Department of Planning and Environment

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DRAFT FOR EXHIBITION - Section 7.11 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

Local Infrastructure Funding Policy team. Contact us on:

infrastructure.contributions@planning.nsw.gov.au

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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* and the *Local infrastructure contributions (review by IPART) practice note 2019*.

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.

This practice note should be read in conjunction with the:

- Local infrastructure contributions system practice note
- Administering contributions practice note.

Making a section 7.11 contributions plan

Section 7.11 contributions are one of the mechanisms available to councils to collect contributions towards funding local infrastructure. A section 7.11 plan details what infrastructure will be provided, approximately how much it will cost and when and where it will be provided. This information is used to calculate a contribution rate and determine the contribution that will be paid by development.

This module lays out the steps involved in making and using a section 7.11 plan.

Legislative requirements

Section 7.11 contributions are based on a transparent relationship between the demand for and provision of infrastructure to support development.

- They are charged under section 7.11 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).
- Councils can require them as a monetary contribution, dedication of land or both if they are satisfied that the development will create or increase a need for infrastructure in the area (section 7.11(1) EP&A Act).
- Councils can also accept a material public benefit (works to provide the infrastructure) to satisfy a contribution obligation (section 7.11(5)(b) EP&A Act).
- Councils can recoup the costs of already provided infrastructure that helps serve development (section 7.11(3) EP&A Act).
- Councils can only impose a section 7.11 contribution if they have a contributions plan in place (section 7.13 EP&A Act).

Councils must also provide certain information in a contributions plans. The information required in a section 7.11 plan is set out in the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation). Table 2 highlights what this required information is and where councils can find guidance on each topic.

Table 2: Content to include in a section 7.11 plan

Content of a section 7.11 plan	EP&A Regulation section	Module that provides guidance
The purpose of the plan	212(1)(a)	This module
The land to which the plan applies	212(1)(b)	Defining plan catchments and subcatchments
The relationship between the expected types of development and the demand for additional infrastructure	212(1)(c)	Determining demand and demonstrating nexus
The contribution rates for different types of infrastructure and the formulas for determining contributions for different types of development	212(1)(d) 212(1)(e)	Calculating contribution rates
A map showing the specific public amenities and services proposed	212(1)(f)	What can be funded through section 7.11 and 7.12 contributions Developing a works schedule and mapping infrastructure
A works schedule that contains an estimate of the costs and staging	212(1)(g)	Developing a works schedule and mapping infrastructure
The priorities for the expenditure of contributions through pooling and progressively applying funds	212(1)(h)	Borrowing, pooling contributions and forward funding infrastructure
The timing of payment and the policy on considering deferred or periodic payments	212(3)	Timing of payment
How the contribution rates in the plan will be indexed and how contribution amounts owing will be adjusted between granting consent and payment	-	Indexing contribution rates and conditions of consent
The exemptions policy	-	Exempting certain development from contributions

Policy positions

The principles of the infrastructure contributions system underpin section 7.11 contributions

Section 7.11 contributions are a cost reflective charge that can allow councils to fund the full cost of the infrastructure required to support development in a particular area. The principles of reasonableness, nexus and accountability are applied in the strictest sense to contributions levied under this mechanism. These contributions provide a market signal to development. Higher contribution rates show where infrastructure service costs are high and where development is more expensive to undertake.

- The contribution rates should be reasonable and reflect the actual cost of the infrastructure provided.
- Rigorous plan making requirements and a strict application of nexus and apportionment are required.

Contributions plans should have a clear and defined purpose

A section 7.11 plan must have a section defining the purpose of the plan. Councils have discretion on the wording and purposes to include in this section. At a minimum it should include the following purpose:

The primary purpose of the plan is to authorise the council or a registered private certifier to require a contribution be made towards the local infrastructure identified in the plan.

Contributions must be detailed in a condition of consent

Councils should use simple and clear conditions of consent that demonstrate to the applicant how much is due and when and how this amount will be indexed. Guidance and requirements for drafting conditions are provided in the department's guidance on writing conditions of consent.

Conditions of consent for contributions should include:

- the name of the plan
- the amount owed, broken down into the different contributions rate categories
- the timing and method of payment
- that the amount owed will be indexed at the time of payment, in line with the indexation method adopted in the plan.

Best practice guidance

The life of a contributions plan is guided by the underpinning assumptions

A contributions plan should generally have a lifecycle of 10 to 15 years or equal to the forecast development duration.

When determining the appropriate life cycle, a council should consider the:

- life cycle of the development area and facilities being delivered
- long range planning that is required for any major infrastructure
- the growth assumptions including population projections, lot and dwelling projections and non-residential development projections that the plan has been informed by
- life cycle of any studies or strategies that underpin the plan.

Contributions plans must be regularly reviewed

The contributions plan must be regularly reviewed throughout its lifecycle to ensure it remains current. This includes regular review of the costs in the plan to ensure they remain accurate over the life of the plan, as well as more in depth review of the plan overall.

This should be done as part of the regular plan review process or when changes in costs are anticipated or incurred. Additionally, the contribution rates in the plan should be adjusted in line with the indexation method adopted in the plan.

Procedure and process

The steps outlined in Table 3 show a simplified process for making and using a section 7.11 plan.

Table 3: Simplified process for making and using a section 7.11 plan

Step	The process	Module that provides guidance
1	Undertake a needs assessment and consider likely future development patterns and infrastructure needs of the local government area	Council process
2	Review funding options and decide whether to prepare a section 7.11 plan	Selecting the most appropriate contributions mechanism
3	Start drafting the plan, considering all the information and policies that must be included in a contributions plan	Council process
4	Decide where the plan will apply	Defining plan catchments and subcatchments

5	Determine the demand for infrastructure	Determining demand and demonstrating nexus
6	Identify what can be funded through contributions and what will need other funding sources	What can be funded through section 7.11 and section 7.12 contributions
7	Estimate the cost of infrastructure and prepare a work schedule and mapping	Developing a works schedule and mapping infrastructure
8	Calculate indicative contributions rates	Calculating contribution rates
9	Detail how local works in kind agreements will be considered	Works in kind agreements
10	Detail the policy on seeking security	Security for contributions and planning agreements
11	Finalise draft plan preparation and complete council approval process for exhibition	Council process
12	Exhibit contributions plan, consider submissions and make amendments if necessary	Exhibiting and adopting contribution plans
12.1	*Plan to be reviewed by IPART if the contribution rate is above the threshold*	*IPART review of section 7.11 plans*
13	Adopt plan and upload to the NSW Planning Portal and council's website	Exhibiting and adopting contribution plans
14	The plan is in operation with council continuing to report on its progress	Reporting and publication requirements
15	Regularly review the plan to ensure it remains current	Reviewing, amending and repealing of contributions plans

Exempting certain development from contributions

Certain types of development are exempt from local contributions for a variety of strategic, economic or social reasons.

- Some types of development are always exempt from paying local contributions.
- Councils can choose to exempt other types of development in their contributions plans.

This module details the mandatory exemptions. It also discusses things councils should consider before providing additional exemptions in their contributions plans.

Legislative requirements

Councils must not charge local infrastructure contribution conditions in a development consent for certain development.

Table 4: A summary of legislative requirements

Development that is exempt from contributions	Legislation
Councils cannot charge contributions to seniors housing development by a social housing provider. The terms 'seniors housing' and 'social housing provider' are defined by the State Environmental Planning Policy (Housing) 2021.	Direction under section 94E (now section 7.17) (Ministerial direction)
When calculating the cost of development for section 7.12 levies, councils cannot include certain costs that are detailed in the EP&A Regulation. This includes affordable housing.	Section 208 EP&A Regulation
Councils cannot charge section 7.12 levies to development on subdivided land if a section 7.11 contribution was already made for that initial subdivision unless the development is likely to increase the demand for local infrastructure beyond the initial subdivision.	Environmental Planning and Assessment (Local Infrastructure Levies) Direction 2015 (Ministerial direction)

Development that is exempt from contributions	Legislation
Councils cannot charge section 7.11 contributions or section 7.12 levies to development in: • Port Botany Lease Area • Port Kembla Lease Area • Port of Newcastle Lease Area.	Environmental Planning and Assessment (Local Infrastructure Contributions – Port of Newcastle) Direction 2014 (Ministerial direction) Environmental Planning and Assessment (Local Infrastructure Contributions – Port Botany and Port Kembla) Direction 2013 (Ministerial direction)

Policy positions

Contributions plans should clearly describe what type of development is exempt from infrastructure contributions

Councils should be aware of the mandatory exemptions to infrastructure contributions. When making a new plan, councils should ensure the plan is consistent with any legislative requirements relating to mandatory exemptions and clearly state these exemptions in the plan.

Forgone contributions cannot be recovered from other development

Exemptions have a financial impact that council must be aware of when developing infrastructure contributions plans. If a development is exempt from paying contributions, this results in a revenue shortfall relative to the demand for the infrastructure it creates. This shortfall cannot be recovered from other development. Councils will need other funding sources to cover this portion of the costs in the plan.

Certain Crown development should be exempt from some contributions

Certain categories of Crown development are infrastructure for the community and are unlikely to generate the same demand for public amenities or public services in the same way as private development.

Circular D6 *Crown development applications and conditions of consent* details the categories of infrastructure for which councils should and should not charge contributions to certain Crown development.

Exemptions apply only to the exempt components of a mixed use development

Developments can combine multiple land uses and development types. The exemption from infrastructure contributions only applies to the exempt component of the development. For example, a mixed use development may have commercial premises at the ground floor and seniors housing by a social housing provider above. In this case, the exemption applies only to the seniors housing delivered by a social housing provider, as this is the exempt use. The remainder of the development attracts contributions.

When calculating the proposed cost of development for section 7.12 levies, costs and expenses that that are exempt from the calculation under section 208 of the EP&A Regulation must be excluded.

Best practice guidance

Councils can exempt other types of development in their contributions plans

Councils may choose to exempt other developments from paying contributions, in addition to the mandatory exemptions. However, councils should carefully consider the revenue implications of providing additional exemptions, including whether this will impact their ability to deliver the infrastructure identified in the plan.

The contributions plan should include a list of any additional exemptions as well as the rationale behind these. Councils should make consistent and transparent decisions about granting additional exemptions so that:

- developers have certainty
- the council does not face an excessive cost burden to fund the portion of local infrastructure that would have been paid by the exempt development.

There are three key considerations when determining whether additional exemptions for contributions may be appropriate. These considerations should form the basis of a council's rationale for additional exemptions, which should be detailed in the relevant contributions plan.

Table 5: Three considerations for additional exemptions

Key considerations	Examples
Social benefit of the development	• The development has a clear public purpose • The social benefit outweighs any private gain • The social benefit applies to the community being directly impacted by the development • The social benefit applies to the broader community
Financial implications for the council	• Forgone contributions place undue pressure on other funding streams • Pressure on council finances could lead to infrastructure deficits
Capacity to pay (primarily applies to case-by-case exemptions)	• There are charitable or compassionate grounds to grant exemptions • The applicant is going through hardship such as rebuilding after a natural disaster • The organisations service or operating model means they have a limited capacity to pay contributions, such as registered charities, not-for-profits, social housing providers or developments under certain grant programs

Councils can consider providing discounts on monetary contributions

Separate to the process of exempting certain development from contribution obligations, councils may wish to provide a discount on an applicants owed contribution amount. Discounting is at the discretion of council. The guidance above can be useful when considering if a discount is appropriate. There should be a section in each contributions plan that details the council's policy on discounts and the circumstances in which they would be considered.

