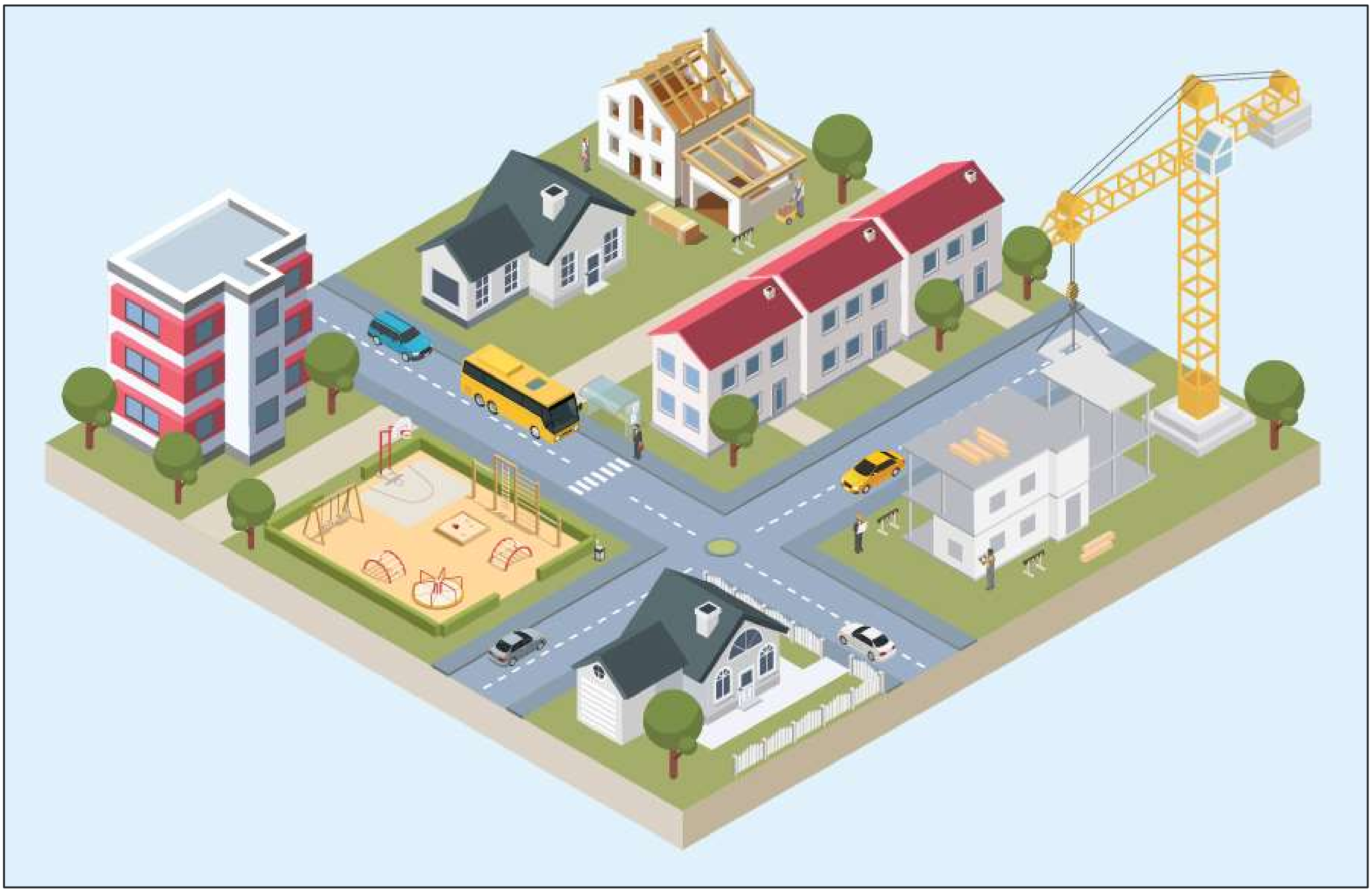
Department of Planning and Environment

dpie.nsw.gov.au

DRAFT FOR EXHIBITION - Section 7.12 levies

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.

