

Infrastructure Contributions

# Practice Note Review

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Policy Paper

October 2021





# Acknowledgement of country

The Department of Planning, Industry and Environment acknowledges the traditional custodians of the land and pays respect to Elders past, present and future.

We recognise Australian Aboriginal and Torres Strait Islander peoples' unique cultural and spiritual relationships to place and their rich contribution to society.

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## Find out more:

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Practice Note Review - Policy Paper

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# 1. Vision and strategic objectives

The Department of Planning, Industry and Environment is working to deliver Australia's best designed infrastructure contributions system. We are promoting investment to build liveable communities.

The local infrastructure contributions practice notes are being reviewed to make them a user focused, multi-faceted online experience. They will deliver modern policy advice and settings for a simple, efficient, certain, transparent, and consistent infrastructure contributions system.

The review will achieve the following strategic objectives:

- Reform policy advice and settings to support a principles based system.
- Implement standard approaches and processes to make the system more efficient and consistent.
- Update guidance materials to make the system simple, certain, and transparent.
- Engage with the community and stakeholders in all phases of the policy development process.

## 2. The practice notes provide the policy advice and settings for infrastructure contributions

The practice notes help councils, developers and the community understand the NSW infrastructure contributions system. They give guidance and establish parameters around planning agreements and infrastructure contributions plans.

Councils must consider the practice notes when they are preparing local infrastructure contributions plans and planning agreements. There are currently four sets of practice notes in place, which you can find on the department's [website](#):

- [Infrastructure contributions practice notes](#): issued in July 2005, these are a set of guidelines on infrastructure contributions which assist planning authorities to prepare section 7.11 and 7.12 contribution plans, and planning agreements.
- [Secretary's Practice Note on Local Infrastructure Contributions](#): issued in January 2019, this relates to the review of plans by the Independent Pricing and Regulatory Tribunal.
- [Planning agreements practice note](#): recently updated in February 2021 to assist parties in the preparation of planning agreements.
- [Section 7.12 fixed development consent levies practice note](#): provides information on section 7.12 contributions and guidance.

## 3. The current practice notes are outdated and need review

The current practice notes have been incrementally prepared and issued over the past 15 years and are not consistent in their approach, application, or design. Also, the current practice notes have not focussed on the user experience and do not always provide policy advice in a manner that is relevant for practitioners.

## 4. The new practice notes will be simple, easy to navigate and integrated with the digital tool

To improve the infrastructure contributions practice notes the department is converting them into individual modules, based on a specific policy issue. These will be published as interlinked webpages, linear PDFs, and importantly some will be built into the architecture of the digital tools.

This will allow practitioners to use the practice notes and find the information they need, in the format that suits their requirements more easily. The diagram below illustrates the modules and how they fit together to form practice notes:

### Navigating the infrastructure contributions practice note nodules.

<b>1</b>	<b>Introductory modules</b>	Role of the practice note / Principles of infrastructure contributions / Selecting the most appropriate funding mechanism
<b>2</b>	<b>Funding mechanisms</b>	Making a section 7.11 contributions plan / Making a section 7.12 contributions plan / Entering into a planning agreement
<b>3</b>	<b>Modules related to all mechanisms</b>	Borrowing and forward funding / Exemptions / Exhibition / Financial management / Governances / How to use the digital tools / Land use / Mining and energy / Reporting / Valuing land
<b>4</b>	<b>Modules related to 7.11 and 7.12 contribution plans</b>	What can be funded through contributions / Defining the contributions catchment/ Work schedules and mapping / Adjustments and indexation
<b>5</b>	<b>Modules related to 7.11 contribution plans</b>	Demand for infrastructure / Works in kind / Contribution rates / Ipart Review/ Benchmarked costs / Contributions plan and planning proposals / Land value contributions
<b>6</b>	<b>Modules related to planning agreements</b>	Policies and procedures / Securities

## 5. Practice note modules will have a simple consistent structure

The department has developed a Role of the practice notes module that details how the practice notes will be structured and how they will be used to provide policy advice and settings.

In summary, each module outlines the:

- Legislative requirements - things that must be done.
- Policy advice and settings - things that must be considered.
- Best practice advice - things that should be done.
- Procedures and process - how to do the things.
- Worked examples - the way things might be done.
- Templates or guides - things to use.

Note, not all of the modules will be changing policy settings or advice. However, they will be simplified and reworked into the structure identified above. To minimise the burden on stakeholder's capacity to review and provide feedback, the department will exhibit only those modules where new or changed policy advice is being provided.

Also, some sections of the practice notes will need to be developed in time and will not be available at launch of the new system. For example, the department will work with councils and other stakeholders to develop worked examples. In this way we can share experiences and best practices developed by infrastructure contributions planners.

## 6. We are exhibiting nine draft practice note modules

The current practice notes provide policy advice and guidance on the legal and regulatory requirements for undertaking infrastructure contributions planning. They cover of a wide range of topics, such as financial management and governance arrangements, reporting requirements, methodologies for calculating contribution rates and exhibition requirements.

Many of the policy settings in the existing practice notes will not change. However, there are some with new policy settings and advice that will need to be introduced into the practice notes.

This exhibition is seeking feedback on some key policy settings and changes and the modules being exhibited focus on these areas.

The modules are:

- A.** Role of the practice notes.
- B.** Principles of infrastructure contributions.
- C.** Selecting the most appropriate funding mechanism.
- D.** What can be funded through section 7.11 and 7.12 local infrastructure contributions.
- E.** Making a section 7.11 contributions plan.
- F.** Making a section 7.12 contributions plan.
- G.** Exhibition.
- H.** Borrowing and forward funding.
- I.** Infrastructure contributions for mining and energy developments.

The table below demonstrates where new policy settings will reside in the revised practice notes being exhibited.

<b>Current policy setting</b>	<b>Productivity Commissioner's</b>	<b>Principle</b>
<b>Both section 7.11 and 7.12 contributions</b>		
<b>Principles include nexus, apportionment, and reasonableness.</b>	Introduction of system objectives and refinement of existing principles to make the infrastructure contributions system more efficient and cost reflective.  Recommendation 2.1.	Principles of infrastructure contributions module.  Also available at appendix B.  Selecting the most appropriate funding mechanism module.  Also available at appendix C.
<b>Councils develop and maintain a system and process for making infrastructure contributions plans.</b>	All infrastructure contributions plans required to be made through the new online digital tool on the NSW Planning Portal.  Recommendations 4.8 and 6.1.	Making a section 7.11 contributions plan module.  Also available at appendix E.  Making a section 7.12 contributions plan module.  Also available at appendix F.
<b>Funds can only be pooled if specified in a contributions plan.</b>	Pooling of contribution funds is permitted by default.  Recommendation 4.9.	Borrowing and forward funding module.  Also available at appendix H.
<b>Section 7.11 contributions</b>		
<b>Rezoning permitted without an infrastructure contributions plan in place.</b>	Infrastructure contribution plans to be developed upfront as part of the zoning process.  Recommendation 4.1.	Exhibition module.  Also available at appendix G.  Making a section 7.11 contributions plan module.  Also available at appendix E.
<b>Councils purchase required land with contributions payments.</b>	Introduction of a direct land contribution mechanism.  Recommendation 4.2.	Making a section 7.11 contributions plan module  Also available at appendix E.
<b>Costing is at the discretion of councils.</b>	Introduction of benchmarked costs for infrastructure.  Recommendation 4.5.	Making a section 7.11 contributions plan module  Also available at appendix E.
<b>Essential works list only applies to plans that meet a particular threshold.</b>	Essential works list applies to all section 7.11 contributions plans.  Recommendation 4.6.	What can be funded through section 7.11 and 7.12 local infrastructure contributions module  Also available at appendix D.

Current policy setting	Productivity Commissioner's	Principle
<b>Section 7.12 contributions</b>		
<b>Levy has a maximum rate typically of 1% of development costs.</b>	Levy for residential development increased to 3% and charged as a rate per dwelling. Commercial and industrial uses remain at the equivalent of 1% and charged as a rate per square metre.  Recommendation 4.11.	Making a section 7.12 contributions plan module.  Also available at appendix F.
<b>Planning agreements</b>		
<b>Governed by specific planning agreements principles.</b>	Planning agreements are now also consistent with principles of the infrastructure contributions system.  Recommendation 4.12.	Principles of infrastructure contributions module.  Also available at appendix B.
<b>Draft planning agreements must be publicly notified before being approved.</b>	Draft planning agreements must now be publicly exhibited before being entered into.  Recommendation 4.12.	Exhibition module.  Also available at appendix G.
<b>Section 7.11 and 7.12 contributions and planning agreements</b>		
<b>No specific policy advice and settings provided for mining and energy developments.</b>	Infrastructure contributions policy advice and settings for mining and energy developments.  Recommendation 4.13.	Infrastructure contributions for mining and energy developments module.  Also available at appendix I.

## 7. Next steps

Additional practice note modules will be developed as the implementation of the NSW Productivity Commissioner's recommendations progresses. Some practice note modules are dependent on how the digital tool develops and will need to be updated based on its design and functionality. Others are dependent on advice by IPART regarding benchmarked costs, efficient infrastructure design, and the essential works list. This includes at least the following modules:

- Establishing performance-based benchmarks for open space planning.
- Land valuation, including assumptions and methodology, particularly for land that is yet to be rezoned and may be constrained.
- Guidance for efficient and consistent use of works-in-kind agreements.
- Guidance regarding the rezoning process and requirement for there to be an infrastructure contributions plan in place.
- Guidance for benchmarked cost process, essential works list and efficient infrastructure design.
- The IPART review 'by exception' process.

The department will continue to work with stakeholders and the community to develop this policy advice.



# Have your say

The department welcomes your feedback regarding the infrastructure contributions practice note modules, as outlined in this paper. Your feedback will help us better understand the views of the community and practitioners and will assist us in finalising the modules.

Submissions can be made via the department's website:

[www.planningportal.nsw.gov.au/exhibition](http://www.planningportal.nsw.gov.au/exhibition) or at [infrastructure.contributions@planning.nsw.gov.au](mailto:infrastructure.contributions@planning.nsw.gov.au)

All submissions will be made public in line with our objective to promote an open and transparent planning system. If you do not want your name published, please state this clearly at the top of your submission. The department will publish all individual submissions and an assessment report on all submissions shortly after the exhibition period has ended.