Defining plan catchments and subcatchments

Defining catchments for a contributions plan and subcatchments within a plan is a key part of plan making. It allows councils to determine the scope of development that will create demand for infrastructure and forms the basis for determining demand and calculating contribution rates.

This module provides guidance on how to determine an appropriate catchment and the mapping requirements for these catchments.

Legislative requirements

Under section 212(1)(b) of the EP&A Regulation, contributions plans must contain information detailing the land to which the plan applies. This is referred to as the plan catchment and applies to both section 7.11 and section 7.12 plans.

Policy positions

Contributions plans can have catchments and subcatchments

Each contributions plan will have a boundary that shows the area that the plan applies to. This overall boundary is referred to as the plan catchment.

Plans can also have subcatchments. These might relate to specific infrastructure types or categories within a contributions plan. A subcatchment could have an area of demand different to other types of infrastructure.

For example, local open space catchments may be specific to a certain planning area while open space catering for widespread use, such as large sports facilities, may have the entire local government area as the catchment.

Catchments should be clearly and accurately mapped

Plan catchments and any subcatchments should be clearly shown via accurate mapping, and their purpose explained in the plan. The catchment maps must be accurate and legible so that they clearly show the boundaries of the catchment and any subcatchments. Councils should consider including wayfinding within the map, such as important road names and lot numbers, so it is easy to identify specific land within the catchment.

Accurate mapping is important because contributions cannot be charged to development outside a catchment boundary. Maps for contributions plans should be created to the same standard as maps produced for other council documents such as local environmental plans. Mapping information can be found in the Standard Technical Requirements for Spatial Datasets and Maps 2017.

Plan catchments can cross local government area boundaries

Councils can prepare a cross boundary or joint contributions plan with another council when catchments cross different local government areas. This might occur when the demand for an item of local infrastructure does not conform to the boundaries of just one council area. For example, a growing urban area might cross two local government areas. A community facility to service this urban area would then have a catchment that crosses over the two councils.

Best practice guidance

Catchment boundaries should relate to the demand for infrastructure

Councils should consider any factors that impact demand for specific facilities when determining the catchment boundaries for a contributions plan or subcatchments within a contributions plan.

- Boundaries related to populations - A catchment can be a geographic area that will incorporate the population, both existing and future, from which the major demand for a facility or service will be created. This could be a single greenfield development area, an entire local government area or a combination of local government areas.
- Boundaries related to intended use patterns - The type of infrastructure and its intended use pattern can influence the catchment boundaries. For example, a catchment for local open space may be specific to a limited area as the community likely to use the space may be more localised. Other open space intended for widespread use, such as regional sporting facilities, may have the entire local government area as the catchment.
- Boundaries influenced by an access barrier - A catchment may also be influenced by an access barrier, such as a railway line or a major highway. Barriers can affect the ability or inclination of a resident population to access services on the other side. This may be due to limited crossing points, a lack of transport options or even a perception of an impediment. For example, a population may identify with a centre that is further away but easier to access.

Catchment size should be large enough to promote efficiency

Catchments should be large enough to promote efficiency in funding and providing infrastructure, while still accurately reflecting the infrastructure demand. Generally, with a smaller catchment, it will take longer to accumulate enough contributions for works to start. Smaller catchments also increase the complexity around managing the plan and increase the need to borrow externally and between plans, adding administrative burden.

Catchments should be defined to capture the largest proportion of the population who will use the infrastructure, as far as is practical and equitable. Demands from outside the catchment must be accounted for through apportionment, and this portion of the costs cannot be charged to the catchment.

Determining demand and demonstrating nexus

The power to impose a contribution relies on there being a clear relationship between the development being charged and the demand for the infrastructure being funded. Contributions plans must demonstrate that they are reasonable by showing this relationship.

This module outlines the methods councils can use to determine demand and demonstrate nexus for a section 7.11 plan.

Legislative requirements

Councils can only charge section 7.11 contributions if they are satisfied that the development will or is likely to increase demand for infrastructure. They must demonstrate this in the contributions plan.

Table 6: A summary of legislative requirements

Legislative requirements to demonstrate demand	Legislation section
Councils can only charge a contribution under section 7.11 if they are satisfied that the development will or is likely to increase demand for infrastructure.	7.11(1) EP&A Act
Contributions plans must identify the relationship between the expected types of development and the demand for additional public amenities and services to meet that development.	212(1)(c) EP&A Regulation

Policy positions

Section 7.11 plans must demonstrate nexus between development demand and infrastructure

Section 7.11 plans must demonstrate the relationship between development, the increased demand for infrastructure and the specific infrastructure being provided. This relationship is referred to as nexus. Identifying nexus demonstrates that both the scope of work being funded and the contributions levied are reasonable. The plan must also show how other demand is accounted for, such as demand from existing populations.

Nexus establishes the relationship between demand for infrastructure and development.

Apportionment is a calculation that ensures contributions reflect the demands for infrastructure created specifically by the development.

Identifying nexus requires an assessment of three key areas

The level of growth in the area that is occurring because of the development

Area 1. Forecasting growth and development is key to demonstrating nexus. Councils should consider the makeup, spatial distribution and timing of growth that will occur in the catchment area, within the timeframe of the contributions plan. This should include an assessment of:

- the overall population change forecast for their local government area
- changes to zoning and development controls that may create additional population
- changes in demographics, such as trends in the size and makeup of households or shifts in population age groups
- changes in the way people use and occupy housing such as changes to household formation rates and occupancy rates
- developable land capacity, whether this land is likely to be developed or redeveloped, how much development this will yield and what type of development will result
- changes to employment or business areas that could lead to a larger or smaller workforce using the local area.

Analysing these factors can help forecast the expected increase in both residential and worker populations and the likely demographics of these populations.

The demand for infrastructure that will be generated by the growth

Area 2. Calculating how much demand for infrastructure is created by the increase in population. Councils should consider the:

- anticipated characteristics, needs and preferences of the forecast population
- participation rates and usage trends for various activities expected for the forecast population.

Calculating demand does not produce exact results as the new population is only theoretical. However, councils can make predictions using historical data, demographic analysis or by doing formal needs assessments for these populations. This information should be used to develop a picture of the impact of development on existing infrastructure and identify an expected gaps in provision.

The specific infrastructure that is required to meet the demand

Area 3. Identifying the specific infrastructure needed to meet the demand involves detailed options analysis. This should identify the preferred option for infrastructure that best meets the demand and while also considering the upfront and overall cost. This should consider:

- if some of the demand can be catered for by using existing facilities, either as they are or through upgrades to the facilities
- the types and extent of infrastructure that will be required to address that demand
- when infrastructure would be required to meet the demand generated by the development.

Once the council has identified the infrastructure needed to address the demand created by the new population, it should be used to develop a works schedule and mapping for the contributions plan.

Demand must be apportioned accurately

Apportioning the demand to new development is a part of demonstrating nexus. Councils must ensure contributions paid by development reflect the proportion of the demand they create. Apportionment illustrates the level of demand for infrastructure created by new development, as a proportion of the overall demand for that infrastructure.

Demand for infrastructure can come from areas such as existing population, from new residential, worker and tourist populations, or people outside the local government area. For example:

- Full cost recovery (100% apportionment to new development) would only be appropriate where the infrastructure is provided to meet only the level of demand anticipated by new development and there is no spare infrastructure capacity available in the area, and the infrastructure will not serve an existing unmet demand.
- If the proposed infrastructure also satisfies some other demand, only the portion of demand created by new development can be charged as a contribution. For example, 60% of the demand may come from the development, while 40% of the demand may come from existing residents. The contributions plan can only charge for the 60% of the cost that is apportioned to development.

Apportionment is calculated as a percentage and applied to the contributions rates through an apportionment factor. The module calculating contribution rates has more information on calculating and using an apportionment factor.

Plans should be supported by publicly available studies and strategies

Councils should support their contributions plans with sufficient evidence at a level of detail that will allow stakeholders to interpret assumptions made in the plan. The type and amount of evidence needed to demonstrate nexus can vary depending on the size and complexity of the plan.

Councils can also use existing studies and strategies to support the plan. This might include:

- strategic planning documents - councils can use local strategic planning statements, local environmental plans and local housing strategies to gauge where development is likely to occur and what the scale of this development will be
- census data – this data is available from the Australian Bureau of Statistics in various formats and can be used by councils to understand changes in population and demographics
- demographic analysis - this can include social plans, demographic analysis and local residential studies
- community surveys or studies - user or participation surveys undertaken for various public facilities such as recreation or community facilities
- community strategic plans - these plans focus on achieving the long-term social, environmental and economic aspirations of the community. They underpin the work of a council and should be used to inform the contributions plan, including what infrastructure and services the community prioritise
- land ownership patterns - this can help inform where development is likely to happen quickly. Large areas of land held in single ownership may be more easily redeveloped
- external studies - traffic management, roads or drainage studies may be required where a council does not have sufficiently detailed strategies or information.

When making a contributions plan, councils will need to collate this information into a holistic picture that can inform the scope of the works. Any studies and strategies used to develop a contributions plan should be included in the exhibition of the plan as supporting material.

Employees and workers can result in demand for infrastructure

Employees and workers can cause an increase in demand for infrastructure. Employees and workers generally have different usage patterns than residents and create demand for infrastructure at different times. Councils should consider these differences in their contributions planning. For example, demand from workers might be more likely to generate morning and evening peak activity and lunchtime usage of plazas and town squares, with limited other pedestrian activity.

However, the extent to which employees and workers create additional demand depends on the specific circumstances of the development. In some situations, a worker may also live in the area and is likely to have already been counted as part of the residential demand for infrastructure.

For example, in a newly developing mixed use centre, a proportion of the new workforce may also be new residents. In this circumstance, it would be unreasonable for the contributions plan to combine the worker and residential populations when calculating the level of demand since the demand overlaps or coincides. Councils should consider this overlap in populations when determining how infrastructure costs will be apportioned.

A section 7.12 plan may be more appropriate in situations where it is difficult to accurately apportion between residential and worker populations.

Best practice guidance

Councils should consider ways to increase efficiencies when providing infrastructure

Councils should consider if they could address some of the demands from their communities in innovative ways. This might include:

- co-location of facilities - public facilities sharing a location with private facilities or negotiating agreements for the community to use infrastructure available at schools and other publicly funded facilities
- multi-use facilities - designing infrastructure that can allow for multiple uses of the one facility such as sports fields that can be adapted to accommodate multiple sports
- examining the capacity of existing facilities - identifying where there may be excess capacity that can accommodate additional demand, or the opportunity to manage existing facilities in a more efficient and creative manner to satisfy present and potential demand. Councils should also consider ways in which existing facilities may be upgraded to cater for additional demand rather than providing new facilities, such as upgrading lighting or irrigation to increase the carrying capacity of a sports field.

