


DRAFT FOR EXHIBITION -Local infrastructure contributions system

Practice note

December 2023





Acknowledgement of Country

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

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More information

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Updates to this practice note

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

Table 1: A summary of updates to this practice note

Edition	Publish date	Updates
First edition	XX Date	-

Terminology

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

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

Using this practice note

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

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

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Role and structure of the practice notes

The role of practice notes is to help councils prepare contributions plans and negotiate planning agreements. They can also help applicants and the community understand the local contributions system.

Practice notes form an important part of the policy framework for infrastructure contributions. This framework consists of:

- Part 7 of the *Environmental Planning and Assessment Act 1979* (EP&A Act)
- Part 9 of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation)
- directions made by the Minister for Planning
- practice notes issued by the Planning Secretary.

How to use the practice notes

There are five infrastructure contributions practice notes

Each of the five practice notes focuses on a local infrastructure contribution mechanism or on general advice and administration of the local infrastructure contributions system. The practice notes are:

- The local infrastructure contributions system
- Section 7.11 contributions
- Section 7.12 levies
- Planning agreements
- Administering contributions

Practice notes

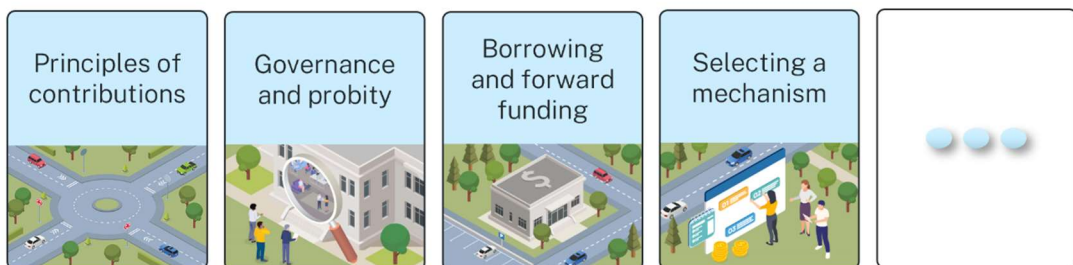


These practice notes will be updated periodically. This reflects continual improvement to advice over time as well as expansion of best practice guidance and examples.

The practice notes are made up of modules that provide guidance on a specific topic of policy area related to contributions. Practice notes can be read in their entirety to give a complete guide. Modules can also be read individually as advice and guidance for specific parts of the system.

Most modules are unique to a practice note, while some modules are consistent across different practice notes where they cover a topic that is common to more than one mechanism.

Modules



Each module has a consistent template

Each module can be structured into 6 consistent sections. Some modules will have all 6 sections, while most modules will only have the ones relevant to their topics. This structure allows the reader to access the most important information on a topic first, followed by more detailed information and guidance.



Legislative requirements

This section details the things councils **must do** as required by the EP&A Act and Regulation, or a ministerial direction. The modules describe the requirements in plain language, but practitioners should always refer to the current legislation when making decisions.

Policy positions

This section details the policy positions a council **must consider**. The EP&A Regulation requires that councils must consider any relevant practice notes when preparing a contributions plan and must consider any relevant practice notes when negotiating or entering into a planning agreement.

Best practice guidance

This section gives best practice guidance on things councils **should do** if it is appropriate for their situation. If an equivalent or better way of achieving an outcome is possible, it can be considered.

Procedure and process

Some modules will include procedure and process guidance that will help explain the **how to** of the system. These will help councils and stakeholders understand the steps involved in contributions planning. This may involve process maps and detailed descriptions.

Examples

This section gives examples of things contributions practitioners **might do**. Examples show how advice provided in the practice notes may be applied in practice but are not intended to be an exhaustive list.

Templates

Some modules will have templates and **tools councils can use**. These are included for reference and information.

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Principles of infrastructure contributions

Infrastructure contributions are a charge on development that are set within a principles based approach. This approach underpins how councils can plan for, collect and spend contributions or deliver infrastructure. This module explains the principles based approach and what councils should consider when approaching infrastructure contributions.

Legislative requirements

Within the principles based approach there are requirements of the EP&A Act:

- Local infrastructure contributions under section 7.11 must be **reasonable**.
- Local infrastructure contributions under section 7.11 must have a **nexus** to development.
- Planning agreements must be **voluntary**.

Table 2: A summary of legislative requirements

Basis in the EP&A Act for the principles	Section
Local infrastructure contributions must be reasonable	-
Only a reasonable dedication or contribution may be required under section 7.11	7.11 (2) & (4)
The Land and Environment Court can disallow a condition under section 7.11 if it is unreasonable, even if it is in accordance with an adopted plan	7.13 (3)
The infrastructure must be provided in a reasonable time	7.3 (1)
Land dedicated to a public purpose must be made available in a reasonable time	7.3 (3)
Local infrastructure contribution under section 7.11 must have a connection or nexus to development	7.11(1) & (3)
Planning agreements must be voluntary	7.4 (1)

Policy positions

The principles of reasonableness and accountability underpin local infrastructure contributions and should be considered by councils when using the system.