Published by NSW Department of Planning and Environment

dpie.nsw.gov.au

DRAFT FOR EXHIBITION - Section 7.12 levies

First published: December 2023

Department reference number: DOC22/965180

More information

Local Infrastructure Funding Policy team. Contact us on:

infrastructure.contributions@planning.nsw.gov.au

Copyright and disclaimer

Contents

Updates to this practice note 5

Terminology 5

Using this practice note 5

Making a section 7.12 contributions plan 7

Legislative requirements 7

Policy positions 9

Procedure and process 11

Exempting certain development from contributions 13

Legislative requirements 13

Policy positions 14

Best practice guidance 15

Defining plan catchments and subcatchments 17

Legislative requirements 17

Policy positions 17

Best practice guidance 18

Developing a works schedule and mapping infrastructure 20

Legislative requirements 20

Policy positions 20

Best practice guidance 22

Templates 23

Estimating infrastructure costs 25

Legislative requirements 25

Policy positions 25

Examples 29

Exhibiting and adopting contributions plans 32

Legislative requirements 32

Policy positions 34

Best practice guidance 35

Indexing contribution rates and conditions of consent 37

Legislative requirements 37

Policy positions 38

Best practice guidance 39

Procedure and process 39
Timing of contributions payments 41
Legislative requirements 41
Policy requirements 41
Requesting a higher section 7.12 rate 43
Legislative requirements 43
Policy positions 43
Procedure and process 45

Updates to this practice note

This practice note was first published on XX date and will be periodically updated. It replaces the *Section 7.12 fixed development consent levies practice note 2021*.

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 7.12 contributions plan

Section 7.12 levies are one of the mechanisms available to councils to collect contributions towards funding infrastructure. They can only be required as monetary contributions and not land dedication or works in kind. A section 7.12 plan is a simple and administratively efficient way of collecting monetary contributions from development.

This module lays out the steps involved in making and using a section 7.12 plan.

Legislative requirements

Section 7.12 levies are an administratively efficient and simple mechanism:

- they are charged under section 7.12 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).
- councils can only impose a section 7.12 levy if they have a contributions plan in place (section 7.13 EP&A Act).
- the levies are based on a percentage of the cost of development, up to the maximum rates identified in section 209 of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation).
- the cost of development must be calculated in line with specific requirements. Section 208 of the EP&A Regulation defines what can and cannot be included when determining the cost of carrying out development.
- section 7.12 plans must specify the type of development or area that the plan applies to and must preclude a section 7.11 condition from being applied to that same type or area (section 7.18 (2) EP&A Act).
- councils must not 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 will or is likely to result in an increase in demand beyond the demand of the original subdivision (Environmental Planning and Assessment (Local Infrastructure Levies) Direction 2015)

The information required in a section 7.12 plan is set out in the EP&A Regulation and highlighted in Table 2.

Table 2: Content to include in a section 7.12 plan

Content of a section 7.12 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)	This module
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 if pooling and progressively applying funds	212(1)(h)	Borrowing, pooling contributions and forward funding infrastructure
The percentage of the development levy for each type of development	212(2)(a)	This module
How the cost of development will be indexed from the granting of consent to when the levy is paid	212(2)(b)	Indexing contribution rates and conditions of consent
The timing of payment and the policy on considering deferred or periodic payments	212(3)	Timing of payment
The exemptions policy	-	Exempting certain development from contributions

Policy positions

The principles of the infrastructure contributions system underpin section 7.12 levies

The principles of the contributions system should be considered in relation to section 7.12 levies. However, the principles of reasonableness, nexus and apportionment do not apply as rigorously because section 7.12 levies are focused on being administratively efficient and simple.

- Contributions under section 7.12 plans are set in the EP&A Regulation with little variation, addressing the issue of reasonableness.
- Although a relationship between new development generally and demand for infrastructure is required, direct nexus and apportionment does not have to be established.

Contributions plans should have a clear and defined purpose

A section 7.12 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.*

Section 7.12 plans must demonstrate a general relationship between development and the demand for infrastructure

Section 7.12 levies can be charged even if there is no direct connection between the development being levied and the infrastructure being funded.

However, there is still a requirement for a section 7.12 plan to identify and demonstrate a clear relationship between the expected types of development and the demand for infrastructure. While there may not need to be a direct connection between an individual development and specific infrastructure item, there still should be a connection between the types of development on which the levy is imposed and the infrastructure being funded by the levy.

Demonstrating this relationship can include detailing expected additional demand generating development. This can include the projected future volume of residents, workers or visitors, the new gross floor area or net developable area and linking these increases to a need for upgraded or new infrastructure types.

For additional advice on demonstrating this relationship, refer to the module *Determining demand and demonstrating nexus* in the section 7.11 practice note. While section 7.12 plans do not need to demonstrate direct nexus, this information can still be useful.