Nexus can be demonstrated in different ways depending on the type and scale of infrastructure

Transport infrastructure

New transport infrastructure is generally identified as part of a broader planning process and is often underpinned by technical studies that consider:

- the indicative layout of the new road network
- how new infrastructure integrates into the existing transport networks
- expected transport volumes and demand.

Transport infrastructure is also made up of many individual items, such as sections of road and different levels of intersections. Supporting documentation needs to establish that all the components for the road network are required.

To demonstrate nexus, councils should show that each item of transport infrastructure in a contributions plan is either:

- supported by a technical study with the scope and location of the infrastructure consistent between the contributions plan and the technical study. The infrastructure in the contributions plan should be mapped to the infrastructure in the technical study, and this map should be included in the plan.
- supported by satisfactory evidence or explanation when it is not feasible to undertake a technical study (or the proposed infrastructure is not consistent in scope or location with the technical study). Such evidence should explain its inclusion or deviation, scope and location. This could include:
  – internal traffic modelling that uses revised or updated population or dwelling forecasts to demonstrate that changes are required to accommodate higher or lower demand on transport infrastructure than previously forecast
  – other internal analysis such as an options analysis (like a cost-benefit analysis of the alternatives considered) and factors considered.

Stormwater infrastructure

The need for new or upgraded stormwater infrastructure is generally identified as part of a broader planning process and is often underpinned by technical studies. Nexus for stormwater infrastructure can be established for new or upgraded infrastructure that is required to meet the increased demand for stormwater services due to development, consistent with the relevant state and national standards.

In greenfield developments, there is a significant increase in impervious surfaces due to roofs, driveways, roads and carparks. This increases runoff and causes flooding in low lying areas that would not have occurred prior to development. Given that all new development in a greenfield site contributes to the stormwater impact in the area, it is fair and reasonable that all development contributes to the cost of stormwater management.

In infill developments, sites are often already impervious. The redevelopment may bring little or no increase in impervious area but may result in changes to water quality and quantity. Therefore, councils must demonstrate a different nexus between the development and the need for additional stormwater infrastructure.

To satisfy the nexus requirement, councils should demonstrate that each item of stormwater infrastructure in a contributions plan is either:

- supported by a technical study with the scope and location of the infrastructure consistent between the contributions plan and the technical study. The infrastructure in the contributions plan should be mapped to the infrastructure in the technical study, and this map should be included in the plan
- supported by satisfactory evidence or explanation when it is not feasible to undertake a technical study (or the proposed infrastructure is not consistent in scope or location with the technical study). Such evidence should explain its inclusion or deviation, scope and location.

Open space and community facilities

When establishing nexus for open space, councils generally need to demonstrate that the open space land and embellishment included in a contributions plan meets the needs of the anticipated population of the development. This includes the:

- amount of land for open space and recreation purposes
- number and types of facilities for active and passive recreation
- targets for open space that the council is trying to achieve and their basis.

To satisfy the nexus requirement, councils should demonstrate that the open space and embellishment in the contributions plan are consistent with:

- recommendations in any technical studies or needs assessment studies prepared to inform planning for the relevant area such as a technical study outlining the expected demographics of the incoming population and the additional facilities required to meet their needs
- the council's recreation policies and strategies which should be generally consistent with benchmarks reflecting NSW Government policies and guidelines, such as population-based benchmarks released by the NSW Office of Sport.

Procedure and process

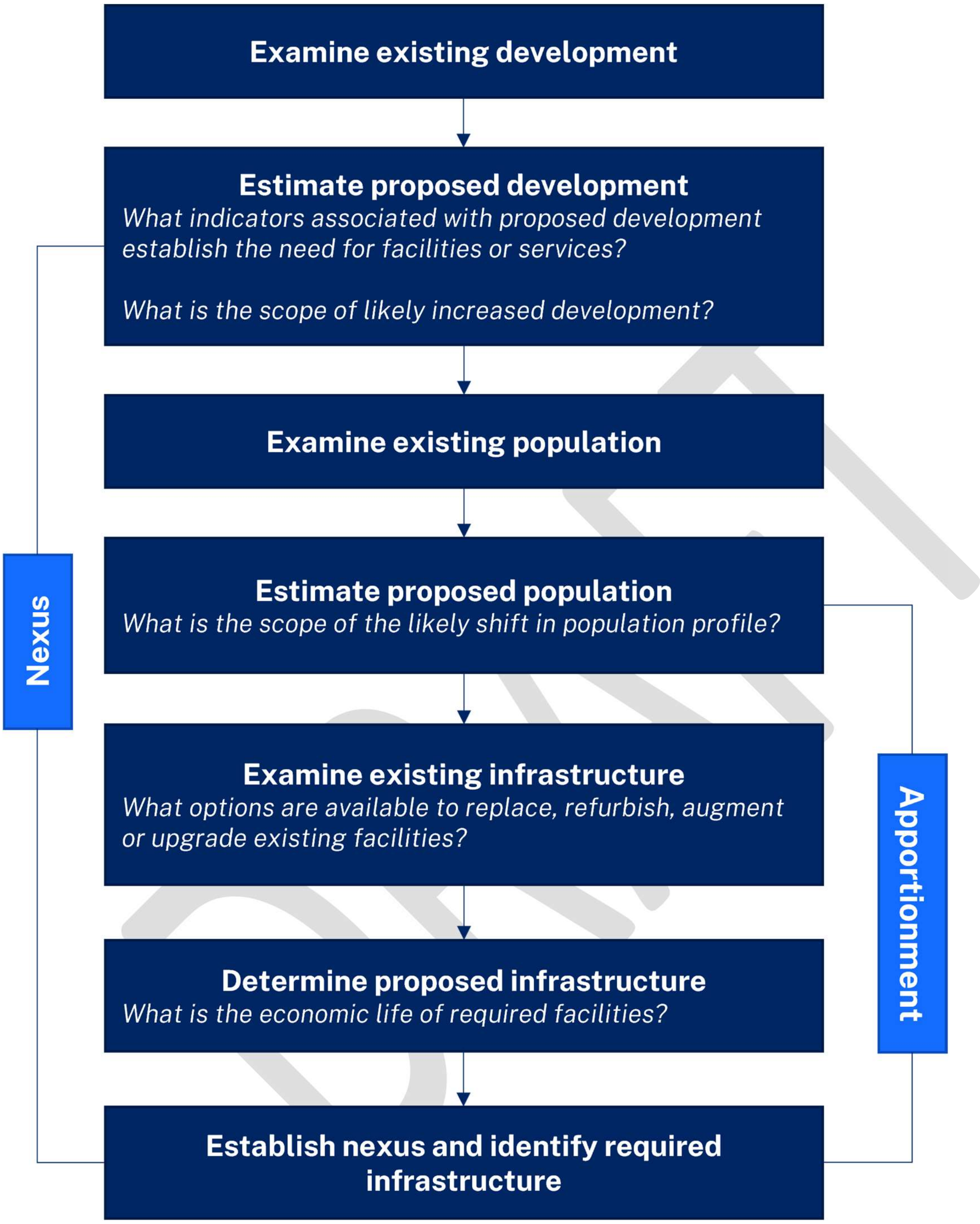

Figure 1: The process for determining demand and demonstrating nexus

Developing a works schedule and mapping infrastructure

Developing a schedule of works then programming and mapping those works are key parts of making a contributions plan. They provide transparency and certainty around the infrastructure that will be provided, when and where it will be provided and how much it will cost.

This module describes how to develop a works schedule and the information required to support it.

Legislative requirements

Councils must include information in their contributions plans on what infrastructure is to be provided and where. Plans must also include an estimate of the cost and the staging of the infrastructure.

Table 7: A summary of legislative requirements

Works schedule requirements in the EP&A Regulation	Section
A map showing the infrastructure to be provided	212(1)(f)
A works schedule that includes an estimate of the cost of the items and the staging of their provision	212(1)(g)

Policy positions

The works schedule should provide a detailed plan of implementation

A works schedule is a critical component of a contributions plan. It provides an understanding of what infrastructure is required, when and how it will be provided and how much it will cost. The works schedule should act as a detailed plan of implementation, establishing the relative priority of each piece of infrastructure as compared to other infrastructure on the schedule. Councils should continually review and refine the prioritisation in the works schedule to account for any changes over time.

The works program of a schedule should:

- be a genuine evaluation of the needs of a projected population

- be realistic and achievable
- include accurate cost estimates
- be specific and provide clear details about the infrastructure to be provided.

Developing a works schedule should be done collaborative within councils. It will require input from different areas of council, such as teams involved with assets, projects and finance.

The works schedule should outline delivery time frames or thresholds

Councils should determine when infrastructure will be delivered, and detail this in the works schedule. Timings should be realistic, ensure infrastructure will be available in time to service the intended population and be based on funding availability and cash flow analysis.

The time frames can be expressed in terms of:

- indicative dates or time frames - these tend to be clearer and more transparent and can be useful to feed into a council's overall capital works program and provide greater flexibility in the plan while still indicating what would trigger the provision of the infrastructure. They will also generally have a lower administrative burden than the requirements of thresholds.
- thresholds that will trigger the delivery – this could be when the population reaches a certain number or when a certain number of development applications have been approved. This is useful when the development pattern is less certain. They will generally have a higher administrative burden due to the need to monitor the thresholds.

If a council decides to pool contributions or forward fund infrastructure the priority of infrastructure delivery should be reflected in the work schedule. Councils may need to reprioritise the order of infrastructure items to allow for change over the life of a plan.

Mapping should clearly show where the infrastructure is to be provided

Councils should map where they will be providing the infrastructure. The maps should show the locations of specific infrastructure as well as an identifier that links to detailed information about the infrastructure item in the works schedule.

The mapping can be indicative in the early stages of plan delivery to allow for flexibility and efficiency, and this indicative nature should be noted on the map. Where the location cannot be provided accurately, such as in a new release area, the criteria for inclusion of the infrastructure should also be included in the mapping. For example, the location of a community facility may be planned for a town centre which isn't fully determined. The mapping could indicate that the location of the infrastructure may change if the location of the town centre is changed.

The accuracy of the mapping will be dependent on the delivery horizon of the infrastructure, maps can be more indicative initially and become more accurate closer to delivery. As the infrastructure delivery becomes more certain councils should update their maps.

Like plan catchment maps, infrastructure maps should be created to the same standard as maps produced for other council documents such as local environmental plans. Mapping information can be found in the Standard Technical Requirements for Spatial Datasets and Maps 2017.

Best practice guidance

Works schedules should feed into a council's financial plan and delivery program

The works schedule identifies what infrastructures will be provided and the estimated cost of the infrastructure. This information should be reflected in a council's long term financial plan and operational and delivery plans. This ensures that the implementation of the contributions plan is incorporated into the broader decision making of the council.

The cost in the works schedule should reflect the total cost of the infrastructure and detail all the different funding sources, such as grants, that are tied to that piece of infrastructure. This helps ensure that the other funding sources for infrastructure are identified and accounted for and will be available when the time comes to deliver the infrastructure.

However, the cost used to calculate the contribution rate should only include the proportion that will be funded through the contributions plan.