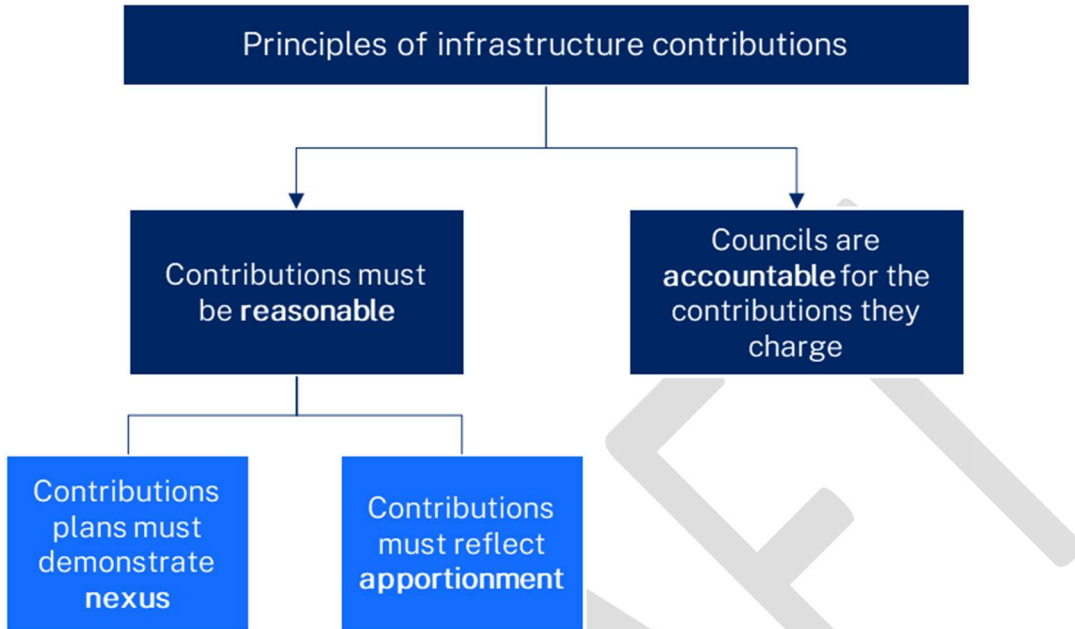


Figure 1: The principles of infrastructure contributions

Local infrastructure contributions must be reasonable

Infrastructure contributions must be reasonable. This means that the infrastructure costs and the assumptions the contributions plan is based on must be reasonable and that the infrastructure should be provided in a reasonable time.

The requirement for a contribution to be reasonable is a fundamental concept for section 7.11 contributions. For example, the Land and Environment Court can disallow a condition of development consent for section 7.11 contributions if it finds it unreasonable, even if this condition is in line with the contributions plan.

The court cannot disallow a section 7.12 levy in the same way. However, reasonableness is still an underlying principle of this mechanism and is achieved through the maximum amount being set by the EP&A Regulations.

The reasonableness of a contribution in a plan is demonstrated by showing nexus (the connection between development and demand created) and apportionment (the share of costs borne by development).

Contributions plans must demonstrate nexus

Nexus is the relationship between the expected types of development in the area and the demonstrated need for infrastructure created by a development. Generally, infrastructure contributions are appropriate where there is likely to be an impact on the demand for infrastructure.

Although nexus in its strictest sense only applies to section 7.11 contributions, the link between development and contributions should underpin decision making in the system in general. For example, section 7.12 plans must demonstrate a general relationship between infrastructure and demand, while planning agreements should generally be used for infrastructure that is not wholly unrelated to development.

Contributions must reflect the apportioned costs of infrastructure

Apportionment is a tool to ensure that a charge only ever reflects the demands of development and no other demands. Apportionment is a process that seeks to isolate demands, to ensure that the contributing population only pays for its share of the total demand. For example, it would be unreasonable to apportion all costs for an indoor sports facility to the contributing population if there is clear demand by the existing population for such a facility.

Demonstrating nexus and apportioning costs is discussed in more detail in the Determining the demand and demonstrating nexus module of the section 7.11 practice note.

Councils are accountable for the contributions they charge

Councils must also be accountable for the infrastructure contributions they collect and how these funds are managed and spent. This includes:

- following the legislative requirements relating to contributions
- being transparent about how the contribution rates were derived and the decision making processes involved
- delivering the infrastructure in a reasonable time and ensuring the facilities meet the needs of the development
- accurately reporting on how funds are collected, managed and spent and being open to public scrutiny.

How the principles are applied to each mechanism

The principles discussed above underpin the local infrastructure contributions system. However, they are considered and applied differently depending on which mechanism is used. The in practice

application of the principles for each mechanism are highlighted below and discussed in detail in their respective practice notes.

Table 3: Principle considerations for each mechanism

Section 7.11 contributions	Section 7.12 levies	Planning agreements
<p>Aim to be certain and transparent</p> <ul style="list-style-type: none"> • Cost reflective charge with a high level of rigour • Strict application of reasonableness, nexus and apportionment 	<p>Aim to be efficient, consistent and simple</p> <ul style="list-style-type: none"> • Low and simple fixed rate • Does not need to establish direct nexus and apportionment • Requires a relationship between infrastructure and demand 	<p>Aim to be flexible and efficient</p> <ul style="list-style-type: none"> • Negotiated outcome • Facilitates direct delivery, out of sequence development and innovation • Should not be wholly unrelated to development

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Selecting the most appropriate contribution mechanism

There are three mechanisms available under the EP&A Act to allow councils to require contributions towards local infrastructure. These are:

- section 7.11 contributions
- section 7.12 levies
- planning agreements.