# Appendix

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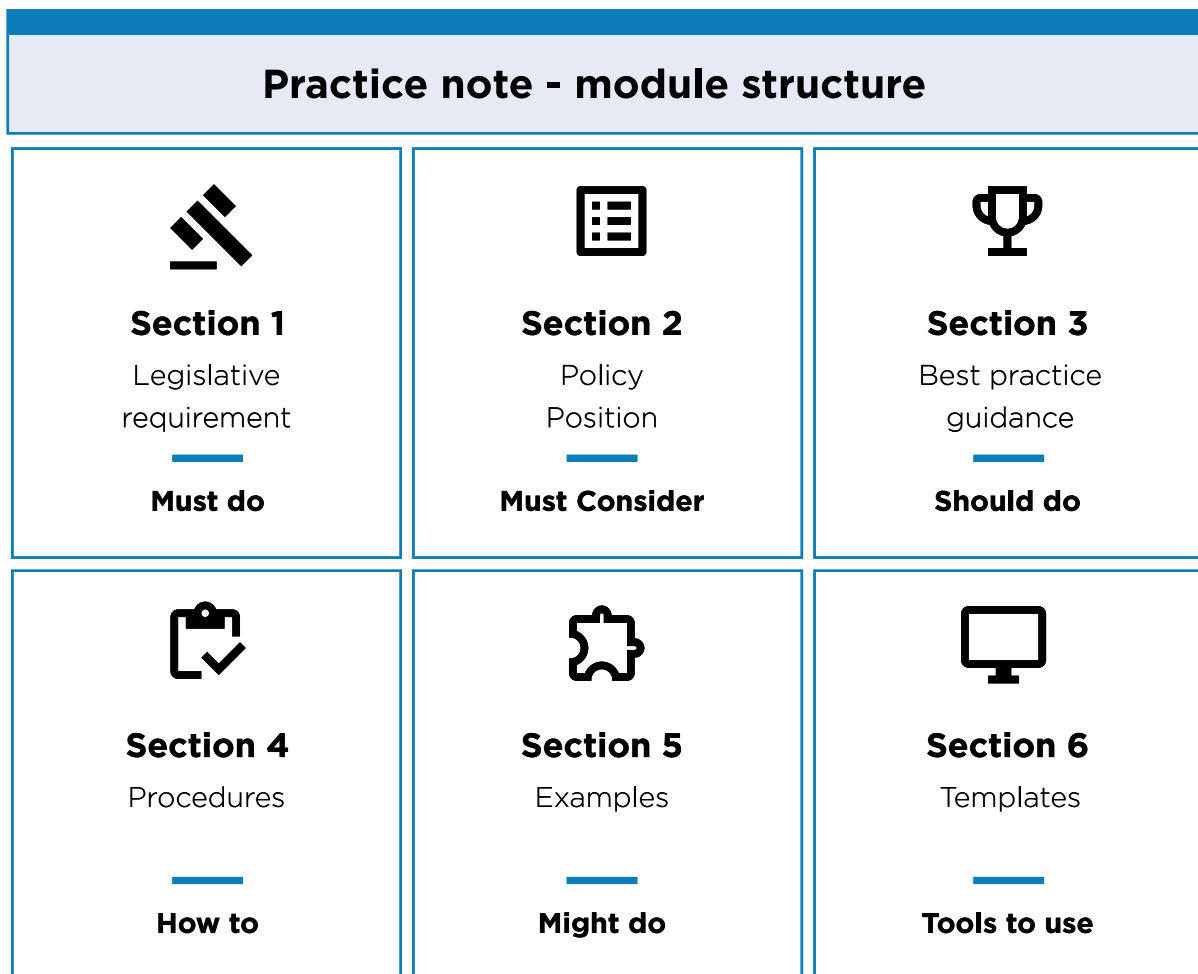
# Appendix A: Role of the practice notes

These practice notes are to assist councils, applicants and the community understand and use the infrastructure contributions system. They form an integral 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 4 of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation).
- Directions made by the Minister for Planning and Public Spaces.
- Practice notes issues by the Planning Secretary.

The infrastructure contributions practice notes are structured into modules. The modules should be read together to give a complete guide to the contributions system and can also be read individually as advice and guidance for specific parts of the system. Users can access the modules in different ways to suit their needs. They are available as a set of linear documents, a series of hyperlinked web pages and are also available through the Planning Portal digital tool.

Each module outlines the legislative requirements (must do) and policy requirements (must consider) and provides best practice advice (should do). These three sections form the core of each practice note module. Each module may also contain detailed advice on procedures and process (how to), worked examples (might do) and templates or guides (tools to use). These six sections are outlined below.



# Structure of each module

## 1. Legislative requirements



Each module will detail the mandatory requirements. These are the things planning authorities **must do** as required by the EP&A Act and Regulation, or as required through a Ministerial Direction. Each module will describe these requirements in plain English, but practitioners should always refer to the current legislation when making decisions.

## 2. Policy requirements



This section details the policy requirements which a contributions practitioner **must consider**. These have legislative weight as the EP&A Regulation requires that councils must have regard to any relevant practice notes when preparing a contributions plan and must consider any relevant practice note when negotiating, or entering into, a planning agreement.

## 3. Best practice guidance



This section details the best practice guidance. These are things practitioners **should do**, but if an equivalent or better way of achieving the required outcomes is possible it can be considered. These best practice outcomes form a key part of the practice notes and should be considered by councils when dealing with infrastructure contributions.

## 4. Procedure and process



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

## 5. Examples



These are examples of things practitioners **might do**. Some modules will have examples of different ways to use the contributions system or approach certain issues. These are useful to give insight and spark ideas, but they are not intended to be an exhaustive list of all possibilities.

## 6. Templates



Some modules will have templates or **tools to use**. These are included for reference and information. Most tools will live within the digital tool on the Planning Portal, as live templates, and documents.

# Appendix B: Principles of infrastructure contributions

Infrastructure contributions are a charge on development that reflects the demand for infrastructure created by the development. They are based on an impactor pays and beneficiary pays model and sit within a principles based framework. This framework is guided by the objectives of the contributions system and underpins how planning authorities can use the various contributions mechanisms.

## Impactor pays:

The development that creates the demand for the infrastructure is charged for their portion of the cost of the infrastructure. For example, a development might create the need for new drainage services and should pay for their share of the infrastructure.

## Beneficiary pays:

The developments that benefit when State or local government delivers infrastructure is charged for some of the cost of the infrastructure.

## Legislative requirements

Within the principles based approach there are several principles that are enshrined in the requirements of the *Environmental Planning and Assessment Act 1979* (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**.

### Principles in the EP&A Act

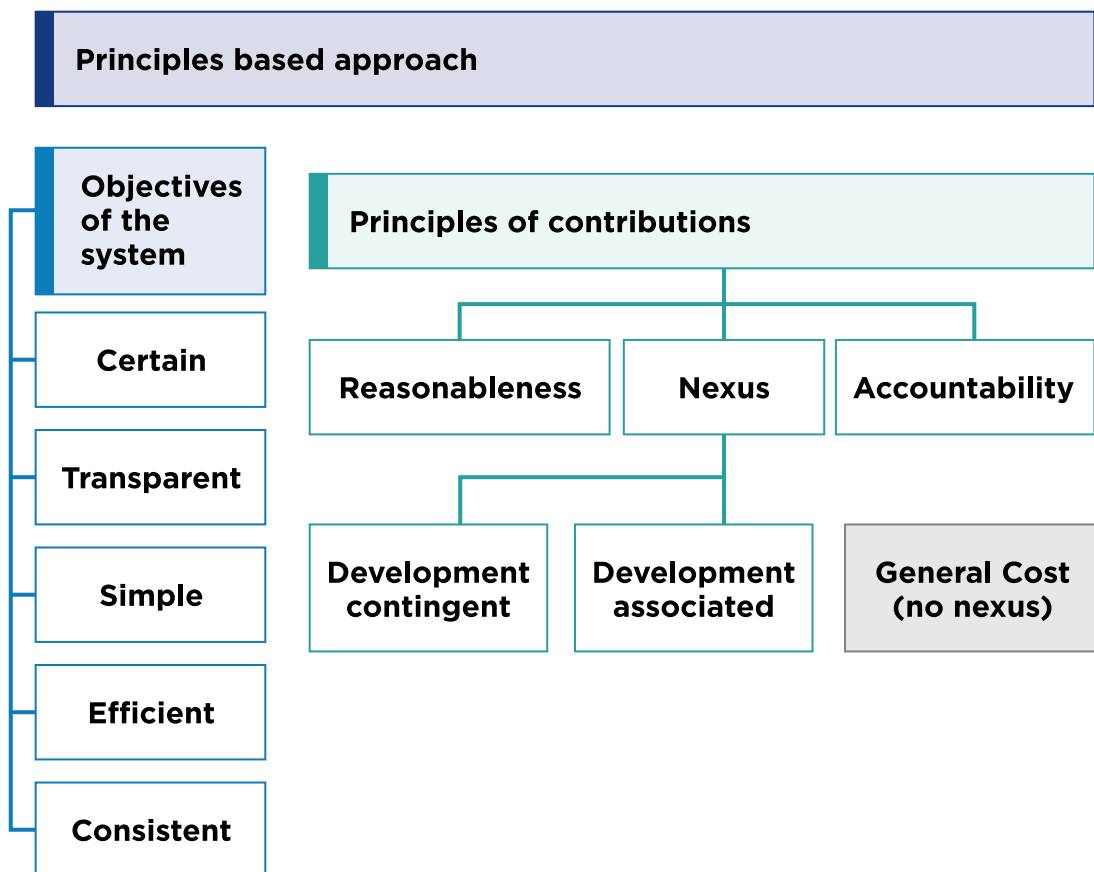
Local infrastructure contributions must be reasonable:

- The infrastructure must be provided in a reasonable time. Section 7.3 (1).
- Land dedicated for a public purpose must be made available in a reasonable time. Section 7.3 (3).
- Only a reasonable dedication or contribution may be required under section 7.11. Section 7.11 (1).
- A condition under section 7.11 may be disallowed by the Court if it is unreasonable even if it is in accordance with an adopted plan (this does not apply to section 7.12). Section 7.13 (4).