Councils should regularly review their works schedule

Throughout the life of a contributions plan, the infrastructure needs for an area may change. This could mean infrastructure is no longer required or may require modification to meet changes in demand. This might occur if the development pattern or population profile is different to the forecasts or the demand for types of infrastructure has changed.

During the regular plan review process councils should review whether the planned infrastructure still meets the needs of the residents. Councils can consider substituting other works that may be more appropriate to meet the new infrastructure needs of the community. This would require an amendment to the works schedule and contributions plan.

Templates

Contents of the works schedule – section 7.11 plans

Each infrastructure item listed in the works schedule should have the following information:

- Reference number: Council's reference for the infrastructure item.
- Name: The name should be clear and specific. For example, 'Roundabout – intersection of Summer St and Winter Rd, Suburbville', rather than generic references such as community facility or road upgrading.
- Description: This should detail the infrastructure item, providing a description of the works or the purpose of the land.
- Location: This should include a description of the location as well as a GIS reference if appropriate.
- Category: The infrastructure category for the item, for example:
  - open space
  - community facilities
  - roads and traffic facilities
  - drainage and stormwater management
  - other infrastructure
  - plan administration and related costs.
- Cost: The estimated cost of providing the infrastructure item.
- Cost type: Specify if the cost is land or works. The cost of land and works should be separately listed and defined under different cost types.
- Delivery timeframe: The indicative timing or the threshold being used as the measure for provision. If a plan authorises the pooling of contributions, it must outline how pooled payments will be prioritised in its works schedule.
- Apportionment: This should show the breakdown of funding for the infrastructure including the proportion being apportioned:
  - to new development
  - between catchments if applicable.
- Recoupment: This should identify infrastructure items in the works schedule which have already been completed and for which the council is seeking to recoup costs from its contributions plan. This should include the following information:
  - year of completion

- any amounts previously funded and the source of this funding
- amount to be recouped under the plan (apportionment still needs to be factored into recoupment amounts).

Contents of the works schedule – section 7.12 plans

Each infrastructure item listed in the works schedule should have the following information:

- Reference number: Council's reference for the infrastructure item.
- Name: The name or description of the infrastructure being provided or upgraded in the plan. The name should be clear and specific. For example, 'Roundabout – intersection of Summer St and Winter Rd, Suburbville', rather than generic references such as community facility or road upgrading.
- Description: This should detail the infrastructure item, including if the cost is for land and works or just works.
- Location: This should include a description of the location as well as a GIS reference if appropriate.
- Cost: The total estimated cost for the infrastructure item.
- Delivery timeframe: The indicative delivery time frames.

Estimating infrastructure costs

Estimating the cost of infrastructure is a key part of contributions planning. For section 7.11 plans the cost estimate informs the contribution rate and allows councils to calculate the amount of non-contribution funding needed to deliver the infrastructure.

This module provides guidance on how to estimate infrastructure costs for section 7.11 plans. This guidance can also be applicable for section 7.12 plans, though the nature of that mechanism means the level of detail in estimating costs is less critical.

Legislative requirements

There are no legislative or regulatory requirements for councils to estimate infrastructure costs in a particular way.

Policy positions

Councils can include benchmark costs, individual cost estimates or actual costs in their plans

Contributions plans must be based on the reasonable cost of providing the infrastructure needed by the incoming population. Accurately determining infrastructure costs helps demonstrate the reasonableness of the plan and can also reduce the risk of under collecting funds in a plan. However, it can be difficult to accurately estimate all the costs in a plan. Final designs are unlikely to be available when the plan is first developed, and design and cost considerations may change over the life of the plan.

The costs included in contributions plans can be:

- estimates for infrastructure to be provided at a future date based on site specific concept plans
- actual costs for infrastructure that has already been provided and is being recouped
- benchmark costs for infrastructure that is not yet fully scoped.

A combination of benchmarks, estimates and actual costs can be included in each plan, depending on the progress of each infrastructure item in the schedule. Councils should clearly state in their plans how the cost for each infrastructure item was determined.

Individual cost estimates are the most accurate way to determine costs

Individual cost estimates are the most accurate way to determine costs for infrastructure that is yet to be provided. They provide an accurate representation of the cost to deliver the specific piece of infrastructure as identified in the contributions plan. Cost estimates and the plans on which they are based should accompany the contributions plan as supporting documentation.

Individual cost estimates should be based on concept plans and should be reflective of site-specific conditions. They should be prepared by appropriately qualified professionals, such as a quantity surveyor or valuer. Councils should consider having the costs prepared by an external source to ensure independence.

Although individual cost estimates are the most accurate, they should not be considered completely reliable, especially early in the life of a contributions plan. Infrastructure is unlikely to have reached the final design phase early on, so individual cost estimates on earlier designs may be less accurate. In these cases, councils should undertake concept planning and make a reasonable estimate of the cost.

Benchmark costs can be appropriate in some situations

Benchmarked costs provide a transparent approach to determining contribution plan costs and can simplify the plan making process. However, benchmarks are generally a less accurate method for estimating infrastructure costs. Councils might consider using them when:

- the infrastructure item is not yet fully scoped or designed, and the detailed work is likely to happen at a later point in the delivery timeframe, such as infrastructure that is prioritised towards the end of the works schedule.
- the expense in getting a full cost estimate outweighs the benefits, such as when the cost of the item is small or the cost is generally easy to estimate and likely to be close to the benchmark, meaning the risk of final cost differences does not warrant the resourcing required to get a specific cost estimate.

Costs should be reviewed regularly and updated once actual costs are known

Councils should regularly review the cost estimates in their contributions plans to help mitigate the risks of under collecting. Inaccurate costs are one of the highest risk factors when collecting contributions. Councils should review the costs in their plans as part of regular plan reviews, at least every four to five years or the review timeframe adopted in the relevant contributions plan.

Once a piece of infrastructure has been provided but contributions still need to be collected to finish paying for it, the cost has been established. Councils should update their plans to include the actual cost of construction in the next plan review and index this cost in accordance with the plan.

Councils can use either nominal cost or net present value

There are two basic techniques for including future costs of facilities within a works program, nominal costs and net present value. Generally nominal costs are simpler and easier to interpret, while net present value can be more accurate.

Nominal costs

This approach uses the total cost of infrastructure delivery in today's money, to determine the total required contributions amount. The model estimates the value of infrastructure items in today's dollars even though they may be constructed in 2, 5 or 10 years.

The contributions rates per person are then derived by dividing the total attributable contributions amount by the future population. This approach does not account for when the infrastructure item will be built or the projected growth profile. It also requires careful use of indexation, such as construction cost or land value indexes, to account for escalating infrastructure delivery costs. A contributions plan based on nominal values requires regular review to ensure it reflects the actual cost of infrastructure delivery.

Net present value

The net present value approach discounts future cash flows to account for the fact that funds received or expended today are worth more than future funds, owing to the effect of inflation. Compared to the traditional nominal approach, the net present value model needs more information to ensure that costs and revenues can be calculated correctly. The net present value model requires:

- a works schedule which details when each piece of infrastructure will be delivered
- the growth profile (either population or other demand units) by year
- several indexes to escalate and discount both costs and revenues.

If accurate indexes are used, the net present value method will better align the contributions revenue and real cost over time and has the potential to reduce contributions revenue shortfalls.

The net present value approach for contributions plans is discussed by IPART in their Technical Paper - Modelling local infrastructure contributions.

Comparison of nominal costs and net present value

Table 8: Comparison of nominal costs and net present value

Considerations	Nominal costs	Net present value
Infrastructure items	• The cost of all infrastructure is added up to get the total value of the work schedule and hence the total required revenue. • This total value is used to calculate the contribution rates. The contribution rate is then indexed.	• The cost of every infrastructure item is separately escalated and then discounted to account for delivery time and its effect on the present value. • It is necessary to know when each infrastructure item will be delivered by year which can be detailed in the capital works plan.
Indexes needed	• Only one index is needed: - escalation rate to index current contributions rates - this does not consider the effects of escalating infrastructure costs.	• Three different indexes are used: - escalation rate to estimate future infrastructure costs (this may be different for different infrastructure items) - discount rate to discount future cashflows (revenue or cost) to present value - escalation rate to index current contributions rates going forward (for example, a relevant CPI index rate). • Choice of escalation rate is based on historical data and may not reflect the future market.
Works schedule detail	• Does not consider when infrastructure items will be delivered.	• Works schedule must detail when each piece of infrastructure will be delivered.
Population estimates	• Only requires an estimate of the total population that creates the demand for the infrastructure.	• Requires a year-by-year breakdown of the predicted population to understand the profile of population growth over time (for example, how much of the total population growth is predicted to occur in each year).
Revenue risks	• Revenue shortfalls are common without regular review.	• Potential to reduce future contributions revenue shortfalls.

Considerations	Nominal costs	Net present value
Complexity	• Easier to apply and understand. • Requires fewer inputs and less detail needed in early stages of the contribution plan.	• More complex model. • May be challenging to understand if all the inputs are not defined clearly. • Encourages councils to consider infrastructure delivery prioritisation and phasing, as well as population growth.

Land costs are often a large proportion of the costs in a contributions plan

In addition to estimating the cost of infrastructure construction, councils must estimate the cost of land for the infrastructure. Land acquisition costs are often one of the largest components of a contributions plan in areas where land values are high.

Councils should engage an accredited, independent valuer to determine the value of the land needed for infrastructure. The valuation methodology should be clearly documented in the valuation advice including any assumptions and justifications.

Land costs may also be informed by any recent council land transactions including, by agreement, compulsory acquisition, or dedication.

Examples

Worked example of infrastructure costs using nominal cost or net present value

Council has proposed that a road is to be built in 7 years (Year 7). In year 1 when the plan is prepared, the cost of the road is valued at $1 million. This example assumes a discount rate of 2.5% per year, a projected Sydney CPI of 2.5% per year and a projected road construction cost escalation of 7% per year.

Table 9: Worked example showing outcome of nominal costs or net present value

Consideration	Nominal costs	Net present value
Road value	Value is based on the value in year 1, which is $1 million.	The value of the road takes into account the year that the road will be built (Year 7). By escalating the $1 million (Year 1) by a relevant index (7%), the value of the road in Year 7 is $1.5 million.

Consideration	Nominal costs	Net present value
	$1 million (Year 1 Value)	$1.5 million (Year 7 Value)
Contribution amount (total revenue)	The total value of $1 million is entered into the contributions plan. This is the total revenue needed to pay for the road. • *Total revenue = Total value*	The contribution amount put into the plan considers the time-cost of money. The cost of the road when it is delivered in year 7 ($1.5 million) is discounted back (using the discount rate of 2.5%) to get the road's present value of $1.3 million. This present value is the total present revenue needed to pay for the road. • *Total present revenue = Total present value*
	$1 million (Year 1 Value)	$1.3 million (Year 1 Value)
Populations	The projected total population is predicted using historical population data.	The year-by-year population increase is predicted to understand the profile of population growth over time.
	500 people over 5 years	100 people in the 1st year, 300 people in the 3rd year and another 100 people in the 5th year
Contributions rate	The contributions rate is the total revenue ($1 million) divided by the total population (500 people). Therefore, the contributions rate is $2000 per person in Year 1. This cost is escalated each year.	The *total present revenue* is the sum of the *discounted yearly revenue*, which is the yearly population multiplied by the yearly contributions rate. To get the contributions rate in year *n*, the contributions rate in year 1 is escalated to the power *n*.