Councils must decide the most appropriate mechanism for their circumstances as they are ultimately responsible for the delivery of local infrastructure in their local government area. This module provides guidance on when to use each mechanism, as well as other funding sources councils should consider when planning for and providing infrastructure.

Legislative requirements

There is no legislative requirement to use one mechanism over another – this is at the discretion of councils. However, there are requirements around how the mechanisms can be used in combination.

Table 4: A summary of legislative requirements

EP&A Act requirements	Section
If a section 7.11 plan and a section 7.12 plan apply to the same piece of land, a council cannot charge both types of contributions.	<u>7.18 (2)</u>
A section 7.12 condition and section 7.11 condition cannot be imposed on the same development consent.	<u>7.12 (2)</u>
Planning agreements can be used in addition to or instead of section 7.11 contributions or 7.12 levies. They are a separate mechanism that does not need to be tied to a local contributions plan.	<u>7.4</u>

Policy positions

Councils should consider the circumstances of their local government area, the nature of development, type and amount of infrastructure needed and the resources available for managing the contributions before deciding which mechanism to use.

- Councils can use a combination of mechanisms in their local government area and this can change over time as the development profile of the area changes.
- Not all types of infrastructure can be funded through every mechanism. Councils should consider the infrastructure needed when choosing the appropriate mechanism.
- Some mechanisms can only fund part of the infrastructure costs, and councils will need to use a mix of funding sources.
- Councils should also consider the staff, resources and time they have available to manage the contributions process.

Infrastructure contributions can only be required through the contributions system

The mechanisms available under Part 7 of the EP&A Act are the appropriate way for councils to require contributions for local infrastructure. Councils should not pursue contributions schemes through development control plans or local environmental plans (other than affordable housing contributions). This ensures the infrastructure contributions system is transparent and consistent.

Best practice guidance

When to use section 7.11 contributions

Section 7.11 contributions are usually most appropriate in greenfield or major redevelopment infill areas where the rate and type of development are more predictable and there will be a significant increase in demand for infrastructure created by the development. They are also more appropriate where the high cost of infrastructure justifies the significant resources needed for section 7.11 contributions planning and the ongoing management of these funds.

This type of plan requires the council to demonstrate the nexus between the development and the demand for infrastructure. Councils must apportion costs so that the development is only paying for the demand it creates. This often means that councils will need to fund the part of the cost of infrastructure that benefit existing residents from other funding sources, such as rate revenue or grants. However, a section 7.11 plan can create more certainty around infrastructure funding

because, after taking into account apportionment, this type of plan can fund the full cost of the infrastructure.

When to use section 7.12 levies

Section 7.12 levies are a flexible mechanism that can be used in a broad range of situations. They generally have lower rates of contributions, but this is offset by greater flexibility in expenditure and administrative efficiency.

Section 7.12 plans are useful in situations where it can be difficult to determine the types of future development and activities, the rate at which development will occur, and where it will occur, making detailed infrastructure contributions planning difficult. For example, in areas experiencing low or unpredictable rates of development, or areas with a significant commercial or industrial development component.

These plans have less certainty than section 7.11 plans because the contribution is based on a set percentage charge on the cost of development, rather than being based on the cost of infrastructure as section 7.11 plans are. They are not necessarily intended to recover the full cost of the infrastructure needed in an area, but act as a simple mechanism to collect contributions towards this infrastructure.

When to use planning agreements

Councils can use planning agreements in a wide variety of circumstances, set out in [section 7.4\(2\) of the EP&A Act](#). Planning agreements tend to be more successful where there is a large landowner who wants to coordinate and deliver infrastructure at the same time as the development. Agreements can offer different and better outcomes through efficiencies in the development and infrastructure construction process or through innovation.

However, councils must consider whether the outcomes of a planning agreement are worth the effort and administration required to negotiate and implement an agreement.

What to consider when choosing an approach

Table 5: Considerations for using each mechanism

Consideration	Section 7.11 contributions	Section 7.12 levies	Planning agreements
Development pattern	<ul style="list-style-type: none"> Greenfield or major redevelopment infill areas Areas where the rate and type of development are more predictable and there will be a significant increase in demand for infrastructure created by the development 	<ul style="list-style-type: none"> Infill areas where there are lower rates of development or the scale and patterns of development are uncertain Established urban areas, where development is mainly 'infill' development and is also sporadic Rural and regional areas, where there are slow rates of development or development is sporadic Commercial and industrial areas, where direct demand for public infrastructure is difficult to establish for individual development 	<ul style="list-style-type: none"> Major growth or development occurring in a distinct area Specific infrastructure is required to facilitate development and a developer offers to deliver it A proposed development has not been anticipated by the council and works and facilities to cater for this development have not been identified in a contributions plan
Resource requirements	<ul style="list-style-type: none"> Time and resource intensive to prepare, implement and administer 	<ul style="list-style-type: none"> Simple and administratively efficient to prepare, implement and administer 	<ul style="list-style-type: none"> Time and resource intensive to prepare, requires lawyers, requires a developer to initiate the negotiation and support from all parties affected by the agreement
Land ownership pattern	<ul style="list-style-type: none"> Fragmented land ownership 	<ul style="list-style-type: none"> Fragmented land ownership 	<ul style="list-style-type: none"> Land is owned by a single or very few landowners or a consortium