Local infrastructure contributions under section 7.11 must have a nexus to development. Section 7.11(1).

Planning agreements must be voluntary. Section 7.4 (1).

# Policy requirements



## Objectives underpinning the infrastructure contributions system

The infrastructure contributions system must deliver the public infrastructure required to support development while striving to be:

- Certain.
- Consistent.
- Efficient.
- Transparent.
- Simple.

These objectives help State and local governments to deliver the infrastructure needed to support development. They can sometimes be at odds with each other; for example, it is difficult for a system to be at once completely certain, administratively efficient, and provide efficient market signals for development.

Different mechanisms under the contribution system will be influenced by some objectives more strongly than others. This in turn influences how rigorously or flexibly the principles of infrastructure contributions are applied and allows the system to be, on balance, certain, consistent, efficient, transparent, and simple.

Objectives of the system				
<b>Certain</b>	<b>Transparent</b>	<b>Simple</b>	<b>Efficient</b>	<b>Consistent</b>
Certain and predictable application. Certainly in the setting of the infrastructure charge.	Openness and accountability for contributions collection and expenditure.	Easy to understand with minimal administration costs.	Administratively efficient to use. Promotes the creation of market signal to guide efficient development.	Consistent and fair contributions. Based on impactor pays and beneficiary pays principles.

## Principles of infrastructure contributions

As well as the legislative requirements, there are several policy principles that support the principles based contributions system. Some expand on the requirements of the EP&A Act, while others are policy requirements that build out the principles based framework.

### Contributions must be reasonable

Infrastructure contributions must be reasonable. This can mean, for example, that the actual contribution or dedication required must be reasonable and that the planning authority should provide the infrastructure in a reasonable time.

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 appropriate contributions plan. The Court cannot disallow a section 7.12 contribution in the same way, reasonableness is still an underlying principle of this mechanism and is achieved through the maximum amount being set lower than most section 7.11 contributions.

### Contributions must have nexus to development

Nexus means a connection. It is the relationship between the expected types of development in the area and the demonstrated need for infrastructure created by the development. Nexus is a legal requirement for section 7.11 contributions, but it is a useful principle to consider throughout the whole system.

Generally, infrastructure contributions are appropriate where there is likely to be an impact on the demand for infrastructure. The principle of nexus can be further broken down into three types of infrastructure costs.

#### Development-contingent costs

Development-contingent costs have a nexus to development. They are costs that would be avoided if the development did not proceed.

The development has created the need for the infrastructure, and it should bear the cost. This should reflect the actual cost of the infrastructure. Local contributions are generally for development-contingent infrastructure.

#### Development-associated costs

Development-associated costs have an indirect nexus to development. These costs arise where

infrastructure costs would be incurred regardless of whether a development proceeds, but there is a clear relationship to that development. The infrastructure would not have been committed to were it not for the promise that development would follow. Infrastructure provided for the State is likely to be development-associated.

### General costs

General costs do not have a nexus to development. They arise regardless of whether any specific development proceeds. Other factors drive general costs, including:

- An increase in population or change in the composition of the population, such as through ageing.
- Community preference for higher service levels.
- The need to improve existing infrastructure to meet new environmental standards.

Contributions should not be charged for general costs.

### Planning authorities are accountable for the contributions they charge

Infrastructure contributions must meet the objectives of transparency and certainty. To achieve this planning authorities 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 around how the strategies and 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 and objectives interact

The principles of infrastructure contributions underpin the design of the mechanisms and the system as a whole. However, flexibility is required to ensure that the objectives of the system can be achieved. The objectives influence each mechanism of the system in different ways.

### Contributions for infrastructure provided by local government

<p><b>Section 7.11 Local contributions</b></p> <p>Certain and transparent</p> <p>Cost reflective &amp; high level of rigor</p> <p>Funds development-contingent costs</p>	<p><b>Section 7.12 Local levies</b></p> <p>Efficient, consistent and simple</p> <p>Low and simple fixed rate</p> <p>Primarily funds development-contingents cost</p>	<p><b>Land value contribution</b></p> <p>Certain and transparent</p> <p>Cost reflective</p> <p>Part of some section 7.11 plans, high level of rigor</p> <p>Funds development contingent costs</p>	<p><b>Local planning agreements</b></p> <p>Efficient</p> <p>Negotiated outcome</p> <p>Faciliates direct delivery out of sequence development and innovations</p>
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## Section 7.11 contributions are certain and transparent

Section 7.11 local infrastructure contributions are an impactor pays charge used to fund development-contingent costs. They are a cost reflective charge and should reflect the actual cost of the infrastructure required to support development in a particular area. They provide an efficient market signal to development, as higher contribution rates show where infrastructure service costs are high, and where development is less efficient.

- As such, the charges should be reasonable and reflect the actual efficient cost of the infrastructure provided.
- Because it is a cost reflective mechanism, rigorous plan making requirements and a strict application of nexus and apportionment are appropriate.

## Land value contributions are certain and transparent

### **The land value contribution is on exhibition**

Land value contributions will form a component of some section 7.11 contributions plans. The land value contribution is currently on exhibition and available for comment.

## Section 7.12 contributions are administratively efficient, consistent, and simple

The same principles which underpin the infrastructure contributions system should be considered in relation to section 7.12 development consent levies. However, section 7.12 is focused on achieving the objectives of administrative efficiency, consistency, and simplicity.

- Councils can trade-off some of the rigor required by section 7.11 planning for a more administratively efficient system, which generally raises less funds.
- Reasonableness is established through the setting of the maximum contribution at a rate that is lower than would be collected under most section 7.11 plans.
- Councils can use section 7.12 contributions to fund infrastructure costs, without having to establish direct nexus and apportionment as required under a section 7.11 plan.

## Local planning agreements are efficient

Planning agreements are an efficient way to achieve infrastructure outcomes where other mechanisms do not have the required flexibility. Councils can achieve certainty and transparency through developing planning agreement policies and through the rigorous reporting requirements.

As with the rest of the contributions system, the underlying principles of infrastructure contributions should be considered in relation to planning agreements. However, the flexibility of planning agreements and the fact they are a negotiated outcome justifies a less stringent application.

- Planning authorities should always consider a development proposal on its merits, not based on a planning agreement.
- Planning agreements must be voluntary.
- Planning agreements are not required to demonstrate the same nexus with development as required for section 7.11 local contributions. However, planning agreements should provide for public benefits that have some relationship to the development.
- Planning agreements should be used primarily for the delivery of infrastructure to support development that is out-of-sequence or unexpected, and to facilitate the direct delivery of development-contingent infrastructure or impact mitigation works.
- Planning agreements should not be used as a means of general revenue raising or to overcome revenue shortfalls.
- Value capture should not be the primary purpose of a planning agreement.

# Appendix C: Selecting the most appropriate local contribution mechanism

There are three mechanisms available under the *Environmental Planning and Assessment Act 1979* (EP&A Act) that allow councils to require contribution towards local infrastructure. These are:

- Section 7.11 local infrastructure contributions.
- Section 7.12 levies.
- Planning agreements.

This module provides guidance on when to use each mechanism, as well as other funding sources councils should consider when providing infrastructure. 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.

## Legislative requirements

There is no legislative requirement to use one mechanism over another, this is at the discretion of councils.

However, the circumstances where a council using a section 7.11 plan can also put in place a land value contribution are legislated.

### **The land value contribution is on exhibition**

Land value contributions will form a component of some section 7.11 contributions plans. The land value contribution is currently on exhibition and available for comment.

## Policy requirements

Councils should consider the circumstances of their local government area, the 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.
- Councils should also consider the staff, resources, and time they have available to manage the contributions process.
- Some mechanisms can only fund part of the infrastructure costs and councils will need to use a mix of funding sources.

## 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 cannot pursue equivalent schemes through development control plans or local environmental plans. This ensures the infrastructure contributions system is transparent and consistent.

Development control plans can be a useful tool to provide detailed planning and design guidelines to support development in an area, including identifying required infrastructure, its potential location and layout. They can also be a useful framework to assist councils to determine the most appropriate means of providing this infrastructure. Development control plans support the planning controls in local environmental plans, which provide certainty regarding zoning and identify land required for acquisition for infrastructure.

Both can be used to support the imposition of conditions of consent related to infrastructure where this is appropriate, but they cannot be used to require monetary contributions or planning agreements.

## Best practice guidance

The sections below outline some situations where councils can consider using different approaches. Councils should consider the circumstances of their local government area, the type and amount of infrastructure needed and the resources available for managing the contributions, before deciding which mechanism to use. This can include using one or more of the available contribution mechanisms, as well as other potential funding sources.

### Alternative approaches to providing infrastructure

Before deciding to use infrastructure contributions, councils should consider if they could address the demand from their communities in innovative ways, which might not always mean funding completely new facilities. This might include, for example:

- Co-location of facilities. This could mean public facilities sharing a location with private facilities or negotiating agreements for the community to use infrastructure available at schools and other publicly funded facilities.
- Multi-use facilities. Councils could consider designing infrastructure that can allow for multiple uses of the one facility. For example, sports fields that can be adapted to accommodate multiple sports.
- Examining the capacity of existing facilities. It can be more appropriate to rationalise existing separate services and to manage existing facilities in a more efficient, alternative, and creative manner to satisfy existing as well as likely increased demand.

### When to use section 7.11 contributions

Section 7.11 contributions plans are usually most appropriate in greenfield or major redevelopment infill areas where the rate and type of development is 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 in undertaking section 7.11 contributions planning and the ongoing management of these funds.

This type of plan requires the council to consider the connection (sometimes referred to as '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 costs that benefit their existing residents from other funding sources, such as rate revenue or grants.

Some section 7.11 contributions plans can also have a land value contribution component.

#### **The land value contribution is on exhibition**

Land value contributions will form a component of some section 7.11 contributions plans. The land value contribution is currently on exhibition and available for comment.

## 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. For example, they are often used in areas experiencing low or unpredictable rates of development, rural and regional areas, or areas with a significant commercial or industrial development component.