<table>
<tr><th>Consideration</th><th>Nominal costs</th><th>Net present value</th></tr>
<tr><td></td><td>$$Contributions\ rate = \frac{Total\ revenue}{Total\ population}$$</td><td>$$Total\ present\ revenue = \sum_{n=1}^{n} Yearly\ population \times Yearly\ Contributions\ Rate$$

$$Total\ present\ revenue = C_1 * P_1 + C_2 * P_2 + C_3 * P_3 + C_4 * P_4 + C_5 * P_5$$

$where\ C_n\ is\ the\ contributions\ rate\ in\ year\ n$

$where\ P_n\ is\ the\ population\ in\ year\ n$</td></tr>
<tr><td></td><td><table>
<tr><td>Year 1</td><td>$2000</td></tr>
<tr><td>Year 2</td><td>$2140</td></tr>
<tr><td>Year 3</td><td>$2290</td></tr>
<tr><td>Year 4</td><td>$2450</td></tr>
<tr><td>Year 5</td><td>$2622</td></tr>
</table>
Assume escalating at 7%p.a. (road construction escalation)</td><td><table>
<tr><td>Year 1</td><td>$2625</td></tr>
<tr><td>Year 2</td><td>$2690</td></tr>
<tr><td>Year 3</td><td>$2758</td></tr>
<tr><td>Year 4</td><td>$2827</td></tr>
<tr><td>Year 5</td><td>$2898</td></tr>
</table>
Assume escalating at 2.5%p.a. (Sydney CPI)</td></tr>
</table>

Calculating contribution rates

Section 7.11 plans use formulas to turn the cost of the infrastructure into contribution rates, which are used to calculate the total contribution paid by development.

This module provides guidance on how these formulas are used to determine contribution rates.

Legislative requirements

Section 7.11 plans must show the contribution rates and the formulas used to determine those rates.

Table 10: A summary of legislative requirements

Requirements under the EP&A Regulation	Section
Contributions plans must contain the formulas used to determine the contributions required	212(1)(d)
Contributions plans must show the contribution rates for different types of development	212(1)(e)

Policy positions

Contribution rates and formulas should be clearly shown in the plan

Contributions plans uses formulas to convert the cost of a works schedule into a cost per unit of charge, such as a *per person* or *per lot* rate. These rates per unit of charge are then used to calculate the actual contribution due for a specific development.

Contribution rates and the formulas used to calculate them should be clearly shown in the plan:

- each infrastructure category in the plan should have a detailed contribution rate schedule showing the calculations and assumptions used to arrive at that rate
- the plan should have a summary contribution schedule showing the overall indicative contribution rates for each type of development.

Common units used in contributions are:

- per person
- per lot

- per worker
- per visitor or tourist
- per square metre of floor space.

Simple formula for calculating contribution rates

In simple terms, the contribution rate is a function of the total cost of the infrastructure in the schedule of works multiplied by an apportionment factor, divided by the demand for the infrastructure. A simple formula demonstrating this is shown below.

$$\boldsymbol{Contribution\ rate} = \frac{\boldsymbol{infrastructure\ cost \times apportionment\ factor}}{\boldsymbol{demand}}$$

Infrastructure in the schedule of works may have different apportionment factors and demand, so contribution rates may be calculated separately for different infrastructure categories or for different items of infrastructure.

Councils may use different formulas specific to their circumstances. This is why it is important to include the formulas used to determine the contribution in the plan.

Infrastructure cost

The infrastructure cost represents the total cost of infrastructure for that contributions catchment or the total cost for that infrastructure category, as shown in the schedule of works. This should be the cost that will be borne by the council to provide the infrastructure.

Apportionment factor

The apportionment factor represents the proportion of the cost that has been apportioned to new development. The apportionment factor can be calculated by dividing the incoming population by the total population that is creating demand for the infrastructure.

For example, if all the demand for a piece of infrastructure is being created by new development, the apportionment factor would be 1. If 60% of the demand for infrastructure is apportioned to new development and 40% is apportioned to existing residents or other demand, this would be represented in the formula as an apportionment factor of 0.6.

Demand

The demand represents the demand for the infrastructure created by new development over the life of the plan. This may be based on, for example, the number of new lots in a catchment, the total incoming population the infrastructure will serve or the floorspace that will be created by new development.

Demand for different types of infrastructure may be determined using different demand units. Contributions for open space may be calculated on a per person rate, while contributions for drainage and stormwater infrastructure might be calculated on a per lot basis.

Contribution schedules should clearly show indicative contribution rates

The contribution schedule in a plan should show the indicative rates that apply to the expected types of development for the plan. This allows applicants to use the plan to estimate a contribution amount for their development. It also provides a signal to the market of the cost of developing in that particular location.

Council will need to convert the contribution rates for each infrastructure category into indicative contribution rates using a common unit of charge. This is usually based on a *per lot* and *per dwelling* rate for residential development and *per square metre* for commercial and industrial development.

Councils can do this using the standard occupancy rates appropriate for their local government area. The occupancy rates can be based on historical occupancy rates for that area, as published by the Australian Bureau of Statistics, or studies and other data used to produce a forecast future occupancy rate. The occupancy rates must be set out in the contributions plan.

For example, open space or traffic and transport contributions may be calculated on a per person basis and then converted into a per dwelling basis using the standard occupancy rates for that area.

Examples

Apportioning between existing and new development

There are various methods to identify demand by population. However, the most common method is for councils to use either a population projection or establish the population or development yield from a release or redevelopment area. This will give the total number of ‘persons’ for the formula.

For example, for a works program of $10 million serving an end population of 10,000 (4,000 existing residents and 6,000 incoming residents), with both incoming and existing residents contributing to the demand, the apportionment factor would be:

- *Apportionment factor = 6000 / 10,000 = 0.6*
- *(If there was no existing demand, the apportionment factor would be 1).*

The new population is therefore responsible for $6 million of the works program ($10 million x 0.6), while council commits to funding $4 million to cover demand by the existing population.

Using the contribution rate formula:

- *Contribution rate = $10,000,000 x 0.6 / 6,000 new residents*
- The contribution rate will be: $1,000 per person .

Converting contributions into a set of standard indicative contributions rates

Where a contribution is set at a 'per person' rate, it might be necessary to convert this into a contribution for a dwelling.

As an example, hypothetical projected occupancy rates for a local government area might be:

- 1.3 persons per one bedroom dwelling
- 1.8 persons per two bedroom dwelling
- 2.5 persons per three bedroom dwelling.

The conversion of the 'per person' rate is simply a multiplication of the contribution per person by the occupancy rate for different types of dwellings or lots within the catchment area.

If a contribution for community facilities is $1,000 per person, using these occupancy rates would result in:

- $1,300 (*$1,000 x 1.3*) for a one bedroom dwelling
- $1,800 (*$1,000 x 1.8*) for a two bedroom dwelling
- $2,500 (*$1,000 x 2.5*) for a three bedroom dwelling.

This can be repeated for any dwelling or allotment type as long as the occupancy rate is adopted in the contributions plan.

Exhibiting and adopting contributions plans

Councils must publicly exhibit draft contributions plans before they can be finalised and adopted. This is an important step in the infrastructure contributions process that ensures the system is transparent and certain.

This module provides guidance on the exhibition and adoption process.

Legislative requirements

Section 7.11 and 7.12 plans must be publicly exhibited and a council must consider all submissions received.

Table 11: A summary of legislative requirements

Exhibition requirements	Legislation
A draft contributions plan must be publicly exhibited for a minimum of 28 days.	Schedule 1(6) EP&A Act
Anyone can make a submission on the draft contributions plan during the exhibition period.	Schedule 1(15) EP&A Act
Council must publish on its website the dates of the exhibition period, the draft contributions plan and any supporting documents.	Section 213(1) EP&A Regulation
Any mandatory requirements for community participation identified in a council's community participation plan concerning contributions plans must also be met.	Section 2.22(2) EP&A Act
After considering submissions on the draft plan, council can: • approve as exhibited • make changes and approve • not proceed with the plan. Council must publish notice of the decision on its website and if the option not to proceed is chosen, the notice must include the reasons for this. Section 7.11 plans requiring a review by IPART have additional requirements.	Section 214 EP&A Regulation

Exhibition requirements	Legislation
A council can make minor updates or edits to a draft or adopted plan without needing to re-exhibit or create a new plan. This includes correcting minor typographical or formatting errors, indexing contribution rates, and detailing when infrastructure items or works have been completed.	Section 215(5) EP&A Regulation

Requirements for setting up an exhibition period

Councils must exhibit contributions plans for a minimum of 28 days. More complex contribution plans or plans that are on exhibition with other documents such as planning proposals, may benefit from a longer exhibition period.

- The minimum 28-day public exhibition period for draft plans includes weekends.
- If the exhibition period is due to close on a weekend or a public holiday, it should be extended to finish on the following weekday.
- The period between 20 December and 10 January is excluded from the calculation of a period of exhibition (Schedule 1(16) EP&A Act).

Any supporting documentation should be made available during the exhibition. This could include scope of works and cost estimate studies used to inform the plan, or associated technical studies or reports that provide additional information to help someone interpret it.

Public notification must be given at the start of the exhibition

Councils must announce the beginning of an exhibition period to ensure people are made aware and provided the opportunity to review and comment. At a minimum, this must include a notification on the council's website detailing:

- the exhibition timeframe
- how to view the draft plans and supporting documentation
- how someone can make a submission.

Council can adopt the plan after exhibition

After public exhibition councils can choose to:

- approve the draft contributions as exhibited without any changes
- make changes to the plan and approve it

- not proceed with the plan, in which case council must publish a notice indicating that they are not proceeding and why.

Councils must publish notice of their decision on their website and upload any approved contributions plans to the NSW Planning Portal and their website. This is part of a council's contributions publishing requirements.

Policy positions

Receiving and reviewing submissions

Any person can make a submission on a draft plan during the exhibition period. Councils must clearly communicate a submission can be made and how it will be considered. Councils should review all submissions thoroughly and consider whether the draft plan should be updated based on the feedback received.

Significant changes made to drafts following an exhibition could require re-exhibition

Councils must determine if significant changes made to a draft plan following the exhibition require re-exhibition, particularly if changes are not in response to submissions. Councils should ensure that decisions on infrastructure contributions are transparent and that the public can see the processes and understand the decisions involved.

Re-exhibition is likely required if the changes would materially affect:

- the catchments of the plan or the location of infrastructure
- the infrastructure to be funded and the types of development to which the plan applies
- the contribution rates
- how the contributions are calculated.

Exhibition is required before an IPART review for section 7.11 plans

If a review by the IPART is required for a section 7.11 plan, the plan must be exhibited before being submitted. Refer to the module review by IPART for further guidance on this process. If changes are recommended to the plan following a review by IPART, these changes do not need to be re-exhibited.