Consideration	Section 7.11 contributions	Section 7.12 levies	Planning agreements
Infrastructure need	<ul style="list-style-type: none"> • Appropriate for areas: <ul style="list-style-type: none"> - with more intensive infrastructure needs as contributions reflect the actual efficient cost of the infrastructure - where there is little or no capacity in existing infrastructure to meet the needs of new development. 	<ul style="list-style-type: none"> • Appropriate in areas where: <ul style="list-style-type: none"> - the demand for infrastructure is lower or more spread out over time - there is some capacity in the existing infrastructure to meet the needs of new development. 	<ul style="list-style-type: none"> • A negotiated outcome appropriate where: <ul style="list-style-type: none"> - a developer wants to provide infrastructure in addition to, or at a higher standard than, what has been specified under a contributions plan - a developer has a direct incentive, such as bringing forward potential development, to be involved in the delivery of infrastructure - a different and better or more innovative outcome can be negotiated than can be achieved through imposing contributions.
What infrastructure can be included	<ul style="list-style-type: none"> • Can only include capital costs for local infrastructure • If the plan charges a contribution over a certain threshold, it can only include infrastructure on the <u>essential works list</u> 	<ul style="list-style-type: none"> • Can only include capital costs for local infrastructure 	<ul style="list-style-type: none"> • Can include a wider range of infrastructure types and can include funding for recurrent costs • Appropriate where a developer is seeking to provide infrastructure that is beyond the scope of what is permitted in a section 7.11 or section 7.12 plan

Consideration	Section 7.11 contributions	Section 7.12 levies	Planning agreements
Independent Pricing and Regulatory Tribunal (IPART) review	<ul style="list-style-type: none"> If the plan charges a contribution over a certain threshold for residential development, it must be <u>reviewed by IPART</u> 	<ul style="list-style-type: none"> No IPART review 	<ul style="list-style-type: none"> No IPART review
Opportunity for appeal	<ul style="list-style-type: none"> Can be challenged on the ground that it is unreasonable and can be appealed on the basis that the EP&A Act or Regulation have not been complied with (section 7.13 (3) EP&A Act) 	<ul style="list-style-type: none"> Can be appealed if the legislation has not been complied with in the preparation of the plan (section 7.20(3) EP&A Act), but not on the grounds of reasonableness (section 7.12(4) EP&A Act) 	<ul style="list-style-type: none"> Can only be appealed if there was a failure to follow procedures required in the EP&A Act or Regulation (per section 9.45 EP&A Act)

Infrastructure should be funded from multiple sources

Contributions plans generally only fund a proportion of the full cost of infrastructure, for example because some of the cost may have been apportioned to existing development. Councils will need other funding sources for the portion of infrastructure that will service existing demand and the cost of running and maintaining the infrastructure.

Different sources can be used in combination. Councils should also consider sources of funding such as rates, federal and state grants or subsidies. It may also be appropriate to have user charges for some local infrastructure.

Councils must ensure that they do not 'double-dip' when using multiple sources of funds. Double-dipping is where the same component of an item is funded twice, for example through the collection of contributions and through a grant.

General revenue

For most contribution plans, a proportion of the cost of infrastructure must be funded from general revenue. Local government rates in NSW are pegged. The rate peg is the maximum percentage amount by which a council may increase its general income for the year. This amount is set annually by the Independent Pricing and Regulatory Tribunal (IPART). It is typically based on the change in the Local Government Cost Index, a productivity factor, any special adjustments and, since 2022-23, a population factor for each council.

Special rate variations

Councils can apply to the Independent Pricing and Regulatory Tribunal (IPART) for a special rates variation, this is a special variation to general income above the rate peg amount. IPART considers applications against the guidelines set by the NSW Office of Local Government.

Conditions of development consent

In some circumstances, councils can require infrastructure to be provided through conditions of development consent instead of through a contributions plan. Section 4.17(1)(f) of the EP&A Act allows consent authorities to impose a condition of consent that require developers to carry out works that relate to any matters of consideration outlined in section 4.15(1) of the EP&A Act.

When determining if works should be required as a condition of consent, councils should consider whether the works:

- are required as a direct result of a single development
- are not covered by an existing contributions plan
- can be reasonably provided by the developer as part of their development
- will be undertaken by the developer.

Some examples include traffic management at the entry to the development, internal drainage works or footpaths. For mining and energy developments, specific impacts are those related directly and exclusively to the development, such as roads, noise, dust or visual amenity. These should be considered early in the development assessment process and mitigated through conditions of consent where appropriate.

Borrowing and forward funding

Forward funding infrastructure can bring significant benefits such as reducing the overall cost of infrastructure and land and providing infrastructure at an earlier time. Borrowing and forward funding should be a key part of many councils' infrastructure delivery strategies.