In such areas, 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. Section 7.12 plans generally have lower rates of contributions, but this is offset by greater flexibility in expenditure and administrative efficiency. This type of plan does not have the same requirements to consider the connection between the development and the demand for infrastructure as section 7.11 contributions plans.

## When to use planning agreements

Councils can use planning agreements in a wide variety of circumstances. Planning agreements tend to be more successful where there is a large landowner who can coordinate and deliver infrastructure at the same time as the development. Planning agreements are also used to support out-of-sequence development particularly where major growth or development occurs in a distinct area. Agreements can offer different and better outcomes through efficiencies in the process or through innovation by the parties.

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

## What to consider when choosing an approach

Consideration	Section 7.11 contributions	Section 7.12 levies	Planning agreements
<b>Development pattern</b>	Greenfield or major redevelopment infill areas, where the rate and type of development is more predictable and there will be a significant increase in demand for infrastructure created by the development.	<p>Infill areas where there are low rates of development or scale and patterns of development are uncertain.</p> <p>Established urban areas, where development is mainly 'infill' development and is also sporadic.</p> <p>Rural and regional areas, where there are slow rates of development or development is sporadic.</p> <p>Commercial and industrial areas, where direct demand for public infrastructure is difficult to establish for individual development.</p>	<p>Planning agreements tend to be more successful where major growth or development occurs in a distinct area.</p> <p>Where infrastructure is required to facilitate development, which might have good planning merit but be out of sequence with broader strategic planning.</p> <p>Where a proposed development has not been anticipated by council and works and facilities to cater for this development have not been identified.</p>

<b>Consideration</b>	<b>Section 7.11 contributions</b>	<b>Section 7.12 levies</b>	<b>Planning agreements</b>
<b>Resource requirements</b>	Time and resource intensive to prepare and implement.	Simple and administratively efficient to prepare.	Time and resource intensive to prepare, requires a developer to initiate the negotiation and support from all parties affected by the agreement.
<b>Land ownership pattern</b>	Fragmented land ownership.	Fragmented land ownership.	Land is owned by a single or very few landowners, or a consortium.
<b>Infrastructure need</b>	<p>Appropriate for areas with more intensive infrastructure need as contributions reflect the actual efficient cost of the infrastructure.</p> <p>Where there is little or no capacity in existing infrastructure to meet the needs of new development.</p>	<p>Appropriate in areas where the demand for infrastructure is lower or more spread out over time.</p> <p>Where there is some capacity in existing infrastructure to meet the needs of new development.</p>	<p>A negotiated outcome appropriate, for example, where:</p> <ul style="list-style-type: none"> <li>• a developer wants to provide infrastructure in addition to, or at a higher standard than, what has been specified under the contributions plan.</li> <li>• a developer has a direct incentive, such as bringing forward potential development, to be involved in the delivery of infrastructure.</li> <li>• a different and better or more innovative outcome can be negotiated, than can be achieved through imposing contributions.</li> </ul>
<b>What infrastructure can be included</b>	Can only include capital costs of infrastructure on the essential works list.	Can only include capital costs for infrastructure.	<p>Can include a wider range of infrastructure types and can include funding for ongoing costs.</p> <p>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.</p>
<b>Certainty</b>	More certainty around the infrastructure which will be provided.	More certainty around the infrastructure which will be provided.	Might not provide the exact infrastructure that council requires.
<b>Legal status*</b>	Subject to legal challenge.	Subject to legal challenge, but not a merits appeal.	Is a legal agreement.

\* Section 9.45 of the EP&A Act applies to each of the options and a plan or agreement can be appealed on the basis that the Act or associated Regulations have not been complied with.

## Councils should consider all potential funding sources

Councils will need other funding sources to make up the cost of the proportion of the infrastructure that will service existing demand, the cost of running and maintaining the infrastructure and other general costs. The different sources can be used in combination.

Councils must ensure that 'double-dipping' does not occur when multiple sources of funds are used. Double-dipping is where the same component of an item is funded twice, for example, through the collection of contributions and through a grant. This is unreasonable and could lead to a challenge to the validity of a condition of consent requiring a contribution.

### General revenue

Councils should also consider other income sources of funding such as rates, Commonwealth and State grants or subsidies. It can also be appropriate to have user charges for some local infrastructure.

### Special rate variations

Councils can apply to the Independent Pricing and Regulatory Tribunal (IPART) for a [Special Variation to the rate peg](#). IPART considers applications against the guidelines set by the NSW Office of Local Government. Council requests for variations are often to develop or maintain essential community services or regional projects.

### Conditions of development consent

In some circumstances, councils can require infrastructure be provided through conditions of development consent, rather than requiring infrastructure contributions. 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.

Such a condition can be imposed where the works:

- Are required as a direct result of a single development.
- Are not covered by an existing contributions plan or planning agreement.
- Can be reasonably provided by the developer as part of their development.
- Will be undertaken by the developer.

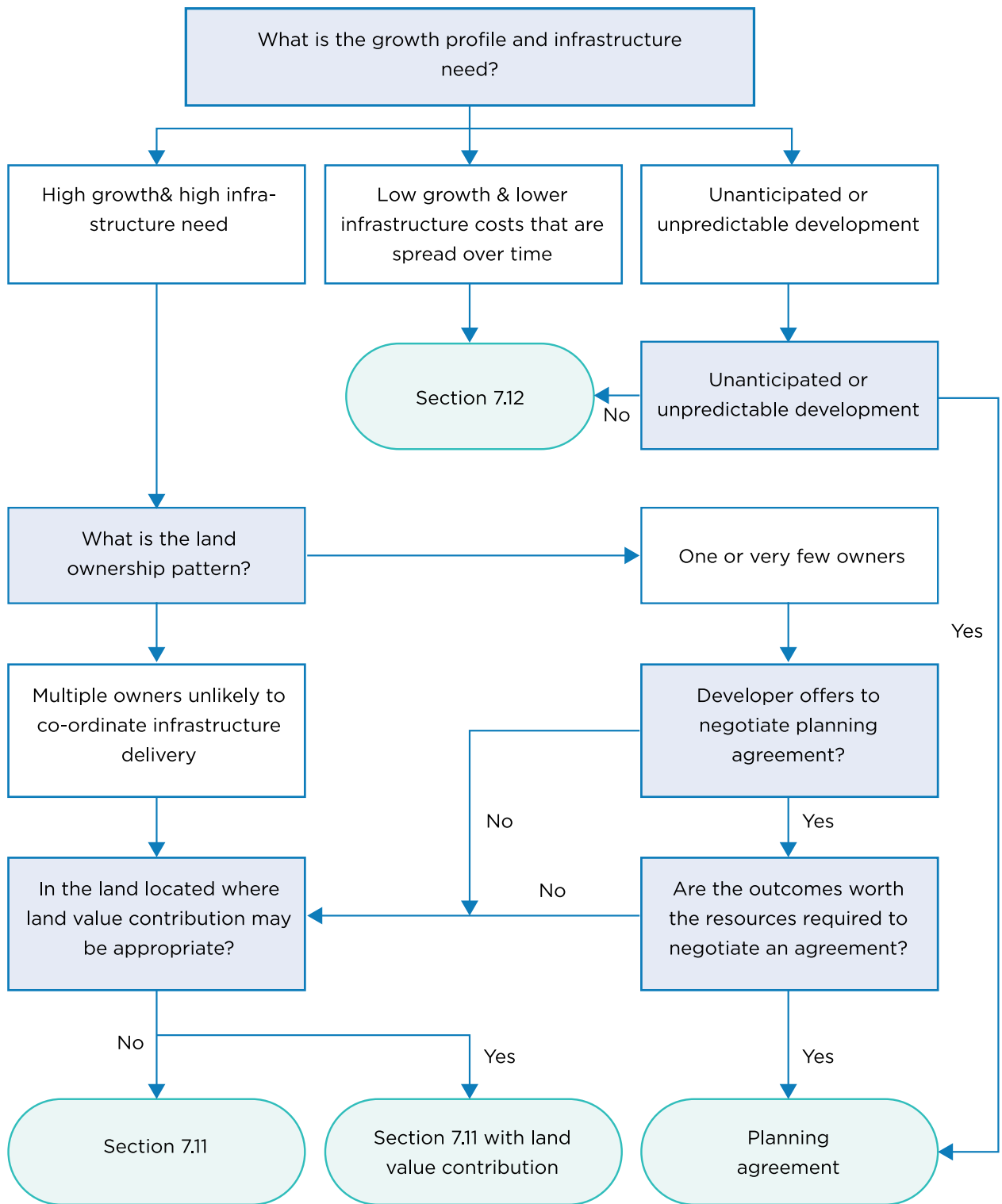
Some examples might include traffic management at the entry to the development, internal drainage works, footpaths and cycleways.

### Borrowing and forward funding

Forward funding infrastructure can bring significant benefits including reducing the overall cost of infrastructure and land, and increasing certainty for industry, and providing infrastructure at an earlier time. Borrowing and forward funding should be a key part of many council's infrastructure delivery strategy.

# Procedure and process

## Selecting the most appropriate funding mechanism



# Examples

## Example 1 – greenfield council

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

- A section 7.12 plan to apply across the entire local government area. This will ensure that the sporadic, ongoing infill development contributes to the infrastructure needed to support this growth. Although each instance of this type of development has a low impact, over time it can represent a significant cumulative increase in demand for infrastructure.
- Section 7.11 plans for specific new growth precincts with high infrastructure need. These plans reflect the actual efficient cost of providing the infrastructure in these areas.
- A planning agreements policy outlining the circumstances where council would consider negotiating planning agreements, such as when:
  - 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.

## Example 2 – regional council or infill council with no redevelopment sites

Regional councils with low levels of sporadic 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 or expertise requirement. These funds can be used slowly over time to invest in infrastructure to benefit these communities.

## Example 3 – infill council with major redevelopment sites

A metropolitan 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. This will ensure that the sporadic, ongoing infill development contributes to the infrastructure needed to support this growth. Although each instance of this type of development has a low impact, over time it can represent a significant cumulative increase in demand for infrastructure.
- A specific section 7.11 plan for an identified precinct that council anticipated will begin to be redeveloped soon. For example, a precinct around a train station that will be changing from primarily free-standing houses to major high-rise development.
- A planning agreements policy, outlining the circumstances in which they might negotiate a planning agreement.