Best practice guidance

When a contributions plan relates to a planning proposal, the exhibition period should be concurrent to ensure transparency and efficiency

Where possible, councils should ensure that a draft contributions plan is exhibited at the same time as a related planning proposal. This will:

- assist stakeholders to better understand the impacts of the contributions plan and planning proposal
- ensure a local contributions plan will be in place before the rezoning and associated development
- allow the full implications of development to be factored into developer's feasibility studies, and infrastructure planning and costing.

The exhibition process should be inclusive and transparent

An exhibition should aim to ensure transparency and provide an opportunity for all stakeholders to comment on the plan. Councils should refer to their community participation plan for any additional requirements on setting up and running a public exhibition for their community.

Considerations should include:

- the community's right to be informed about planning matters that affect them
- providing planning information in simple language, easily accessible and in a form that best facilitates community participation
- making community participation inclusive and actively seeking views that are representative of a community
- providing appropriate community participation methods that have regard to the significance and likely impact of the draft plan on exhibition
- making planning decisions open and transparent and giving the community reasons for those decisions and how their views have been considered
- following the exhibition, keeping people informed of future next steps related to the plan.

Consider optional engagement during the development of a draft contributions plan

Early consultation with key stakeholders during the preparation stage can help create a shared understanding of the likely infrastructure requirements, capacity limitations of any existing infrastructure, potential costs and potential for works in kind. This will help to develop a more robust draft and provide more transparency for stakeholders.

Notify other parts of council when a new contributions plan is adopted

Contributions plans affect most areas of the council and require a whole of council approach to implementation during their lifetime. Once a new plan is adopted, make sure other areas of the council are made aware of the plan and its operation.

This is particularly important for areas of council that will have legislative or reporting requirements relating to the plan, such as planning assessment, finance and capital works teams.

IPART review of section 7.11 plans

The Independent Pricing and Regulatory Tribunal (IPART) review section 7.11 plans that propose contributions for residential development that exceed the threshold of $20,000 per lot or dwelling, or in some cases $30,000.

IPART is the independent pricing regulator for water, public transport and local government in NSW. Its role in the contributions system is to review whether the cost estimates of a contributions plan are reasonable and provide advice to the Minister on recommended changes to the plan.

This module provides guidance to IPART when undertaking their review and to help councils understand the review process. It sets out the requirements and process for the review, outlines the essential works list and provides links to guidance on the criteria considered by IPART.

Legislative requirements

A ministerial direction sets the thresholds which limit the contributions a council can impose unless the contributions plan is reviewed by IPART. Only IPART reviewed contributions plans may impose contributions over the threshold.

Table 12: A summary of the thresholds and requirements

Requirements of the direction	Legislation
Councils can only impose contributions up to $20,000 per lot or dwelling, unless they have an IPART reviewed contributions plan.	Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2012 and associated amendments
Specified plans in greenfield areas are subject to a higher review threshold of $30,000 per lot or dwelling (Schedule 2).	
Some land to which historic plans apply is exempt from the thresholds. Contributions collected in these areas are not subject to the IPART review process or the essential works list (Schedule 1).	
There are specific requirements to have a plan become an IPART reviewed contributions plan.	

Contributions plans must satisfy certain requirements to be considered an IPART reviewed plan

These requirements are defined in clause 5(3) of the direction. An IPART reviewed contributions plan is a contributions plan that satisfies all the following:

A. IPART has reviewed the contributions plan (or a draft of the plan) in accordance with assessment criteria set out in any applicable practice note, including whether the facilities to which the contributions plan relates are on any essential works list set out in the practice note.

B. IPART has published a report of its review on its website and forwarded it to the Minister for Planning.

C. Following the forwarding of the report to the Minister, the Minister (or a nominee of the Minister) has advised the relevant council as to any amendments required to the contributions plan.

D. The Minister's (or nominee's) advice to the council has been published on the NSW Planning Portal website.

E. The relevant council has approved the plan, and has made any amendments to the plan, in accordance with the written advice of the Minister or the Minister's nominee.

Policy positions

Only some section 7.11 plans need to be reviewed by IPART

Councils cannot impose a condition of development consent over the relevant threshold specified in the Ministerial direction unless the plan has been reviewed by IPART and has complied with the requirements above to be considered an IPART reviewed contributions plan.

The direction applies to conditions imposed on development consents. A contributions plan may still contain contribution rates that exceed the relevant threshold, but the threshold will limit the contribution amount that can be levied.

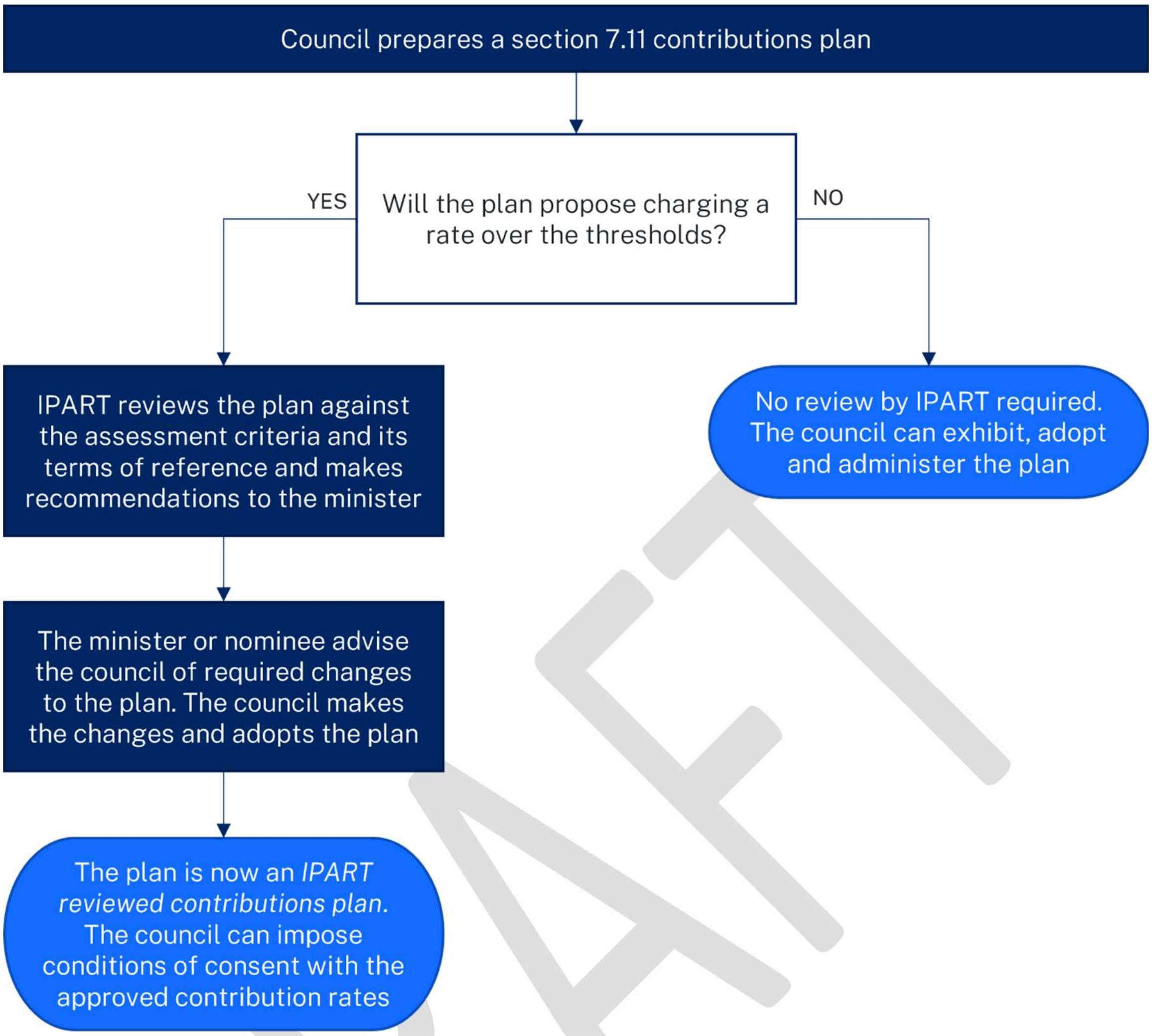

Figure 2: When does a section 7.11 plan need to be reviewed by IPART?

IPART assesses plans against seven criteria

When undertaking its review of contributions plans, IPART will assess the following seven criteria:

Table 13: IPART assessment criteria

Criteria	Assessment
1	The infrastructure in the plan is on the essential works list.
2	The proposed infrastructure is reasonable in terms of nexus (the connection between development and the demand created).
3	The proposed contribution is based on a reasonable estimate of the cost of the proposed infrastructure.
4	The proposed infrastructure can be provided within a reasonable timeframe.

Criteria	Assessment
5	The proposed contributions are based on a reasonable apportionment between: • existing demand and new demand for the infrastructure • different types of development that generate new demand for the infrastructure (such as between different types of residential development such as detached dwellings and multi-unit dwellings, and between different land uses such as residential, commercial and industrial).
6	The council has conducted appropriate community consultation in preparing the contributions plan.
7	The plan complies with other matters IPART considers relevant.

Detailed consideration for each criteria

Each criteria involves detailed consideration, examples include:

- the infrastructure in the plan is on the essential works list as identified within this practice note module
- there is nexus between the development in the area to which the plan applies and the infrastructure identified in the plan, considering:
  - What infrastructure types or categories will the proposed development create demand for?
  - On what basis have the estimates of demand for the infrastructure been established? Has a needs assessment been done?
  - Has the council assessed the implications of the expected types of development catered for by the contributions plan on the demographic structure of the development area?
  - Is there a clear and acceptable methodology for estimating population change arising from the expected types of development?
  - Is the information on demand both reliable and current?
  - Can the new demand be accommodated, in whole or in part, within existing infrastructure?
  - Is the infrastructure appropriately located for the expected types of development in the area the plan applies?
  - If the expected development did not occur, would the infrastructure still be required?
- the proposed development contribution is based on a reasonable estimate of the cost of infrastructure, considering:
  - How were the plan and cost estimates for the land and works prepared? Are the costs current?

- Do cost estimates include all costs required to complete the infrastructure on the essential works list (such as land, capital, fit out, design and project management costs)?
- Have relevant professionals (such as quantity surveyors, chartered surveyors, land valuers) been engaged to provide an independent cost assessment of the infrastructure costs?
- How has the council taken indexation adjustments into account, such as using the Consumer Price Index?
- Are the assumptions and calculations robust?
- Has a Net Present Value methodology been used? If so, has an appropriate discount rate been used?
- Does the plan seek to recoup costs where a council has used other revenue sources to fund the delivery of the infrastructure?

- the proposed infrastructure items can be provided within a reasonable timeframe, considering:
  - Is the timeframe (year or threshold) appropriate for the specific infrastructure types or categories?
  - Will the infrastructure be provided when the demand requires it?
  - Does the plan provide for pooling of funds?
- the proposed development contribution is based on a reasonable apportionment of costs, considering:
  - Will the infrastructure service the existing community or is it only required to meet the needs of the new development?
  - How is the existing community accounted for in the apportionment of costs?
  - How are costs apportioned between different types of land use (such as residential, industrial, and commercial land uses)?
- the council has exhibited its plan and considered the submissions received on exhibition
- IPART may consider any other relevant matters, including but not limited to:
  - When did the contributions plan come into effect? When was the plan last reviewed? When was the plan last amended without the need to review the plan?
  - What is the relationship with local environmental plans and development control plans? Is there any programmed review of these instruments that may affect the underlying assumptions within the plan?
  - Does the plan comply with any other matter IPART considers relevant?

