**: The estimated infrastructure costs on which the contributions plan or planning agreement are based must be comprehensive and robust. Underestimating costs may result in a funding shortfall. If a shortfall occurs council will be required to fund it from other revenue sources. • **Apportionment**: A council will need to consider how it will fund the portion of infrastructure that is not funded from infrastructure contributions.
Delivering the infrastructure	• **Works programming**: Infrastructure delivery is often programmed to take place over many years. Assumptions may vary significantly throughout the life of a contributions plan or planning agreement and impact cash flow and the timing of delivery. • **Borrowing**: If facilities are to be funded by borrowing, councils should ensure that the contributions will be sufficient to repay any loans.

Ongoing asset management	• **Operating and maintenance costs** : A contributions plan can provide for the capital cost of providing new or upgraded infrastructure but not fund the ongoing operating and maintenance costs (although planning agreements can consider these costs). Councils should consider how these operational and maintenance costs will be managed and funded over time. • **Depreciation and renewal** : There are ongoing financial implications for the infrastructure during its lifecycle after it has been funded through contributions. Councils should consider the ongoing depreciation of the infrastructure and any future costs associated with its potential renewal.

Financial information relating to contributions should be included in long term financial plans

Councils should include financial information relating to contributions in their long term financial plans. This will ensure that income, expenditure and required borrowings are considered in the broader financial context of their operations.

Councils should be able to demonstrate they can meet the financial obligations arising from the plan, including the operation and ongoing maintenance of the infrastructure to be provided.

Councils should develop cash flow models for their contributions plans

Cash flow modelling compares patterns of expenditure against patterns of income. While all contribution plans must include a works schedule, this typically only includes a total cost figure for each item. Cash flow modelling ensures that councils can deliver the infrastructure when and where it is required. This provides certainty and transparency around the timing and delivery of infrastructure.

Councils should use appropriately qualified and experienced staff to perform cash flow modelling or engage an external consultant if necessary. Cash flow models should consider the:

- timing for delivery of infrastructure items under the works schedule within the plan
- sources of funding to be used for each item
- expected patterns of development and growth rates.

Cash flow modelling and project planning can help identify pinch points within the plan where a council may need to borrow to deliver the infrastructure. This can inform the council's long term financial plan and determine whether the commitments under the plan are financially sustainable.

- For section 7.11 plans , cash flow modelling is particularly useful due to their complexity, but the level of detail required will be dependent on the size of the plan.

- For **section 7.12 plans** , cash flow modelling can be useful, however, it may not be necessary in all situations especially when the plans are simple or are collecting small amounts of money over long periods.
- For **planning agreements** , cash flow modelling should be a consideration, especially for agreements collecting monetary contributions.

Best practice guidance

Councils should actively manage the financial risk of their contributions obligations

Infrastructure contributions place obligations on a council and these obligations have associated risks. If the risks are not appropriately managed, a council may be unable to provide the infrastructure they have committed to or may be unable to service the debts taken on to provide the infrastructure.

Councils should undertake a risk assessment when developing a contributions plan. A risk assessment should also be done when council enters into a planning agreement, though the risk considerations may be different. Table 8 details some key risks to consider, but councils should undertake their own risk identification and management process.

Table 8: Financial risks and considerations

Key risk	Description
Rate of development	The level of income received under a contributions plan is directly related to the rate of development occurring. Contributions plans are modelled using an expected rate of development. If the rate of development is lower than expected, councils will not receive the contributions when they anticipated. This in turn will impact the money available to deliver infrastructure and service debts.
Interest rates	Interest rates impact both income through the investment of contributions held and the outgoings from servicing the debt. Contributions plans can recoup the cost of interest. However, if the interest rate changes significantly, it may impact financing of the plan.
Cost escalations	Infrastructure costs can escalate due to factors outside a council's control, such as economic conditions or changes in the construction sector. This can impact the ability for the plan to collect enough contributions to provide the infrastructure. Complex infrastructure items or higher cost items that require collection over longer time frames can be more susceptible to external cost escalation pressures.