# Appendix D: What can be funded through section 7.11 and 7.12 local infrastructure contributions

Infrastructure contributions are one option available to councils to fund local infrastructure. This module details the infrastructure that can be funded through section 7.11 and section 7.12 local infrastructure contributions.

## Legislative requirements

Infrastructure contributions under section 7.11 and section 7.12 can fund items described by the *Environmental Planning and Assessment Act 1979* (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. These practice notes use the term local infrastructure to mean both public amenities and public services.

The EP&A Act also requires that contributions can only be used for the ‘provision, extension or augmentation’ of this infrastructure. These practice notes use the term capital cost to mean provision, extension, and augmentation.

### What can be funded under the EP&A Act

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. Section 7.12.
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## Policy requirements

Funding for local infrastructure can come from many sources. Local infrastructure contributions are generally used to fund development-contingent infrastructure, while other sources of revenue should be used for general costs.

### Local infrastructure contributions should fund development-contingent local infrastructure

Local infrastructure is the public amenities and services that councils are usually responsible for delivering. Depending on the infrastructure needs of the area this might include, for example open space, community facilities, local roads, traffic management and stormwater drainage. Local infrastructure is generally a development-contingent cost as it is infrastructure that would not be required if the development did not proceed. The development has created these infrastructure costs by increasing the demand for infrastructure.

Development-contingent costs only include infrastructure designed to the standard needed to support development. Community preference for higher standards, such as a higher order playing field embellishment, is a general cost as it does not arise because of a particular development.

Ensuring local contributions generally reflect development-contingent costs achieves efficiency in the contributions system by:

- Promoting the creation of market signals to guide efficient development.
- Supporting timely and efficient infrastructure delivery.

### Section 7.12 levies can fund a broad range of local infrastructure

Councils can use section 7.12 levies to fund infrastructure without having to establish a direct nexus between the development and demand for infrastructure. However, the infrastructure provided should still be generally related to the development.

There does not need to be a direct connection between an individual development and the infrastructure provided using the contribution from that development. There should be a connection between the types of development being levied and the infrastructure being funded by the levy. Councils should demonstrate this connection in the contributions plan.

### Section 7.11 contributions and the essential works list

#### **Essential works list is being reviewed by IPART**

The Independent Pricing and Regulator Tribunal (IPART) is reviewing the essential works list and developing advice on the approach to considering efficient infrastructure design and application of nexus. This will be exhibited and available for comment on IPART's website.

Under the current essential works list section 7.11 plans can fund:

- Land for open space, including base level embellishment.
- Land for community services.
- Land and facilities for transport, but not including carparking.
- Land and facilities for stormwater management.
- The costs of plan preparation and administration.

### Only capital costs can be funded through local contributions

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

- The costs of 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.

### Recurrent funding and maintenance are general costs

Councils cannot use local contributions towards recurrent funding, maintenance, or operating costs. This includes planning studies other than those which directly support the development of the contributions plan and ongoing administrative costs not directly related to a contributions plan.

The only exception to this is recurrent funding for the on-going cost of roads where heavy vehicular traffic movements arises directly from a specific development activity, such as mining. This is because these costs are not required due to the usual use of the road, but rather directly from the development itself.

## Plan administration can be a capital cost

Councils can fund the cost of plan administration in an infrastructure contributions plan in some circumstances. Plan administration costs are those costs directly associated with the preparation and administration of the contributions plan. These costs represent the costs to a council for project management of the plan, in the same way project management costs are incorporated into the cost estimates for individual infrastructure items within a plan.

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 co-ordinating the plan.

Plan administration costs include only those costs that relate directly and solely to the preparation and implementation of the plan. It does not include costs that are part of council's business as usual, such as their core strategic planning responsibilities.

Section 7.12 is a simple mechanism with low administration costs. If a council wishes to use some of these funds for plan administration, the plan must include this as a line item. However, this amount should be reasonable and proportionate to the low administration requirements of a section 7.12 plan.

## Best practice guidance

### General costs should be funded from rates revenue or other sources

General costs are costs that would arise regardless of whether any specific development proceeds. These costs can be driven by increases in or changes in the composition of the population such as through ageing, or community preference for infrastructure to be provided to a higher service level. Recurrent costs such as maintenance and the cost of running the local infrastructure are also general costs.

General costs should be funded from council rates revenue or other sources, such as grants or user charges.

### Budgeting for costs not included in the contributions plan

Costs such as maintenance, asset management and employment in facilities are general costs that cannot be included in infrastructure contributions. However, it is important that these costs be quantified and documented, as they will become part of the council's recurrent budget once any infrastructure is provided. See the module on financial management for more information on budgeting for and incorporating such costs.

## Water supply and sewerage

Under the EP&A Act local infrastructure ('public amenities and services') does not include water supply or sewerage services. Contributions for this infrastructure are imposed in accordance with Division 5 of Part 2 of Chapter 6 of the *Water Management Act 2000* and section 64 of the *Local Government Act 1993*.

# Appendix E: Making a section 7.11 contributions plan

Section 7.11 contributions are one of the mechanisms councils can use to collect contributions towards infrastructure. It allows for the imposition of a contribution on development based on a demonstrated link between the development and the infrastructure to be funded.

Contributions plans specify what infrastructure will be provided and approximately how much it will cost. This is used to calculate a contribution rate, usually charged per dwelling or per square metre of gross floor area.

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

## Legislative requirements

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

- These contributions are charged under section 7.11 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).
- Councils can only impose a section 7.11 contribution if they have a contributions plan in place.
- Contributions plans must be made in the Planning Portal.
- The standard template is accessed through the digital tool and councils are required to make new plans and revised plans using this template.
- Contributions plans must be reviewed every four years, starting from 1 July 2024.
- Part 4 of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) sets out requirements relating to the content of section 7.11 contributions plans.

Parts of section 7.11 plan	Where to find guidance
The purpose of the plan.	Purpose of the contributions plan.
The land to which the plan applies.	Defining the contributions plan catchment.
The relationship between the expected types of development in the area to which the plan applies and the demand for additional public amenities and services to meet that development.	Determining the demand for infrastructure.
The formulas to be used for determining the section 7.11 contributions required for different categories of public amenities and services and the contribution rates for different types of development.	Determining contribution rates.
The timing of the payment of section 7.11 contributions and the imposition of conditions that allow deferred or periodic payment.	Timing of contributions payment.

Parts of section 7.11 plan	Where to find guidance
A map showing the specific public amenities and services proposed to be provided by the council, supported by a works schedule that contains an estimate of their cost and staging.	<p>What can be funded through section 7.11 and section 7.12 contributions.</p> <p>Using the benchmarked costs.</p> <p>Developing works schedules, programming, and mapping.</p>
If levies and contributions for different purposes are to be pooled and applied progressively for those purposes, the priorities for the expenditure of levies and contributions.	Borrowing and forward funding.
Exemptions must be stated in the contributions plan and be specific about the types of facilities to be exempted. Alternatively, council must state the criteria that will be used to determine an exemption.	Exemptions.

## Policy requirements

### Deciding when to use a section 7.11 contributions plan

Councils have discretion to decide if a section 7.11 contributions plan is appropriate for their situation. Guidance on whether a section 7.11 plan is the most appropriate way to raise infrastructure contributions can be found in [Selecting the most appropriate funding mechanism](#) and [What can be funded through section 7.11 and 7.12 local infrastructure contributions](#).

### Defining the purpose of the section 7.11 contributions plan

The primary purpose of the plan is to authorise the council or a registered certifier to require a contribution be made towards the local infrastructure identified in the plan. This primary purpose will be a mandatory field within the template.

Councils can also choose to include additional purposes, with the template providing recommended wording. These are not mandatory.

### Section 7.11 contributions plans should reflect the efficient cost of providing infrastructure

The costs in section 7.11 contributions plans should reflect both efficient design and efficient cost for the infrastructure.

#### **Benchmark costs and efficient design are being reviewed by IPART**

The Independent Pricing and Regulator Tribunal (IPART) is developing a standardised set of benchmark costs and advice on efficient design. Councils will need to use these benchmarked costs unless a specific efficient cost estimate has been prepared or actual costs based on efficient design are determined following construction. This will increase consistency, encourage efficient provision, and will ensure that contribution charges provide an appropriate price signal for development.

This will be on exhibition and available for comment on IPART's website.

## Infrastructure costs should be reviewed regularly

Councils should regularly review the costs in their contribution plans to ensure that are accurate. This should be done as part of the regular four yearly review of the contributions plan, or when changes in costs are anticipated or incurred. Councils should get updated costings for infrastructure items when they anticipate the cost of delivering this item has changed significantly.

Councils can instead index the infrastructure costs if they anticipate that the cost has not changed significantly or if a detailed costing was recently done. More information on indexation can be found in Indexation and adjustments.

Indexation of the actual contribution rates payable is done automatically in the digital tool.

## Procedure and process

The steps outlined below show a simplified process for making a section 7.11 contributions plan. A detailed process map is also provided that shows the steps, modules and decision points required to develop a section 7.11 contributions plan. The map and steps are interactive and can be used to link you through to the relevant guidance.

<b>Simplified process for making a section 7.11 plan</b>	<b>Module</b>
1. Consider efficient design of infrastructure as part of the strategic planning process.	Efficient infrastructure design.
2. Review funding options and decide whether to prepare a section 7.11 plan.	Selecting the most appropriate funding mechanism.
3. Start preparing draft plan in the digital tool considering the required parts of a plan identified in this module.	Council process.
4. Decide where the plan will apply.	Defining the contributions plan catchment.
5. Determine the demand for infrastructure.	Determining the demand for infrastructure.
6. Identify what can be funded through contributions and what will need other funding sources.	What can be funded through section 7.11 and section 7.12 contributions.
7. Consider benchmark costs or prepare specific cost estimates as appropriate.	Efficient infrastructure design and benchmark costs.
8. Calculate indicative contributions rates.	Determining contribution rates.
9. Finalise draft plan preparation and complete council approval process for exhibition.	Council process.
10. Exhibit contributions plan through the NSW Planning Portal and council's website and consider submissions.	Using the digital tool.
11. Plan to be reviewed by IPART on a 'by exception' basis only.	Exhibition and public consultation.
12. Following approval of the plan by council, prepare and lodge final contribution plan in the NSW Planning Portal and provide notice on council's website.	Using the digital tool.