Procedure and process

This process map can assist councils to select an appropriate mechanism to fund their local infrastructure.

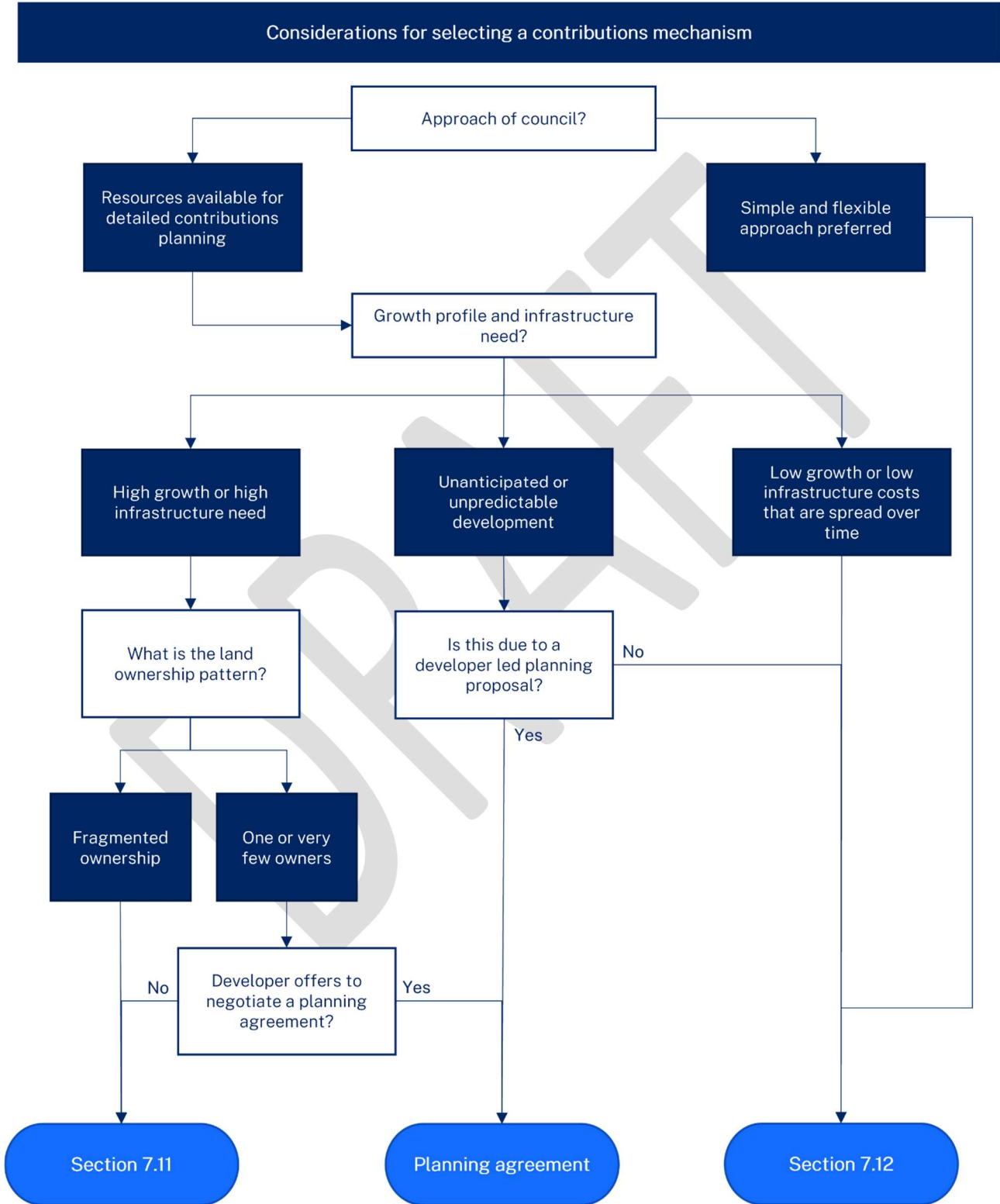


Figure 2: Considerations for selecting a contributions mechanism

Examples

Council with multiple different development sites

A council with areas of intensive greenfield development on rural fringes, as well as low level infill development occurring throughout their local government area might decide to use all three mechanisms. For example, this council might implement:

- A section 7.12 plan to apply across the entire local government area to ensure that the ongoing infill development contributes to the infrastructure needed to support this growth – each instance of this type of development has a low impact, but over time it can represent a significant cumulative increase in demand for infrastructure.
- A section 7.11 plan for specific new growth precincts with high infrastructure need. These plans reflect the actual cost of providing the infrastructure in these areas and increase certainty of it being delivered.
- A planning agreements policy outlining the circumstances where council would consider negotiating planning agreements, such as:
 - an unexpected development or developer led rezoning is proposed that has strategic merit but hasn't been considered in the infrastructure planning
 - a developer offers an innovative way of providing the infrastructure.

Council with no defined development sites

Councils with low levels of dispersed development might implement a local government area wide section 7.12 plan. This is a simple and administratively efficient approach, which allows them to capture infrastructure contributions without a significant staffing requirement. These funds can be used over time to invest in infrastructure to benefit these communities.