Key risk	Description
Regulatory or environmental changes	Changes to the contributions regulatory framework can impact the contributions that can be levied. Other changes could include changes to council's own policy and or unintended consequences of other policy changes, such as infrastructure delivery benchmarks impacting the level of service required from councils.

Risks cannot be controlled by a council, but their impact on council finances can be managed. Councils should:

- develop a detailed works schedule and map the timing of expenditure across the life of the plan
- undertake cash flow modelling based on the development projections within the plan. This will enable income to be compared against expenditure to identify potential pinch points in funding that may impact infrastructure delivery
- regularly review the contributions plan to ensure that any changes in development rates and patterns, interest rates, costs and other regulatory changes are addressed in the plan.

Grants can be used towards infrastructure

Councils can receive grants to help fund items in contributions plans. Councils should be transparent about receiving grants and how they relate to the contributions plan. Grant funding should be accounted for separately from contributions income and expenditure to ensure transparency.

Grant funds can be used to either offset the costs of an infrastructure item in a plan or to embellish the item to a higher standard:

- if a grant is used to offset the cost of the item it should offset both a council's financial commitment for that item and the cost apportioned to development by deducting it from the total cost of the infrastructure item
- if a grant is used to fund infrastructure to a higher standard this should be noted in the contributions plan.

Forward funding through borrowing and pooling of funds is encouraged

Councils should consider forward funding infrastructure. This allows councils to provide the infrastructure before enough contributions have been received to fund the item in full. Providing the infrastructure earlier in the development cycle and before costs increase overtime can generally result in a better outcome for the community.

Forward funding infrastructure can include:

- borrowing to fund the infrastructure upfront and repaying the debt with contributions income
- pooling contributions funds within and between plans to fund higher priority infrastructure earlier.

Although these are useful and relatively low risk options to consider, they do have specific financial management implications. This topic is discussed in the borrowing and forward funding module.

There is no obligation for a council to provide refunds

There is no express obligation for councils to refund infrastructure contributions, even if there are funds remaining after the infrastructure is delivered or if the plan is repealed.

In instances where a developer pays a contribution but the development does not proceed or the consent lapses, council may consider whether it is appropriate to waive the required contributions or grant credit in accordance with the contributions plan. However, this is at the discretion of council.

Reporting and publication requirements

Reporting is key to ensuring transparency and accountability. It facilitates monitoring and evaluation and allows councils, developers and the community to see the contributions collected and the status of infrastructure items being delivered.

This module outlines the reporting and publication requirements for councils. Other planning authorities have similar reporting and publication requirements that are not covered here and they should refer to the relevant legislation.

Legislative requirements

Infrastructure contributions are subject to the same reporting provisions that apply to all other local government income and expenditure

This includes requirements around financial statements, annual reports and the Integrated Planning and Reporting Framework. More detail regarding these requirements can be found in the:

- Local Government Act 1993 – Accounting records, financial reports and auditing.
- Local Government (General) Regulation 2021 – Management and accountability.

Councils also have specific contributions reporting obligations under the EP&A Act and Regulation. These are outlined below.

Reporting and publication requirements for section 7.11 contributions and section 7.12 levies

Table 9: Reporting requirements for section 7.11 contributions and section 7.12 levies

Requirement	Council obligations	Legislation
Local contributions register	Keep a register containing information about local contributions including money, land and works in kind received.	Section 217 EP&A Regulation

Requirement	Council obligations	Legislation
Accounting records	Keep accounting records that allow contributions funds to be distinguished from other funds held by council including specific accounting records for each contribution plan. Disclose certain information for each contributions plan in the notes to its annual financial report.	Section 218 EP&A Regulation
Annual reports	Disclose in its annual report how contributions have been used or expended under each contributions plan. *Further guidance on the contents and structure of annual reports is available from the Office of Local Government.*	Section 218A EP&A Regulation
Annual statement	Prepare annual financial statements for the contributions plans in force in its area.	Section 219 EP&A Regulation
Publication requirements	Publish on the NSW Planning Portal and the council's website: • each current contributions plan • the current development contribution rates under each contributions plan • all annual financial statements • the contributions registers (can be kept on council's website with a link on the NSW Planning Portal).	Section 220 EP&A Regulation