# Appendix F: Making a section 7.12 contributions plan

Section 7.12 levies are one of the mechanisms available to councils that can be used to collect contributions towards infrastructure. It allows a levy to be imposed on development based on maximum rates as determined in *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) and built into the digital tool.

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

## Legislative requirements

Section 7.12 levies are an administratively efficient and simple mechanism.

- These contributions 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.
- Contributions plans must be made in the Planning Portal.
- The standard template is accessed through the digital tool and councils are required to make new plans and revised plans using this template.
- Councils can adopt a contribution rate up to the indexed maximum rate identified in the EP&A Regulation.
- Contributions plans must be reviewed every four years, starting from 1 July 2024.
- Part 4 of the EP&A Regulation sets out requirements relating to the content of section 7.12 contributions plans.

Parts of section 7.12 plan	Where to find guidance
The purpose of the plan.	Purpose of the contributions plan.
The land to which the plan applies.	Defining the contributions plan catchment.
The relationship between the expected types of development in the area to which the plan applies and the demand for additional public amenities and services to meet that development.	Demonstrating the relationship between development and demand for infrastructure.
The categories of development, extent and timing of anticipated development, and levy rates.	Maximum rates.
The timing of the payment of section 7.12 levies and the imposition of conditions that allow deferred or periodic payment.	Categories of development.
A map showing the specific public amenities and services proposed to be provided by the council, supported by a works schedule that contains an estimate of their cost and staging.	Timing of contributions payment.
If levies and contributions for different purposes are to be pooled and applied progressively for those purposes, the priorities for the expenditure of levies and contributions.	What can be funded through section 7.11 and section 7.12 contributions.  Developing works schedules, programming, and mapping.

Parts of section 7.12 plan	Where to find guidance
Exemptions must be stated in the contributions plan and be specific about the types of facilities to be exempted. Alternatively, council must state the criteria that will be used to determine an exemption.	Exemptions.

## Policy requirements

### Deciding when to use a section 7.12 contributions plan

Councils have discretion to decide if a section 7.12 contributions plan is appropriate for their situation. Guidance on whether a section 7.12 contributions plan is the most appropriate way to raise infrastructure contributions can be found in [Selecting the most appropriate funding mechanism](#) and [What can be funded through section 7.11 and 7.12 local infrastructure contributions](#).

### Defining the purpose of the section 7.12 contributions plan

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. This primary purpose will be a mandatory field within the template.

Councils can also choose to include additional purposes, with the template providing recommended wording. These are not mandatory.

### Maximum rates for section 7.12 levies are set and defined in the digital tool

There is a maximum rate for each development category based on the number of new dwellings or new gross floor area to be delivered by the development.

The maximum rates set out in the EP&A Regulation will be indexed quarterly using the Producer Price Index (Road and Bridge Construction – NSW) and reviewed every four years to ensure they remain in line with the intended proportion of development costs. The current base rates can be viewed in the EP&A Regulation. The current indexed maximum rate can be determined by accessing the Planning Portal contributions estimator. More information on indexation can be found in Indexation and adjustments.

#### How the maximum rates are determined

##### **The maximum rate is being exhibited**

The maximum rate for section 7.12 levies is being exhibited as part of the updates to the EP&A Regulation.

It is being designed to be the equivalent to three per cent (3%) of development costs for residential development and one per cent (1%) for non-residential development. The residential rate is a per dwelling rate and the rate for non-residential development a rate per square metre of gross floor area.

The final design of the rates and how they are calculated will be detailed in the finalised version of this practice note.



## Demonstrating the relationship between development and the demand for infrastructure

Section 7.12 contributions are a levy that do not require a direct connection between the development and the infrastructure being funded.

There is, however, still a requirement for the contributions plan to identify and demonstrate a clear relationship between the expected types of development and the demand for infrastructure. The schedule of works should reflect this and be attached to the contributions plan through the digital tool.

## Procedure and process

The steps outlined below show a simplified process for making a section 7.12 contributions plan.

<b>Simplified process for making a section 7.12 contributions plan</b>	<b>Module</b>
1. Review funding options and decide whether to prepare a section 7.12 plan.	Selecting the most appropriate funding mechanism.
2. Start preparing draft plan in the digital tool considering the required parts of a plan identified in this module.	Council process.
3. Decide where the plan will apply.	Defining the contributions plan catchment.
4. Identify what can be funded through contributions and what will need other funding sources.	What can be funded through section 7.11 and section 7.12 contributions.
5. Identify the categories of development to be charged and the levy rate.	Council process.
6. Finalise draft plan preparation and complete council approval process for exhibition.	Using the digital tool.
7. Exhibit contributions plan through the NSW Planning Portal, council's website, and consider submissions.	Exhibition and public consultation.
8. Following approval of the plan by council, prepare and lodge final contribution plan in the NSW Planning Portal and provide notice on council's website.	Using the digital tool.

# Appendix G: Exhibition

A council must exhibit a local contributions plan or planning agreement before finalising. This is an important step in the infrastructure contributions planning process that ensures the system is transparent and certain. This guidance relates to the exhibition of:

- Section 7.11 contribution plans.
- Section 7.12 contribution plans.
- Planning agreements.

## Legislative requirements

The requirements for exhibition are set out in Division 2.6 of Part 2 and Schedule 1 to the *Environmental Planning and Assessment Act 1979* (EP&A Act) and in Part 4 to the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation).

They require:

Mechanism	Requirement	Legislation
Section 7.11 contributions and Section 7.12 levies	<p>Following the preparation of a draft contributions plan, the council must publish the following on the NSW Planning Portal and its website:</p> <ul style="list-style-type: none"> <li>• The draft contributions plan and any supporting documents.</li> <li>• The period during which submissions about the draft plan can be made to council.</li> </ul>	EP&A Regulation, Part 4, Division 2 (clause 28).
	Any person can make written submissions to the council about the draft contributions plan during the submission period.	EP&A Regulation, Part 4, Division 2 (clause 30).
	Minimum public exhibition period for draft contributions plans is 28 days.	EP&A Act, Schedule 1, Part 1 Division 1 (clause 15).
	A local contributions plan cannot be approved until it has been publicly exhibited.	EP&A Act, Schedule 1, Part 1 Division 1 (clause 6).
	Details on what constitutes a day when calculating the minimum 28-day exhibition period.	EP&A Act, Schedule 1, Part 1 Division 3.
	Where land is being rezoned, the contributions plan exhibition must be concurrent with the exhibition for that planning proposal.	Contribution plans and planning proposals module.

Mechanism	Requirement	Legislation
Planning agreements	Following the preparation of a draft planning agreement, the council must publish the following on the NSW Planning Portal and its website: <ul style="list-style-type: none"> <li>• The draft planning agreement and explanatory note.</li> <li>• The period during which submissions about the draft agreement can be made to council.</li> </ul>	
	A planning agreement cannot be approved until it has been publicly exhibited for a minimum period of 28 days.	EP&A Act, Schedule 1, Part 1 Division 1 (clause 6A).
	The public exhibition must occur concurrently with the planning proposal or development application the planning agreement relates to	EP&A Regulation, Part 4, Division 1A (clause 25D).
	An explanatory note must be prepared and accompany the draft planning agreement when on public exhibition.	EP&A Regulation, Part 4, Division 1A (clause 25E).
All	Any mandatory requirements for community participation identified in a council's Community Participation Plan must also be undertaken during the public exhibition.	EP&A Act, Part 2, Division 2.6. (section 2.22(2)).

## Policy requirements

### Setting up and running the exhibition

#### The exhibition period should be for a minimum of 28 days

The minimum 28-day public exhibition period for both draft local contribution plans and planning agreements is calculated in calendar days and 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 next available workday.

The period between 20 December and 10 January (inclusive) is excluded from the calculation of a period of exhibition.

For planning agreement exhibitions relating to the amending or withdrawing of an existing planning agreement, a council should consult their Community Participation Plan if another period of time is specified.

#### Where land is being rezoned, the exhibition should be concurrent with the exhibition for that planning proposal

Councils should ensure that a draft local contributions plan is prepared in sufficient time to enable the plan to be exhibited at the same time as the related planning proposal.

It will provide greater clarity over a developer's contribution obligations and allow the full implications of development to be factored into land values and resulting development feasibility studies.

For draft planning agreements, the public exhibition must occur concurrently with the planning proposal or development application it relates to.

### Public notification needs to be given at the start of exhibition

Council must publish a notification on the NSW Planning Portal and their website announcing the public exhibition of a draft contributions plan or planning agreement, detail the period of time this exhibition will occur, links or directions on how to view the drafts, supporting documentation, and how someone can make a submission.

### Land value contribution requirement

#### **The land value contribution is on exhibition**

Land value contributions will form a component of some section 7.11 contributions plans. The land value contribution is currently on exhibition and available for comment.

### Supporting documentation must be included

Any supporting documentation must also be made available during the exhibition period and included alongside the draft contributions plan or planning agreement.

### Planning agreements require an explanatory note

Planning agreements are legal documents and may be complex and difficult to understand. The explanatory note is used to explain in simple terms what a planning agreement is proposing, how it delivers public benefit, and why it is acceptable and in the public interest. It must be transparent, easy to understand, written in plain English and address all considerations outlined in the draft planning agreement.

By reading the explanatory note, it should be possible for a person to understand the planning agreement, nature of the development proposed, and the public benefits being provided.

In practice, the explanatory note can be prepared by any one of the parties of the agreement but should be reviewed and agreed by all parties before use.

The explanatory note must:

- Identify how the agreement delivers public benefits and is in the public interest.
- Summarise the objectives, nature and effect of the proposed agreement and contain an assessment of the merits of the proposed agreement, including the impact on the community.
- Identify whether the agreement conforms with the council's capital works program, if any.
- Indicate timing of delivery and include maps, diagrams, and other material to help explain what is proposed.
- State whether the agreement specifies that certain requirements of the agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued.