Infill council with major redevelopment sites

A council with predominantly infill development might decide to use a combination of mechanisms, including:

- A section 7.12 plan to apply across the entire local government area to ensure that the ongoing infill development contributes to the infrastructure needed to support this growth – each instance of this type of development has a low impact, but over time it can represent a significant cumulative increase in demand for infrastructure.

- A specific section 7.11 plan for an identified precinct that the council anticipates will be redeveloped soon – for example, a precinct around a train station that will be changing from free-standing houses to high rise development.

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Ministerial directions for local contributions

The Minister for Planning has the power to give direction to councils and other consent authorities which are called Ministerial directions. This module outlines the Minister’s direction making powers for local contributions and where the directions applying to local infrastructure contributions are found.

Legislative requirements

Ministerial direction making powers for local infrastructure contributions

Councils must adhere to any direction made by the Minister for Planning. While the minister has the power to make directions under Part 7 of the EP&A Act, there is no obligation for these powers to be used. The minister may give directions generally or in relation to a particular case.

Table 6: A summary of legislative requirements

Minister powers in the EP&A Act	Section
Power to direct a planning authority to follow particular procedures and standard requirements when negotiating planning agreements	7.9
Power to direct a consent authority to take certain actions about charging contributions under section 7.11 and section 7.12.	7.17
Power to direct a council to approve, amend or repeal a contributions plan or to do so on their behalf in certain circumstances.	7.19

Current ministerial directions

Ministerial directions for local infrastructure contributions are currently published in the [NSW Government Gazette](#) and on the NSW Planning Portal. The directions are found on the NSW Planning Portal under the [infrastructure contributions section](#). They are grouped into the following four tables:

- Active ministerial directions for local infrastructure contributions under section 7.17 of the EP&A Act

- Active ministerial directions setting the maximum monetary contribution payable under section 7.11 plans
- Active ministerial directions for planning agreements under section 7.9 of the EP&A Act
- Revoked or superseded ministerial directions.

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What can be funded through section 7.11 and 7.12 contributions

Local infrastructure contributions can be used to fund a range of different types of infrastructure. However, there are specific requirements on what can be funded depending on which mechanism is used. This module details the infrastructure that can be funded through:

- section 7.11 contributions
- section 7.12 levies.

Planning agreements can fund a wider scope of infrastructure and public purposes. Refer to the [Planning agreements practice note](#) for further guidance on what they can be used for.

Legislative requirements

Infrastructure contributions under section 7.11 and section 7.12 can fund items described by the EP&A Act as ‘public amenities and public services’.

- Public amenities and public services are not defined in the EP&A Act or other legislation. The practice notes use the term **local infrastructure** to mean both public amenities and public services.
- The EP&A Act requires that contributions can only be used for the ‘provision, extension or augmentation’ of this infrastructure. The practice notes use the term **capital cost** to mean provision, extension and augmentation.
- Under the EP&A Act, local infrastructure (‘public amenities and services’) does not include water supply or sewerage services.

Table 7: A summary of legislative requirements

What can be funded	Legislation
Section 7.11 contributions and section 7.12 levies can only require a contribution towards the provision, extension or augmentation of the public amenities and public services	Section 7.11 EP&A Act Section 7.12 EP&A Act

What can be funded	Legislation
Section 7.11 contributions plans that undergo review by IPART are restricted to collecting only for the infrastructure identified on the essential works list	<u>Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2012</u> and associated amendments

Policy positions

Councils can use infrastructure contributions to help fund the infrastructure they provide. Councils are generally responsible for providing infrastructure such as local open space, local roads, traffic management works, stormwater drainage and community facilities such as libraries.

Only capital costs can be funded through local contributions

Local contributions can only fund the capital costs of new infrastructure and extending or augmenting existing infrastructure. Capital costs mean the initial one-off cost of providing the infrastructure. It includes:

- the costs of land and land acquisition including all things necessary to bring the land into council ownership and to a standard suited for the end use
- construction and provision of facilities including all the things necessary to facilitate construction and to bring the facility to a standard that is suited to the end use
- the costs of borrowing incurred by forward funding infrastructure
- some administration costs incurred by the council.

Recurrent funding and maintenance cannot be included in contributions plans

Councils cannot use local contributions to fund the recurrent costs associated with the new infrastructure funded by contributions. This includes costs such as maintenance, asset management and operational costs. These costs should be funded from council rates revenue or other sources, such as grants or user charges.

The only exception to this is recurrent funding for the ongoing cost of roads where heavy vehicular traffic movements arise directly from specific development activity, such as for the mining and extractive industries. This is because these costs are not required as a result of the regular wear and tear on a road, but rather damage caused directly by the development itself.

Plan administration can be a capital cost and included in a contributions plan

Plan administration costs include only those costs that relate directly and solely to preparing and implementing the plan and represent the costs to a council for project management of the plan. It does not include costs that are part of a council's business as usual, such as their core strategic planning responsibilities.

Plan administration costs can include:

- background studies, concept plans and cost estimates required to prepare the plan
- project management costs for preparing and implementing the plan, such as the employment costs for developing and coordinating the plan.

In section 7.11 plans, this can be counted listing and justifying the actual costs of plan administration.