Councils can charge a rate up to the maximum percentage

The section 7.12 levy is charged as a percentage of the cost of carrying out development. Councils can determine the rate they wish to charge up to the maximum percentage specified in the EP&A Regulation.

Table 3: Maximum percentage rates specified in the EP&A Regulation under section 209(2)

Proposed cost of the development	Maximum percentage of the levy
Up to $100,000	Nil
$100,001-$200,000	0.5%
More than $200,000	1%

Councils can also request a higher maximum percentage for specific areas if they meet certain criteria. Section 209(1) of the EP&A Regulation lists areas that are subject to higher maximum percentage rates.

Contribution amounts must be detailed in a condition of consent

Councils should use simple, 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
- 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.

Contributions under a section 7.12 plan can be charged each time there is development

Section 7.12 levies cannot be charged on land where a section 7.11 contribution has already been charged for that subdivision unless the new development will result in an increase in demand beyond that attributable to the initial subdivision.

However, in all other circumstances, a section 7.12 levy can be charged multiple times on a piece of land for different development. For example, an applicant knocking down an existing building and replacing it with another building can be charged a section 7.12 levy, even if the original development had paid one.

Procedure and process

The steps outlined in Table 4 show a simplified process for making and using a section 7.12 plan.

Table 4: Simplifies process for making and using a section 7.12 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 7.12 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 7.12 contributions
7	Estimate the cost of infrastructure and prepare a work schedule and mapping	Developing a works schedule and mapping infrastructure
8	Determine what percentage rates will be charged under the plan	Council process
9	Finalise draft plan preparation and complete council approval process for exhibition. If applying for higher percentage rate, contact the Department for advice	Council process

10	Exhibit contributions plan, consider submissions and make amendments if necessary	Exhibiting and adopting contribution plans
10.1	*If council proposes a plan above the 1% maximum, contact the Department to apply for the higher rate*	*Requesting a higher section 7.12 rate*
11	Adopt plan and upload to the NSW Planning Portal and council's website	Exhibiting and adopting contribution plans
12	The plan is in operation with council continuing to report on its progress	Reporting and publication requirements
13	Regularly review the plan to ensure it remains current	Reviewing, amending and repealing 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 5: 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 6: 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.

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>

$$\mathit{Contributions\ rate} = \frac{\mathit{Total\ revenue}}{\mathit{Total\ population}}$$

</td><td>

$$\mathit{Total\ present\ revenue} = \sum_{n=1}^{n} \mathit{Yearly\ population} \times \mathit{Yearly\ Contributions\ Rate}$$

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

$$\mathit{where}\ C_n\ \mathit{is\ the\ contributions\ rate\ in\ year}\ n$$

$$\mathit{where}\ P_n\ \mathit{is\ the\ population\ in\ year}\ n$$

</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>

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 10: 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.

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 11: 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.

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

- *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:

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

- *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.

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

- *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.

Requesting a higher section 7.12 rate

Councils can only charge section 7.12 levies up to the maximum percentage rate specified in the EP&A Regulation. However, councils can request a higher rate if this rate is justified. This module outlines the process.

Legislative requirements

The maximum percentages that councils can levy under section 7.12 of the EP&A Act are set out in the EP&A Regulation.

- Section 209(2) of the EP&A Regulation sets a maximum rate of 1%, although councils may impose a lower rate.
- Section 209(1) of the EP&A Regulation lists areas that are subject to higher maximum percentage rates.

Policy positions

Councils can request a higher maximum rate

Councils can make a request to the Minister for Planning to increase the maximum section 7.12 percentage levy that they can charge. Any increase in the maximum percentage requires an amendment to the EP&A Regulation and is a matter for the Minister to determine if it should be increased.

Councils considering making a request should review the criteria set out in Table 12 to determine if they can justify the proposed increase. Councils should contact the Department early in this process and before they submit a request, to discuss how they will meet the criteria.

After council has exhibited the draft plan, it can make a formal request to the Minister for Planning to increase the maximum percentage rate and send a copy to the Department via:

- Local Infrastructure Funding Policy team
- infrastructure.contributions@planning.nsw.gov.au

The Department will assess the application and make recommendations to the Minister. Where a request is supported by the Minister, the necessary steps to amend the EP&A Regulation to increase the levy will be undertaken.

In assessing the request, the Department will consider individual geographical, socioeconomic and development contexts. All requests for higher maximum rates will be assessed on their merits, including any requests to deviate from the outlined criteria or percentages.