### Mandatory requirements in Community Participation Plans must be addressed

Councils must also refer to their approved Community Participation Plans for any additional mandatory exhibition requirements that should apply.

## Receiving and reviewing submissions

Any person can make a submission on a draft infrastructure contributions plan or planning agreement during its exhibition period. It must be clearly communicated to the community how they can make a submission and how their submission will be considered. Submissions should be made through the council's website.

The council should review all submissions thoroughly and make an assessment as to whether a submission has merit and, if so, whether there is a need for review of the draft contributions plan or planning agreement.

Refer to Making a section 7.11 contributions plan and Making a section 7.12 contributions plan for further guidance on the next steps following exhibition.

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

Councils should determine if any significant changes made to a draft contributions plan or planning agreement following exhibition, could require re-exhibition.

The timeframe of a re-exhibition period is discretionary, based on the urgency, scale, and nature of the proposal. A council's Community Participation Plan may provide guidance. Councils are encouraged to ensure that decisions on infrastructure contributions plans and planning agreements are transparent so that the public can clearly see the processes and decisions involved.

### Local contribution plans

Re-exhibition might be required if the changes would materially affect:

- Mapping.
- The amount of contributions.
- How the contributions are calculated.

### Planning agreements

Re-exhibition might be required if the changes would materially affect:

- How any of the matters specified in section 7.4 of the EP&A Act are dealt with by the planning agreement.
- Other key terms and conditions of the planning agreement.
- The council's interests or the public interest under the planning agreement.
- Whether a non-involved member of the community would have made a submission objecting to the change if it had been publicly notified.

## The IPART review process for local contribution plans

Councils are required to exhibit a draft local contributions plan and consider any submissions, prior to submitting to the Independent Pricing and Regulatory Tribunal (IPART) if a review is required. Refer to Review by IPART for further guidance on this process.

Following this review, councils are not required to re-exhibit the draft contributions plan again before approving. However, councils should consult their Community Participation Plan and decide if any material changes made following IPART's review would be best re-exhibited to ensure transparency and give their community the opportunity to provide further feedback.

## When re-exhibition of a local contributions plan is not required

EP&A Regulation sets out the minor amendments a council can make to a contributions plan that would not require the creation of a new plan and therefore re-exhibition. These include correcting minor typographical or formatting errors and updating elements that are required to be updated, such as indexed figures.

## Best practice guidance

### The process of public exhibition should be inclusive and transparent

The aim of exhibition is to ensure transparency and provide opportunity for the public to comment on a plan that can have implications in their community.

Councils should refer to their approved Community Participation Plan for any additional guidance on setting up and running a public exhibition for their community.

Things that should be considered, include:

- The community's right to be informed about planning matters that affect them.
- Planning information should be in plain language, easily accessible and in a form that best facilitates community participation.
- Community participation should be inclusive and planning authorities should actively seek views that are representative of the community.
- Community participation methods should be appropriate, having regard to the significance and likely impact of the draft plans on exhibition.
- Planning decisions should be made in an open and transparent way and the community should be provided with reasons for those decisions and how their views have been considered.
- Following exhibition, people who made a submission should be kept informed of the future decisions and next steps related to the draft plan.

### Consider optional consultation during the development of a draft contributions plan or planning agreement, prior to exhibition

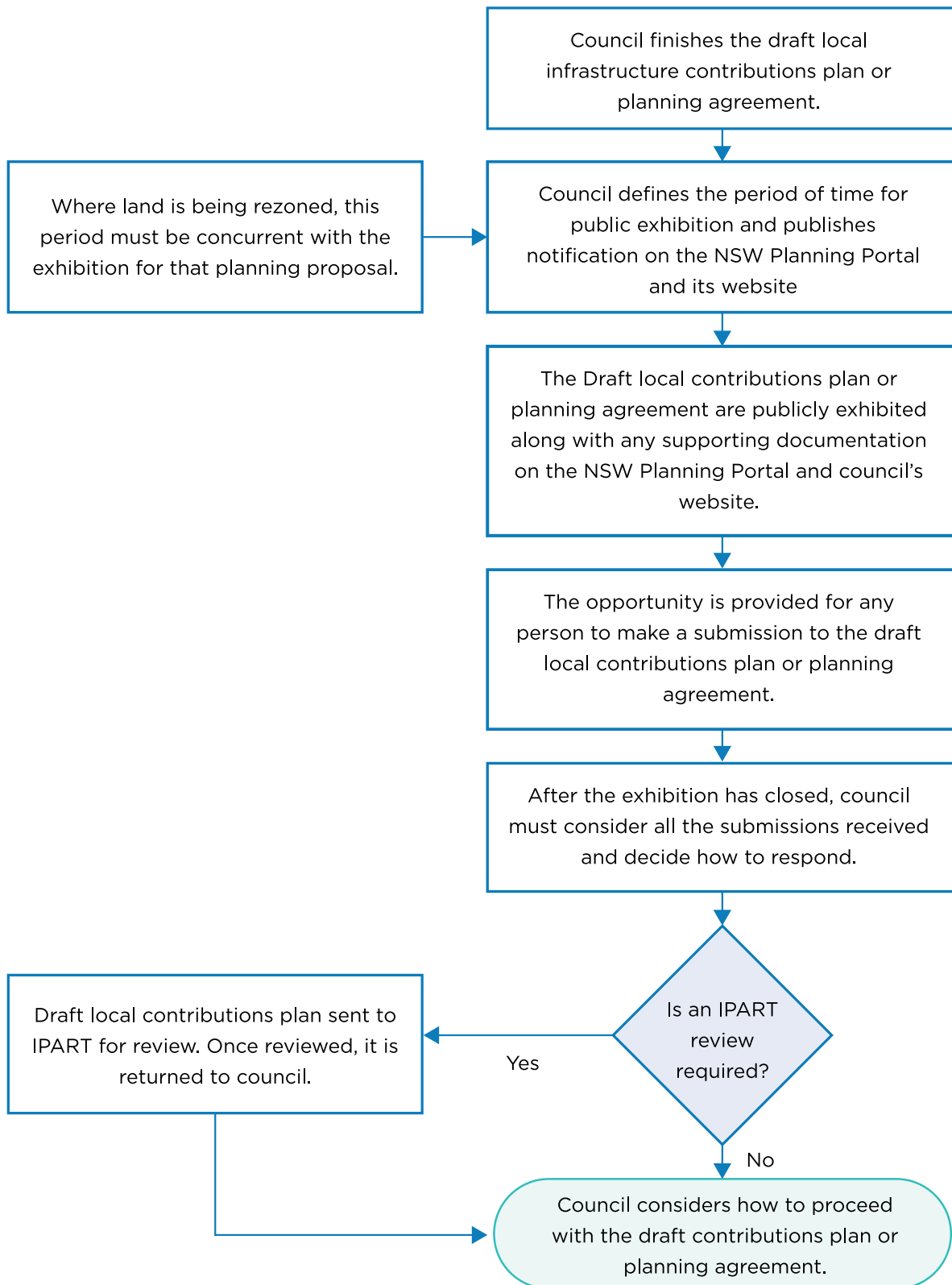
While the legislated requirements are for a council to publicly exhibit a contributions plan or planning agreement after it has been drafted, consideration could be given to any benefits of conducting consultation during the preparation stage to better inform the draft before it is publicly exhibited.

Early consultation with key stakeholders during the preparation stage can assist in facilitating 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 create a more robust draft and provide more transparency for the community.

Key stakeholders could include local developers, broader industry, and the local community. A council should conduct any pre-exhibition consultation in line with their approved Community Participation Plan.

# Process and procedure

## Exhibiting infrastructure contributions plans and planning agreements



# Appendix H: Borrowing and forward funding

Infrastructure is often required before a council has collected enough contributions to fund the item. Borrowing and forward funding can allow councils to provide the infrastructure before they have received the contributions to fund the item in full. Borrowing refers to any form of debt incurred where there is an obligation to repay the funds. This module addresses:

- Internal sources of finance such as borrowing from general revenue or pooling of contributions.
- External sources of borrowing where funds are sourced from NSW Treasury Corporation (TCorp) or a financial institution.

This module provides general information to inform the consideration of the use of borrowings only. Any financial decisions must be made in consultation with the council's finance team and in the context of the council's broader financial operations.

## Legislative requirements

Borrowing and forward funding infrastructure is not mandatory, but it can be a useful tool to consider. Councils must ensure they comply with the requirements around borrowing and forward funding in the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation).

- Councils can recoup the cost of forward funding infrastructure identified in a contributions plan, including the cost of borrowing.
- Councils can pool funds within and between contributions plans.
- Councils can borrow from general revenue to fund infrastructure identified in a contributions plan and repay this money when contributions are collected. They cannot use contributions funds, which are a restricted asset, to pay for anything that is not identified in a contributions plan.

## General local government requirements

Although the contributions system is implemented under the EP&A Act, any external borrowings related to the contributions plan are subject to the same requirements as other council borrowings and governed by the *Local Government Act 1993* and associated regulations. They are also subject to guidance and circulars issued by Office of Local Government.

## Policy requirements

### Councils should consider borrowing and forward funding to deliver infrastructure

Contributions plans identify infrastructure that enables development to occur. This means that councils will typically incur expenditure ahead of when contributions are received. Councils should consider borrowing when infrastructure is needed before sufficient contributions are received for that infrastructure. For example, when:

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



Interest costs associated with borrowing for infrastructure in a contributions plan can be collected through the plan.

## Best practice guidance

### Determining an acceptable rate of borrowing

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

- Community need for infrastructure as identified in the contributions plan.
- Existing and projected future operating costs relative to revenue as shown in the long-term financial plan.
- Council's willingness and capacity to raise additional revenue if required.
- Council's ability to service the debt and the cost associated with the servicing the debt.

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

### Debt servicing ratio

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

## Internal sources of finance

### Pooling of funds between and within contributions plans

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

Pooling enables contributions to be treated as a single bucket of money from which infrastructure can be funded and is the simplest form of borrowing that can be applied to the provision of infrastructure under a contributions plan. Councils can pool funds, both within plans and between plans. This is permitted by default and does not need to be specified in the contributions plan.

Pooling represents a low risk and efficient funding approach to a council. It can allow councils to spend their contributions funds in a timely manner and demonstrates the council's commitment to the ongoing implementation of the plan.