Section 7.12 is a simple mechanism with low administration costs. As such, councils should generally not use section 7.12 funds for plan administration.

Some section 7.11 contribution plans can only fund items on the essential works list

Section 7.11 plans must rigorously establish nexus for each piece of infrastructure and can only fund the costs of infrastructure that can be apportioned to development.

Additionally, some section 7.11 plans are restricted to funding only items on a list called the essential works list. The essential works list only applies to section 7.11 plans with contribution rates above the thresholds specified in the [Environmental Planning and Assessment \(Local Infrastructure Contributions\) Direction 2012](#) and associated amendments. These plans must be reviewed by IPART and can only charge contributions for infrastructure on this list.

Further information on the essential works list and the IPART review process is provided in the [Review of section 7.11 plans by IPART](#) module in the section 7.11 contributions practice note.

Best practice guidance

Councils should budget for costs not included in the contributions plan

Some costs, such as recurrent funding and the part of the infrastructure cost that cannot be apportioned to new development, cannot be recovered through infrastructure contributions.

However, it is important that they are considered, quantified and documented, as they will impact council's recurrent budget. See the module on financial management in the Administering contributions practice note for more information on budgeting for and incorporating such costs.

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Governance, probity and internal controls

Governance, probity and internal controls are important to ensure infrastructure contributions are collected appropriately, accounted for, well managed and spent as intended. They reduce the risk of corruption and other undesirable outcomes.

This module outlines the governance, probity and internal controls councils should implement to safeguard the infrastructure contributions system.

Legislative requirements

The Local Government Act 1993 specifies the general audit and risk requirements councils must comply with.

There are also specific requirements under the EP&A Act councils must comply with concerning the financial management of contributions funds, security and reporting. These requirements are discussed in detail in their respective modules.

Policy positions

Probity and governance are critical in the infrastructure contributions system

Probity is acting with and demonstrating ethical behaviour in a particular process. Councils must demonstrate high standards of probity and good governance in all their contributions related processes, to ensure contribution funds are being appropriately managed and that stakeholders can have confidence in the contributions system.

Decisions must be made with integrity, honesty and fairness. Councils should be impartial in their dealings with the community, developers and applicants, be accountable and transparent, appropriately deal with conflicts of interest and ensure that they are getting value for money when making decisions about how to collect and spend contributions.

Councils can demonstrate their commitment to probity and good governance by:

- having publicly available policies on probity and good governance that specifically discuss how contributions will be treated

- ensuring all staff and councillors are aware of their responsibilities under their code of conduct and the legislative requirements that are specific to contributions
- maintaining accurate records
- documenting all decisions
- making information available to the public for scrutiny.

Councils with large contribution budgets should establish an infrastructure contributions governance committee

Councils should establish an infrastructure contributions governance committee to oversee all infrastructure contributions and planning agreements. This is particularly important for councils with large contribution balances.

The committee should:

- meet regularly to track collections and expenditures and report on works completed
- have oversight of planning agreements
- track planning agreements and ensure that works are being undertaken
- make decisions on the need for a review of a contributions plan
- make decisions on the timing of infrastructure delivery
- oversee the preparation of annual reports and other reporting requirements.

Committees should comprise senior council officers from each relevant section of the council and may be chaired by the council's general manager or other appropriate person. All decisions by the committee should be formally documented and made publicly available when appropriate.

Council fraud and corruption control frameworks should include contributions

Councils should specifically include infrastructure contributions considerations in their Fraud and Corruption Control Frameworks. The framework should identify and manage the specific risk of fraud or corruption present within the infrastructure contributions system and include prevention and monitoring strategies. This is particularly important in relation to planning agreements, where the risk of fraud and corruption is higher and where decisions can have significant financial and reputational implications for council.

The Independent Commission Against Corruption (ICAC) is responsible for investigating corruption in the NSW public sector including in councils. The ICAC website provides important information about how councils can prevent, identify and manage corruption risks. The Audit Office of NSW provides important information about how councils can prevent and manage fraud.

Councils should be particularly mindful of probity and conflicts of interest when negotiating planning agreements

The flexibility and negotiated nature of planning agreements make them a useful tool in delivering infrastructure. However, planning agreements can also create a risk of misuse and corruption if appropriate governance, probity and internal controls are not developed and followed. Additionally, having and following strong governance and probity frameworks can help improve public perceptions of planning agreements and their role in the planning process.

Councils should address governance and probity for planning agreements when developing infrastructure contributions policies and frameworks. This should also be specifically addressed in detail in a council's planning agreements policy.

Councils should implement strong internal controls to ensure probity

Clear and accurate records of all decisions

All decisions relating to contributions and planning agreements should be thoroughly documented. Poor record-keeping is a corruption risk.

Accurate and complete records allow decision makers to justify why decisions were made. For example, clear records can indicate why planning agreements were made, why money was spent, how purchases achieved value for money, and that the decisions were free from bias.

Councils are required to make their contributions plans and planning agreements publicly available on their websites and the NSW Planning Portal. They should also ensure that other public information relating to contributions is easily accessible and in plain language so members of the public can review and understand this information.