Criteria for requesting a higher percentage levy between 1% and 3 %

To make a request for a higher percentage between 1% and 3%, a council must:

- respond to the criteria in Table 12 of this module and provide supporting evidence to facilitate transparent decision making
- include all the information and documentation described in Table 13 of this module.

The detail and amount of evidence required should be proportionate to the value of the contributions plan. Table 12 includes criteria (a to f) that a council should consider when making an application for a levy increase from 1% to 2%. There are **additional** criteria (g and h) for councils to request a levy increase from 2% to 3%.

Table 12: Criteria to address in a higher section 7.12 levy request

<table>
<tr><th>Item</th><th>Criteria for Greater Sydney councils*</th><th>Criteria for all other councils</th></tr>
<tr><td>a)</td><td colspan="2">Strategic areas are identified in a regional plan, district plan or respective local strategic planning statement, as a strategic centre, growth area, local centre or economic corridor.</td></tr>
<tr><td>b)</td><td colspan="2">Local planning controls reflect or are being amended to reflect relevant strategic direction and targets for the centre or defined area.</td></tr>
<tr><td>c)</td><td colspan="2">A requirement for a review every 5 years from the date the new contributions plan comes into force is written into the contributions plan.</td></tr>
<tr><td>d)</td><td colspan="2">Ongoing consultation with the department regarding changes to works schedules will be undertaken, otherwise the higher percentage levy will no longer apply.</td></tr>
<tr><td>e)</td><td>The contributions plan should focus on delivering quality place-based community and green infrastructure and public space</td><td>Contributions should focus on delivering high cost infrastructure items identified in regional plans and strategic plans, such as roads.</td></tr>
</table>

	improvements that enhance the amenity of the centre.	
f)	The centre has been identified by the relevant strategic plan to accommodate significant employment growth. For example, facilitating an increase of at least 25% more employment opportunities than currently available in the centre.	Not applicable.
Additional criteria to address in a request for an increased levy of more than 2% of the cost of development		
g)	The works schedule has been prepared in consultation with the department. The department can liaise and coordinate with infrastructure agencies to identify strategic, place-appropriate infrastructure. The department can also help ensure infrastructure needs are met in the most efficient manner.	
h)	Financial modelling demonstrates that a 2% levy is insufficient to deliver the identified infrastructure in the proposed time frame.	

** Greater Sydney councils are those defined as Eastern Harbour City, Western Parkland City and Central River City in Schedule 1 to the Greater Cities Commission Act 2022.*

The criteria in Table 12 should be addressed but this does not limit the type or amount of information that councils may include. Councils can include any additional information, data, reports or studies to support an application.

Requests for higher percentage levy of more than 3%

Councils should address all criteria in Table 12 if seeking a section 7.12 levy increase of more than 3%. Councils should contact the department before making an application to ensure that the most appropriate information is included in their application.

Procedure and process

Table 13: The section 7.12 levy increase process

Steps	Actions
1	• Council identifies that a section 7.12 plan is the appropriate mechanism.

Identify need for a higher percentage levy	• Council also identifies the need for a higher percentage levy to deliver infrastructure in the area within the plan. • Council considers if a formal request for a higher maximum rate is likely to be successful by reviewing the criteria in Table 12.
2 Consult with DPE on intention to request higher rate	• Council contacts the department before exhibiting the draft section 7.12 plan to discuss its intention to request a higher percentage. • The Department may advise that certain information or actions are required before council exhibits its draft plan.
3 Submit request	• After council has exhibited its draft plan and considered submissions, they can make a request to the Department for an increase to the maximum percentage. • Applications should include: - a formal letter to the Minister requesting an amendment to the EP&A Regulation to increase the levy to a proposed higher rate - the draft plan - a response to the criteria outlined in Table 12 - a summary of submissions received during exhibition and any changes made to the draft plan as a result of these submissions - any further additional information or reference to any actions requested by the Department.
4 Application reviewed	• The Department reviews the council's application. • All requests for a higher maximum percentage levy will be assessed on their merits.
5 Recommendation made	• The Department makes a recommendation to the Minister, which is approved or rejected. • The Department advises the council in writing of the outcome and any conditions attached to an approval for an increased levy.
6 Regulation amendment	• An amendment is made to section 209 of the EP&A Regulation if the Minister approves an increase to a levy. • The timing of this amendment may be affected by other legislative priorities.
7 Plan reviews	• The council reviews its plan within 5 years to assess if the higher levy is still appropriate, or if a section 7.11 contributions plan is a more appropriate mechanism to collect contributions.