Essential works list

IPART reviewed contributions plans can only include items on this essential works list. The following infrastructure (public amenities or public services) are considered essential works:

- land for open space (for example, parks and sporting facilities) including base level embellishment
- land for community services (for example, childcare centres and libraries)
- land and facilities for transport (for example, road works, traffic management and pedestrian and cyclist facilities), but not including carparking
- land and facilities for stormwater management
- the costs of plan preparation and administration.

The essential works list is relevant only to those contributions plans that propose a contribution level above the relevant threshold (unless otherwise directed by the Minister for Planning). The essential works list does not apply to contributions plans currently below the relevant threshold or to those contributions plans that are exempt from the relevant threshold.

Further clarification and detail of some essential works list terms

Base level embellishment

The base level embellishment of open space means work required to bring the space up to a level where it is secure and suitable for passive or active recreation. This may include:

- site regrading
- utilities servicing
- basic landscaping (turfing, asphalt* and other synthetic playing surfaces planting, paths).
- drainage and irrigation
- basic park structures and equipment (park furniture, toilet facilities and change rooms, shade structures, and play equipment)
- security lighting and local sports field floodlighting
- sports fields, tennis courts, netball courts, basketball courts (outdoor only), but does not include skate parks, BMX tracks and the like.

** 'asphalt' (under basic landscaping) includes at-grade carparks to the extent that they service the recreation area only and does not include multi-storey carparks.*

Community services

For the purpose of this practice note, ‘community services’ means a building or place:

- owned or controlled by a public authority or non-profit community organisation
- used for the physical, social, cultural or intellectual development or welfare of the community
- but does not include an educational establishment, hospital, retail premises, place of public worship or residential accommodation.

Community services may include (but are not limited to):

- community centres/halls
- libraries
- neighbourhood centres
- youth centres
- aged persons facilities (senior citizen centres, home and community care centres)
- childcare facilities
- public art galleries
- performing arts centres.

Plan administration

Plan administration costs are those directly associated with the preparation and administration of the contributions plan. They represent the project management costs to a council and are incorporated into cost estimates in much the same way as the project management costs for individual infrastructure items within a plan.

Plan administration costs may include:

- background studies, concept plans and cost estimates that are required to prepare the plan
- project management costs for preparing and implementing the plan (such as the employment of someone to co-ordinate the plan).

They do not include costs that would otherwise be considered part of a council’s key responsibilities such as core strategic planning responsibilities.

Environmental works

The acquisition of land and the undertaking of works for environmental purposes such as bushland regeneration or riparian corridors are not defined as essential works for the purpose of this practice note module.

The only exception is where it can be demonstrated that the land or works in question serve a dual purpose. If one or more of the categories of work meet the definition of essential infrastructure outlined above, only the component of land or works that serve the dual purpose can be considered essential works

Procedure and process

Councils should discuss their contributions plan with IPART as early as possible in the review process

Before or during the plan development and before submitting an application, councils should contact IPART and discuss their intention with the Local Government Contributions Plan team. They can be contacted via:

- **Email**: localgovernment@ipart.nsw.gov.au
- **Phone**: 02 9290 8400
- **Website**: www.ipart.nsw.gov.au

Councils can apply for a review by completing the application form available on the IPART website. The application form includes a checklist of supporting documents required by IPART. Completed application forms and a copy of the plan should then be emailed to IPART who will acknowledge receipt of the plan and publish it along with information about its review on their website.

Councils can approve a plan either before or after IPART has reviewed it

If there is not an existing 'IPART reviewed contributions plan'

Councils may choose to submit an approved plan to IPART for review. The approved plan would be subject to the Ministerial direction and a council could impose contributions only up to the threshold amount until the review process is complete. Councils may only impose a contribution above the threshold when the plan is an 'IPART reviewed contributions plan' as set out in the ministerial direction clause 5(3).

Councils should include a statement in their plan to that effect if this is the case.

If there is an existing 'IPART reviewed contributions plan'

Councils may choose to submit a draft plan to IPART for review. Where a draft plan seeks to amend or replace an existing 'IPART reviewed contributions plan', a council may continue to impose contributions in line with the existing 'IPART reviewed contributions plan' while the draft plan is being reviewed. If the council was to approve the new plan prior to the review being completed the approved plan would be subject to the ministerial direction and the council could only impose contributions up to the threshold amount.

Process for reviewing section 7.11 contributions plans

IPART reviews contributions plans according to terms of reference issued by the NSW Premier that relate to the legislative and policy requirements described in this practice note module.

IPART may also consult with government departments, such as the Department of Planning and Environment, to obtain specialist advice regarding aspects of the contributions plan (or a draft of the plan). IPART will use this advice to inform its review and recommendations to the Minister for Planning.

Once IPART completes its assessment, it will provide its advice to the council and the Minister for Planning. This advice will focus on whether the contributions plan:

- meets the assessment criteria set out above in the policy positions part of this practice note module
- complies with the requirements of the EP&A Act, EP&A Regulation and other relevant practice notes.

IPART will publish copies of the contributions plan, relevant consultant reports and its final report of recommendations on its website once the assessment process is finalised.

The Minister for Planning or nominee considers the report and recommendations of IPART. The Minister provides advice to the council on the contributions plan, particularly on whether it should make any changes to the contributions plan and publishes this advice on the NSW Planning Portal website.

Council must make changes and adopt the revised contributions plan in accordance with the Minister's advice.

The entire review process takes approximately 12 to 18 months.

Table 14: The steps and time frame of an IPART review

Steps	Action	Duration
1	Council completes the application form and discusses lodgement with IPART.	2-4 weeks
2	IPART reviews the plan against the assessment criteria in this module (including the essential works list), its terms of reference and prepares a draft report with its recommendations.	6 months
3	IPART publishes the contributions plan, any consultant reports and its draft report.	6-8 weeks

4	IPART sends its final report and recommendations to the Minster for Planning and relevant council and publishes the report on its website. The department reviews the report and advises the minister.	4-8 weeks
5	The minister or nominee advises the council and the council amends and approves the plan. The approved plan will then become an 'IPART reviewed contributions plan'.	1 month

Examples

Examples of current and completed reviews are available on the IPART website.

Indexing contribution rates and conditions of consent

Indexation is the process of adjusting the contributions to reflect changes to pricing over time. Contributions should be indexed to maintain the real value by adjusting them in line with changes in the cost of providing the infrastructure. Councils should index:

- the contribution rates in a section 7.11 plan
- the 7.11 contribution or 7.12 levy amount in a condition of consent at the time of payment.

Indexation is important to ensure a contributions plan remains viable and can fund the required infrastructure over its lifetime. This module details how indexation is applied in the contributions system.

Legislative requirements

Councils must decide which indexes to use and whether to index quarterly or annually. This information must then be detailed in the relevant contributions plan.

Table 15: A summary of legislative requirements

Indexation requirements in the EP&A Regulation	Section
Councils can index contribution rates in a section 7.11 plan without the need to prepare a new plan. Councils can use either: • a readily accessible index • an index prepared for the council. The index and timing of adjustments must be adopted in the plan.	215(5)(b)
Councils recouping costs through a section 7.11 plan for land already purchased or works already completed can index the original cost amounts. This must be done using the Consumer Price Index.	207
Councils can adjust a section 7.12 levy amount in a condition of consent before payment. The index must be readily accessible and adopted by the plan, along with the timing of adjustments. The index and timing should also be referenced in the condition.	208(5) 212(2)(b)

Policy positions

Contribution rates in section 7.11 plans should be indexed

The rate table in a section 7.11 plan includes the base rates calculated at the time the plan was adopted. However, these rates should be regularly indexed as outlined in the contributions plan to ensure they remain current. The contributions plan must specify how it will adjust the contribution rates, the indexes to be used, the contribution rates they apply to and whether the adjustment will be quarterly or annually.

The different components of the infrastructure costs in a section 7.11 plan can be indexed separately.

- Cost of infrastructure **yet to be provided** can be indexed by applying any readily accessible index.
- Cost of infrastructure **already provided** and being recouped by the council must be adjusted by applying the Consumer Price Index.
- Frequency of indexation can be quarterly or annually.

Councils must publish the most up to date rates on their websites as part of their publication requirements.

If the process of indexation puts a rate over the maximum threshold, this will trigger a review by IPART if the council wishes to impose the higher contribution. Refer to the IPART review of section 7.11 plans module for more information.

Contributions amounts should be adjusted at the time of payment

Contribution amounts in conditions of consent for both section 7.11 contributions and section 7.12 levies should be adjusted at the time of payment with the index adopted by the contributions plan.

Councils must include an adjustments section in the plan detailing how it will adjust the contribution amount between the granting of consent and the time of payment and must reference the index to be used. This should also be detailed in the conditions of consent.

Councils should use simple, clear conditions of consent that demonstrate to the applicant how much is due and how this amount will be indexed. Guidance on drafting conditions of consent is provided in the department's guidance on writing conditions of consent.

The condition of consent should:

- state the contribution amount to be paid

- specify that the amount will be adjusted by applying the specified index at the time of payment
- specify that the adjustment will occur as outlined in the contributions plan.

Best practice guidance

Councils can adopt any appropriate index

The index to be used for recoupment under section 7.11 plans is specified in the regulations and must be the Consumer Price Index.

For section 7.12 plans and non-recoupment costs in section 7.11 plans, councils have the discretion to adopt any readily accessible index or an index prepared for the council. The Australian Bureau of Statistics publishes indexes a council can consider.

Councils should choose an index that accurately reflects how the land or infrastructure costs will change over time, while also balancing the need for simplicity and consistency in the plan. For example, the Producer Price Index - Road and Bridge Construction NSW may be appropriate for some section 7.11 construction costs as it can better reflect the changes to these costs over time. Some costs escalate at significantly different rates, so it may be appropriate to use different indexes. For example, the cost to acquire land often escalates at a much higher rate than infrastructure construction costs. In these instances, using a specific land value index detailed in and adopted by the plan may be appropriate.

However, where the difference is smaller, indexing a plan using several different indexes may not be needed and may add unnecessary complexity. When adopting more than one index for different contribution rates in a section 7.11 plan, the plan must clearly state which index will be used for which rate.

Procedure and process

How to index contribution rates in a section 7.11 plan

Contribution rates should be regularly indexed to ensure they remain current. A simple formula is shown below.

$$\textbf{\textit{indexed contribution rate}} = \textbf{\textit{base contributions rate}} \times \frac{\textbf{\textit{current index figure}}}{\textbf{\textit{base index figure}}}$$

- *Base contributions rate* is the rate at the time the plan was adopted.
- *Current index figure* is the figure at the time of payment.
- *Base index figure* is the figure at the time the plan was adopted.

How to index a contribution or levy amount at the time of payment

Contribution amounts should be indexed at the time of payment. For example, if the plan adopts quarterly indexation and the contribution is not paid in the quarter the consent is issued, the amount should be adjusted to reflect the quarter it is paid in.