Reporting and publication requirements for planning agreements

Table 10: Reporting requirements for planning agreements

Requirements	Council obligations	Legislation
Planning agreements register	Keep a register of all planning agreements that apply to the council's local government area, including ones to which the council is not a party.	Section 206(1) EP&A Regulation
Financial reporting	Report on contributions received under planning agreements including money, land and works received. This is usually done as a note to annual financial statements.	Section 206(2)(d) EP&A Regulation

Requirements	Council obligations	Legislation
Publication requirements	Publish on the NSW Planning Portal and the council's website: • planning agreement register (can be kept on council's website with a link on the NSW Planning Portal) • all executed planning agreements and their explanatory notes • a copy of the financial reporting information.	Section 206(2) EP&A Regulation
Annual reports	• Include information on compliance with and effect of planning agreements the council has entered into in council's annual report.	Section 7.5(5) EP&A Act

Reporting on affordable housing contributions

Councils can collect contributions for affordable housing in several ways, including through planning agreements. For transparency, councils should keep a consolidated affordable housing register that reports the affordable housing contributions received from all sources.

Information related to affordable housing contributions schemes can be found on the Department's website.

Policy positions

Councils can use any format for their registers as long as the minimum requirements are met

Councils can include additional information in their registers at their discretion. They can use any desired reporting format as long as the minimum requirements in the EP&A Regulation are met. The minimum requirements for local contribution registers are under Section 217. The minimum requirements for planning agreement registers are under Section 206.

Best practice guidance

Councils should keep repealed contributions plans available

All repealed contributions plans should remain available as they may still be relevant for contribution obligations under existing consents granted when they were in force. However, the outdated version in the NSW Planning Portal should be replaced with the new version.

Contributions should be included in the Integrated Planning and Reporting Framework

The Integrated Planning and Reporting Framework allows councils to draw various plans together to understand the interactions and to get the best outcomes for their efforts by planning holistically for the future.

The implementation of a council's contributions plans should be incorporated into all aspects of the Integrated Planning and Reporting Framework. This will provide transparency around what is being provided and certainty about when it will be provided. It will also enable councils to plan for the efficient delivery of infrastructure across the life of the plan and manage and monitor any risks.

Further information on the framework can be found on the Office of Local Government website.

Procedure and process

Uploading information on the NSW Planning Portal

Councils must make reporting documents available on their websites and the NSW Planning Portal. For local contributions and planning agreement registers, this requirement can be satisfied by uploading the document to the council's website and providing a link to that site on the NSW Planning Portal.

Quick reference guides on how to upload content to the NSW Planning Portal are available in the *Knowledge Management* section of the portal under 'infrastructure contributions'. You will need to be logged into your NSW Planning Portal account to access the guides. It is the responsibility of each council to keep the reporting and publication documents and links up to date.

Table 11: Required frequency for updating links and publications

Documents	Update frequency
Planning agreement registers	Kept up to date on the council's website
Copies of planning agreements and explanatory notes	Published whenever an agreement is entered into or amended
Local contributions registers	Kept up to date on the council's website
Copies of all current contributions plans	Published whenever a plan is adopted or amended

Documents	Update frequency
Current contribution rates under each plan	Updated when existing contribution rates are indexed
Annual financial statements/reports relating to contributions received and expenditure	Once a year
A detailed breakdown of contributions expenditure by project in annual reports	Once a year

Templates

Reporting template

This template provides a suggested layout for all reporting requirements, including the minimum requirements and some optional information councils may wish to include in their local contribution and planning agreement registers.

Download the reporting template

Contributions rates template

This template provides a suggested layout for the contributions rates document.