Security around contributions data

Councils should secure their contributions data. Councils that maintain their contributions data in spreadsheets should be especially mindful of data security, as spreadsheets have limited data audit trails and the data can be easily changed.

Councils should adopt internal controls to manage risks associated with losing or accidentally overriding critical data. For example, spreadsheets should be password protected or stored in secure folders rather than in folders that can be accessed by all staff.

Regular audit of contributions functions

Internal audit is a key mechanism to manage risk and ensure probity. Councils should run regular internal audits of their contributions system to ensure contributions are being managed and spent

appropriately. [Office of Local Government's Internal Audit Guidelines](#) provides more information on a council's audit requirements.

Best practice guidance

Infrastructure contributions require a whole of council approach to good governance

Contributions are a significant component of a council's [financial management](#) function and they impact all sections of the council. Councils should consider all relevant plans, strategies and policies to ensure that contributions are integrated within council's overall management framework.

As contributions and planning agreements are one of several mechanisms for funding public infrastructure, the infrastructure contributions system should also integrate with financial management plans prepared by the council for budgeting and expenditure purposes.

Councils should consider the implications arising from any contributions plan or planning agreement in the context of the council's overall service delivery function. They impact and influence the work program and responsibilities of a broad cross-section of council operations.

- **Strategic planning, development assessment and environmental services** may be involved in forecasting and facilitating development, preparing and reviewing contribution plans, negotiating and administering planning agreements and issuing and enforcing development consents.
- **Engineering, community and recreation services** may be involved in constructing, maintaining and managing local infrastructure.
- **Administrative and corporate services** may be involved in managing the administrative, legal and financial accounting processes.

The preparation and ongoing administration of the infrastructure contributions system involves all relevant departments of the council.

Joint contributions plans and cross boundary infrastructure

A joint contributions plan, also known as a cross boundary plan, is a way for two or more councils to prepare an infrastructure contributions plan together. Joint plans are used where demand for infrastructure crosses the boundaries of local government areas.

This module provides guidance on the additional steps related to a joint contributions plan. This advice can also be used when planning and delivering infrastructure that will be funded between separate contributions plans by two or more councils.

Legislative requirements

The requirements for preparing a joint contributions plan are the same as those for preparing individual contributions plans. However, there are also specific requirements for cross boundary issues in the EP&A Act.

Table 8: A summary of legislative requirements

Requirements for cross boundary issues in the EP&A Act	Section
A condition may be imposed under section 7.11 or 7.12 for the benefit of an area that adjoins the local government area in which the development is to be carried out.	7.14 (1)
Any monetary contribution required to be paid is to be apportioned among the councils per the relevant contributions plan, or the development consent for the development.	7.14 (2)
Disputes between the councils can be referred to the Planning Secretary and resolved following any direction given by the Planning Secretary.	7.14 (3)

Policy positions

A joint contributions plan may be appropriate where infrastructure demand crosses local government boundaries

Councils should consider preparing a joint contributions plan if the demand for infrastructure crosses the local government area boundary, for example:

- a release area straddling a boundary where collection and expenditure would involve both councils
- a development that is wholly in one area, but the development creates demand for infrastructure in at least one other local government area. This would involve the collection of contributions by only one council which is then passed to the other council for use in their local government area.

Collection and expenditure of funds should be agreed upon between councils

Councils should negotiate and agree on how the funds will be collected from the start of the joint plan to avoid disputes and ensure infrastructure is delivered. This includes how the councils will apportion any monetary contributions paid under a condition of consent in either of the local government areas. Councils should include these details in the joint contributions plan. Any condition of consent granted by the council under these plans must be in accordance with the plan.

The obligations of each council should be unambiguous

The process of preparing a joint contributions plan and programming the works is the same as with a standard contributions plan. However, councils should carefully consider and reach agreement before the plan is adopted. This agreement should then be detailed in the contributions plan or in supporting documentation to ensure there is no ambiguity around the obligations of each council.

Councils should consider and agree on any relevant matters, including:

- the catchment areas and the infrastructure required
- the cost of the infrastructure and standard of delivery
- the works program and delivery timeframes
- arrangements for the collection and sharing of contributions, including the investment and timely expenditure of the contributions
- how the costs of delivery and management will be shared between the councils, including recurrent expenditure and maintenance costs
- loan servicing arrangements and how the risks of any loans will be managed
- how legal expenses will be paid if there is a challenge to the plan
- who will maintain the plan and how it will be managed.

Infrastructure shared between contributions plans has similar considerations

There may be instances where the demand for infrastructure crosses over boundaries but the councils do not want to make a separate cross boundary plan. For example, where the cost of

infrastructure is so low that it would not warrant a new cross boundary contributions plan, such as upgrades a single road along a local government area boundary, or a single park that straddles a local government area boundary and is expected to service demand on either side.

In these circumstances suitable agreements should be made on infrastructure items which will be funded by different contributions plans. This includes apportionment between contributions plans, delivery timeframes and design and costing of the infrastructure.

Procedure and process

The matters that should be considered in preparing a joint contributions plan are the same as those for a section 7.11 plan or section 7.12 plan. Additionally, two or more councils can also enter into a planning agreement.

Councils will need to agree between themselves on the additional requirements for determining apportionment, catchment and financial management.