Adjusting section 7.11 contribution amounts

At the time of payment, the contribution amount owed can be recalculated using the indexed contribution rates applicable at the time of payment.

Or the contribution amount specified in the condition of consent can be indexed using a formula such as:

$$\textit{contribution amount at payment} = \textit{consent amount} \times \frac{\textit{current index figure}}{\textit{base index figure}}$$

- *Consent amount* is the original contribution amount listed in the condition of consent.
- *Current index figure* is the figure at the time of payment.
- *Base index figure* is the figure at the time the consent was issued.

If the plan adopts different indexes for different contribution rates, then this will need to be calculated for each one.

Adjusting section 7.12 levy amounts

At the time of payment, the proposed cost of development can be indexed and then a new levy amount is calculated for payment.

$$\textit{indexed cost of development} = \textit{cost of development at consent} \times \frac{\textit{current index figure}}{\textit{base index figure}}$$

- *Current index figure* is the figure at the time of payment.
- *Base index figure* is the figure at the time the consent was issued.

Timing of contributions payments

Councils can specify when in the development process they require contributions to be paid. This is often linked to the issuing of post consent certificates. For example, requiring payment be made before a subdivision, construction or occupation certificate is issued for the development.

The choice around when councils will require payment has implications for the security requirements of the contributions. Councils should consider their policy on timing of payment at the same time as their policy on security.

This module provides guidance on some considerations for timing of payment.

Legislative requirements

There is no legislative requirement around when councils can require payments for development applications.

Contribution payments for complying development are required before the commencement of building work or subdivision work (section 156 and 158 EP&A Regulation).

Policy requirements

Contributions plans must include information on the timing of payments

Councils must include a section in the plan that details their policy on when monetary contributions should be paid and how they would consider periodic or deferred payment plans.

The following are suggested timeframes for payment to ensure the timely provision of infrastructure and to provide a council with a degree of security regarding payment:

- development applications involving building work - before the release of the construction certificate
- development applications involving subdivision - before the release of the subdivision certificate
- development applications involving building work and subdivision - before the release of the construction or subdivision certificate, whichever occurs first

- complying development certificates - monetary payments are required before the commencement of the building work or subdivision work.

Conditions of consent must clearly specify the timing of payment

Conditions of consent must clearly specify when contributions payments will be required. This ensures transparency and allows an applicant to plan for paying a contribution. The condition should also reference indexation and how this will be applied at the time of payment.

Works in kind agreements

Councils can enter into works in kind agreements with developers to deliver infrastructure or dedicate land identified in a section 7.11 plan. The value of the infrastructure is provided to partly or fully satisfy the development consent condition requiring a monetary contribution.

This module covers works in kind policy matters for councils. Credits for existing development or past contributions are discussed separately. Works in kind agreements are different to a planning agreement, which can be used in a wider variety of situations with a broader scope.

Legislative requirements

The EP&A Act allows for a council to accept the 'dedication of land' or 'provision of a material public benefit' instead of a monetary contribution in the circumstances set out in section 7.11(5). The term **works in kind agreement** is used here for the mechanism to deliver this land or material public benefit.

- These agreements are entered into after development consent imposing a section 7.11 contribution has been granted.
- They cannot be used for section 7.12 levies as there is no provision in the EP&A Act to satisfy a section 7.12 levy through the dedication of land or provision of a material public benefit. However, councils and developers may decide to enter into planning agreements in these circumstances.

Table 16: A summary of legislative requirements

Requirements in the EP&A Act	Section
Works in kind agreements must be voluntary, neither developers nor councils are required to offer or accept them.	7.11(5)
A works in kind agreement can satisfy a section 7.11 contribution in part or in full.	7.11(5)

Policy positions

Offers should be assessed against a standard set of criteria

Councils can enter into a works in kind agreement at their discretion. Any offers for carrying out works to offset a monetary contribution must be made in writing. Councils should follow a consistent and transparent approach when deciding to enter into a works in kind agreement. A council's section 7.11 plan should include the criteria it will use in assessing offers for works in kind.

Table 17: The types of criteria and considerations councils can use for assessing offers for works in kind

Criteria	Assessment
Infrastructure delivery	Any benefits of early delivery of the works to the surrounding area
Scope and standard	Consistency of the works with the contributions plan
Design and cost	Consistency of the works with the estimated cost in the contributions plan
Financial implications	Impact of accepting works instead of revenue, on forecast cash flow and the contributions plan works program
Timing	Impact on the contributions plan delivery program
Handover	Proposed dedication and ongoing management arrangements

Best practice guidance

Councils should have a policy on works in kind agreements

Councils should develop a policy on works in kind appropriate to the circumstances of their local government area. It should address:

- when council might consider entering into a works in kind agreement
- how and when a developer can make an offer
- the information required and the preferred structure of any offer.

The policy should be published on a council's website along with any templates. To ensure transparency, councils should also publish all executed works in kind agreements.

Councils should apply their standard policies and practices to contracts

A works in kind agreement will cover a range of contractual matters such as obligations, enforcement, insurances, and handover arrangements. Councils should apply their standard policies and practices to these issues when preparing agreements and consider any relevant requirements under the Integrated Planning and Reporting Framework and the *Local Government Act 1993*.

Works in kind agreements may have tendering requirements

The Local Government Act requires councils to invite tenders before entering into a wide range of contracts. Contracts involving an estimated value of less than $250,000 are exempt from this requirement, as are contracts where, because of extenuating circumstances, remoteness of locality or the unavailability of competitive or reliable tenderers, a council decides by resolution (which states the reasons for the decision) that a satisfactory result would not be achieved by inviting tenders.

Where the value of the proposed works in kind is over $250,000, councils should ensure it complies with these requirements. Councils can find more information on their tendering obligations at Office of Local Government's Tendering and Procurement.

Councils should require financial security and release it in full after a defects period

Councils should require financial security from a developer to ensure the works are delivered and land is dedicated. Refer to the module on security for more information. Financial security should be partially released when the works are handed over, with the full security released at the end of an agreed defects liability period.

Works in kind agreements do not need to be publicly exhibited but there are reporting requirements

Works in kind agreements do not need to be exhibited before they are entered into as they are a delivery mechanism for infrastructure in a contributions plan that has already undergone exhibition. Refer to the module on reporting for more information on reporting requirements.

Councils should undertake due diligence on land dedication offers

Offers to dedicate land should generally be limited to land that is identified in the contributions plan. When assessing land offers, councils should request from developers or arrange internally where appropriate:

- a detailed description of the land
- a plan by a registered surveyor

- a valuation of the land from a suitably qualified land valuer (the best practice is for a council to arrange this as an independent valuation)
- a contamination and other relevant consultancy reports, depending on the inherent characteristics of the land and its proposed use. Reports should detail any remediation works required to be carried out on the land.

Councils should require a cost estimate to compare the value of the works

Councils should require developers to provide a cost estimate of the proposed works from an independent quantity surveyor. The estimate should allow the council to verify that the works are of the same scope and standard as the relevant item in the contributions plan, or account for any variations.

The developer's cost estimates should be substantiated. Methods can include using standard industry costs, quantity surveyors, council staff experience or other appropriate forms of verification.

Offsets should apply against a total contribution liability

Councils should apply the offset against the total contribution, not a single category of works. Using a works in kind agreement to deliver an infrastructure item in a plan is the equivalent of pooling funds from multiple categories to deliver that item sooner. Councils will need to ensure they keep robust financial records to ensure that all categories of works continue to be funded in the way anticipated by the relevant contributions plan.

Procedure and process

The exact steps and process for preparing and implementing a works in kind agreement may differ between councils and should be detailed in a works in kind policy.

Table 18: Indicative steps for preparing and implementing a works in kind agreement

Steps	Actions and considerations
1 Initial discussion	• Either party identifies opportunities for infrastructure delivery and/or land dedication in a pre-development application meeting. • Discuss opportunities as early as possible to avoid delays in progressing development or delivering infrastructure. • The council provides its template works in kind agreement.
2 Offers	• The developer makes a written offer as soon as it has received development consent which details the contributions liability.

	• If the developer requests changes to the council's template, these should accompany the written offer and be substantiated with reasoning.
3 Assessment	• The council assesses the offer against its works in kind policy and assessment criteria. Where appropriate, the council may also need to assess tender response offers against relevant requirements. • The council will determine whether the offer is supported and the developer is notified.
4 Drafting	• The developer and the council will enter into a works in kind agreement using the council's template. • The developer is usually liable for all the council's legal costs for considering variations to the agreement template.
5 Execution	• The council sends a final copy of the agreement to the developer for execution. • The developer signs the final agreement and returns it to the council with any relevant security and any required construction plans or supporting documentation. • The council executes the agreement. The developer prepares and submits a new development application for the works if necessary.
6 Delivery	• On execution of the agreement, the developer commences the works or arranges the transfer of land to the council. • After completion of the works, the council arranges for inspection and rectification of any identified defects per the requirements of the agreement. • The developer hands over the completed works. Where land is transferred, the developer must provide the required documentation to the NSW Land Registry Services and pay the relevant fees.
7 Post-delivery	• The council provides offsets to the developer's contributions liability and gradually releases security following certification, expiry of the defects liability period or dedication of the land.
8 Reporting	• The council reports on all works in kind agreements as part of its contributions reporting.

Credits for existing development or past contributions

Credits ensure equity in the contributions system by preventing double charging for infrastructure where an appropriate contribution has previously been made. They can be granted in two circumstances:

- credits for existing development
- credits for past contributions.

This module discusses credits in the context of section 7.11 contributions.

Offsetting a contribution liability using a works in kind agreement is discussed separately.

Legislative requirements

Councils must consider previous contributions made by an applicant before imposing a condition requiring a further contribution under section 7.11.

Table 19: A summary of legislative requirements

Requirements in the EP&A Act	Section
For section 7.11 contributions, councils must take into consideration any land, money or other material public benefits that an applicant has previously provided (unless these formed part of a condition of development consent or were part of a planning agreement that excluded consideration of the benefit).	7.11(6)

Policy positions

Credits for past contributions or existing development can reduce the contributions liability

Credits for past contributions or existing development are calculated when the development consent is issued and are reflected as a lower contribution on the condition of consent. This is different to works in kind agreements, where the condition of consent shows the full amount due and the parties later agree to pay this liability through work instead of a contribution.

Councils should provide a clear policy in the contributions plan on when they will grant credits

Councils will have different considerations for when they provide credits and the evidence needed to demonstrate that a credit should be granted. Councils should have a specific policy on credits in their contributions plans and apply it consistently.

When determining a section 7.11 liability, councils should consider any previous infrastructure contributions made for the development site and should provide credits for these where appropriate. It is up to the council to determine how to value previous contributions.

- For residential development , councils should provide a credit that is either equal to an existing demand present on the site, or equal to any previous contributions paid. However, this will differ slightly depending on what type of contributions were previously charged.
- For commercial and industrial development , credits can be more complicated. Commercial and industrial buildings may have different uses at different intensities over time, such as higher or lower levels of traffic generation. Councils will need to assess these on a case by case basis.