Download the contributions rates template

The templates are not mandatory to use. Copies of the templates and information on how to upload documents to the NSW Planning Portal can be found in the *Knowledge Management - Infrastructure Contributions* section once logged into an NSW Planning Portal account.

Reviewing, amending and repealing contributions plans

There are formal processes around how councils can review, amend and repeal their section 7.11 or section 7.12 plans. This module provides guidance on these processes.

Legislative requirements

Councils must take certain steps when reviewing, amending and repealing their contributions plans as set out in the EP&A Regulation.

Table 12: A summary of legislative requirements

Requirements in the EP&A Regulation	Section
Reviewing an adopted contributions plan A contributions plan must be reviewed during its lifetime to ensure it remains current. If the plan specifies dates or triggers for review, these must be followed.	216
Amending an adopted contributions plan Minor amendments to an adopted contributions plan can be made without the need to adopt a subsequent plan. These include: • minor typographical corrections • adjusting contribution rates by indexation in a section 7.11 plan • removing details of completed works. If a council determines an adopted contributions plan needs to be updated following a review process, it can amend the plan by adopting a subsequent version of the plan with the required edits. This would require exhibition and approval of the amended plan.	215(5) 215(1)
Repealing an adopted contributions plan Councils can repeal a contributions plan by adopting a subsequent version of the contributions plan. Alternatively, a council can repeal a contributions plan with no replacement if the plan is complete or no longer required. At least 14 days before repealing a plan, the council must publish a notice on its website of its intention and reason for repealing the plan, followed by a notice once the plan is formally repealed.	215

Policy positions

Contributions plans should be reviewed regularly

A contributions plan should be reviewed to ensure the growth assumptions, infrastructure requirements and cost estimates of the plan remain current. There is no set time frame for reviewing a plan. However, the plan should detail the triggers and time frame for when it will be reviewed, which must be followed by the council. Where an area is growing rapidly, there may be a need for more regular reviews.

- 4 year review time frames can better align with the preparation of a council's delivery program, as well as working alongside its broader strategic planning programs and Integrated Planning and Reporting Framework requirements. This can help integrate infrastructure contributions into these other council planning processes.
- 5 year review time frames can better align with demographic and census data. This can help ensure the projected population growth can stay in line with the proposed infrastructure needs over the life of a plan.

When reviewing a plan, councils should consider if:

- the works program or cost of the infrastructure items need to be updated, which would then have impacts on contribution rates and the levels of apportionment
- the basis of the plan needs to be changed, such as the base population in an area, occupancy rates, standards of provision or timing of delivery. An ongoing review of the plan enables any projections to be closely monitored and adjusted as more accurate information becomes available
- studies or strategies underpinning the plan need to be updated to remain current
- the catchment area needs to be changed, which may be the result of a boundary change to the development or the local government area.

Infrastructure costs should be updated during a review

Councils should update the infrastructure costs in a section 7.11 plan to ensure the rates of the plan remain accurate. This should be done during the regular plan review process or when significant changes to costs are anticipated or incurred. Councils can get new infrastructure costings to update the plan.

Councils should also consider updating costs in a section 7.12 plan over its lifetime.

Regularly reviewing cost estimates in contributions plans, including estimated costs for both land and works, help to mitigate the risks of under collecting. Inaccurate costs are one of the highest risk factors when collecting contributions.

Amended plans should replace the existing version on the NSW Planning Portal

As part of a council's publishing requirements, an amended contributions plan must be uploaded to the NSW Planning Portal, as well as the council's website.

The amended version should replace the outdated version once approved and adopted by the council. However, the old version should remain publicly available, especially for developments that were granted consent under it and are yet to pay their contribution.

Making minor amendments to an adopted contributions plan

When making minor amendments that don't require preparing a new plan, council must ensure the published version of the plan is updated with the changes. A revision history should be included in the plan to provide a summary of what was corrected and the date the plan was updated.

Minor amendments include correcting minor typographical or formatting errors, indexing contribution rates, and detailing when infrastructure items or works have been completed.