To increase transparency around pooling, councils should have a well-defined works schedule that identifies what infrastructure will be given funding priority. Where this is occurring between plans as well as within a plan, council should consider preparing a combined works schedule for all plans that provides a holistic implementation program that can be used to set funding priorities.

### Forward funding from internal sources

Internal borrowing is councils use general revenue to fund infrastructure and later repay this when they receive contributions. This is referred to as internal borrowing as the initial outlay will be repaid through contributions received. Councils cannot borrow from contributions funds, which are a restricted asset, to pay for anything that is not identified in a contributions plan.

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

- Ensure the infrastructure is identified by the works schedule within the contributions plan.
- Keep accurate records of the internal borrowings.
- Incorporate this borrowing into a council's long-term financial plan.

## External sources of finance

### NSW Treasury Corporation finance

NSW Treasury Corporation is the central borrowing authority for the state of NSW. One of the functions of TCorp is to provide loan facilities to local councils that have been deemed 'financially sustainable'. Guidelines on the provision of such loans are available from TCorp. Loan facilities are available for approved community infrastructure which form part of a council's annual capital expenditure program, such as roads, buildings, and stormwater drainage.

It cannot be used for those components that compete with private sector infrastructure. For example, if a council is undertaking the upgrading of an aquatic centre and that centre contains a café, TCorp can provide a loan for the aquatic centre except for that component of the development that contains the café.

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

### Low Cost Loan Initiative

The low cost loan initiative is a partnership between the department of Planning, Industry and Environment, Office of Local Government (OLG) and TCorp that aims to provide subsidised finance to councils to encourage new housing supply. OLG reimburses 50% of the interest rate cost of a maximum 10-year loan for infrastructure that enables new housing supply.

### Bank loans

Bank loans are offered by commercial banking institutions and are usually for a period of up to ten years at commercial interest rates. These interest rates are generally higher than those offered by TCorp. Councils will generally have existing arrangements with banking institutions and the council's finance team will be able to advise the approach if a bank loan is required.

## Managing risks

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

Unexpected increases to the costs of providing infrastructure is one of the key risks associated with contributions plans. It can lead to a shortfall in contributions. Borrowing can enable land to be purchased and infrastructure constructed earlier which then requires a definitive cost to be included in the contributions plan.

## Planning for borrowing

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

## Accounting for borrowing

Council must provide details of income and expenditure for each contribution plan in a note to their annual financial statements. This includes borrowings between plans during the past financial year, as well as the cumulative balance of borrowing within and between plans through pooling provisions.

Councils are not required to report internal borrowings in the note to the annual financial statements, as they are reported in the general expenditure components of these statements. Notwithstanding this, councils should monitor these borrowings when accounting for contributions. When contributions are received for items that have been paid for using internally borrowed funds, these contributions are essentially repayment of an internal loan. Council will need to decide whether it will return the funds to general revenue or retained them within the restricted asset and use them to fund other items in the contributions plan. Councils report external borrowings for contribution plans as part of council's overall borrowings within the annual financial statements.

Further information on the reporting and monitoring requirements relating to infrastructure contributions are outlined in Reporting requirements, registers, and publishing information.

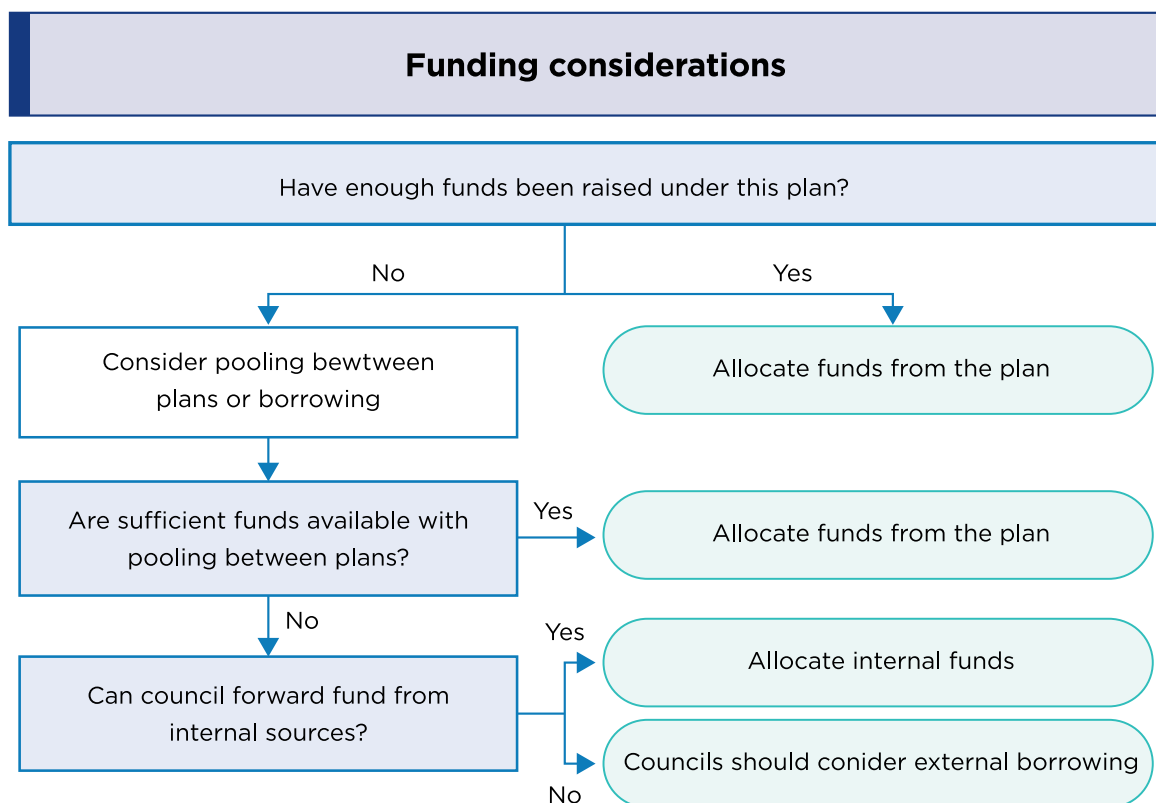
This provides greater certainty in costs and protects council from funding shortfalls.

## Procedure and process

### Selecting the best source of funding

Councils need to consider multiple factors when deciding on the most appropriate source of funding.

The diagram below provides a simplified decision tree that councils can use to guide their decision about what funding source to use. In practice there are likely to be a variety of other factors that might need to be considered and there might be a variety of funding sources used for a specific item.



# Appendix I: Infrastructure contributions for mining and energy developments

This guidance has been prepared to explain how the infrastructure contributions system should be applied to mining or energy developments, as these types of developments can often be complex with varying consent authorities.

## Legislative requirements

There is no legislative requirement to use one mechanism over another, this is at the discretion of councils.

The maximum rates for section 7.12 levies are legislated.

### **The maximum rate is being exhibited**

The maximum rate for section 7.12 levies is being exhibited as part of the updates to the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation).

The final design of the rates and how they are calculated will be detailed in the finalised version of this practice note module.

## Policy requirements

Infrastructure contributions from mining and energy developments should be collected using an appropriate mechanism based on the characteristics of the public benefits being delivered.

### Development specific impacts and infrastructure needs should be addressed through conditions of development consent

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.

### A section 7.11 contributions plan for mining developments

To collect contributions for the purposes of delivering the infrastructure required to support a mining development, councils should have in place a section 7.11 contributions plan. This should identify and apportion the required infrastructure against demand generated by the development.

Refer to the following guidance for further information on section 7.11 contributions plans:

- Making a section 7.11 contributions plan
- What can be funded through a section 7.11 and 7.12 local infrastructure contributions

### A section 7.12 contributions plan for energy developments

To collect contributions for the purposes of delivering the infrastructure required to support an energy development, councils should have in place a section 7.12 contributions plan. The rate of the contribution from energy developments is identified in the EP&A Regulation.

Refer to the following guidance for further information on section 7.12 contribution plans:

- Making a section 7.12 contributions plan
- What can be funded through a section 7.11 and 7.12 local infrastructure contributions

## Planning agreements are appropriate in addition to a local contributions plan for innovative or complex infrastructure solutions

For mining and energy developments, a planning agreement should only be considered when it is the most suitable means to mitigate the impact, such as a contribution for an innovative or complex infrastructure solution that is not achievable through imposing a condition of development consent or a local contributions plan.

Planning agreements provide a flexible and goal-oriented option to facilitate the delivery of infrastructure. They also provide a mechanism to address the impacts of projects that are difficult to plan for on a local scale, which is often the case with mining and energy developments.

Section 7.4(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) outlines the public purposes that can be sought through a planning agreement.

Refer to the following guidance for further information on planning agreements:

- Entering into a planning agreement

### Benefit sharing in planning agreements

The use of planning agreements as a mechanism for sharing social benefits should be undertaken within a robust policy framework.

For example, a planning agreement can be used to deliver a Community Enhancement Fund which is specifically designed as a social benefit sharing mechanism. This is preferable to seeking the same benefits directly through a planning agreement. Community Enhancement Funds can:

- Provide for one-off or recurrent fixed or proportional funding.
- Not be tied to particular infrastructure.
- Be allocated to any community project including community events.
- Be governed by the community.

Other benefit sharing schemes or grants can also be used by councils that sit outside of the planning system. An example is the Resources for Regions program, which provides funding for mining-related communities across New South Wales.

### Value capture in planning agreements

Planning agreements should not be used for the primary purpose of value capture. Councils should not place a flat monetary contribution to be collected from mining or energy developments that is not linked to development-contingent costs, or infrastructure demand related to that development.

Councils should work with individual mining and energy developments to identify strategic infrastructure requirements that can be delivered to the benefit of the community, or to identify innovative and complex infrastructure solutions that can be delivered through a planning agreement. They should be able to show through clear infrastructure costings what infrastructure will be funded in the planning agreement and justify the amount of funding being collected.

## Managing environmental offset in planning agreements

Planning agreements can be used to provide for environmental offset arrangements. Councils should avoid using planning agreements to mitigate localised environmental impacts, as these are better addressed through the development assessment process.

## Tools to use

The following is a non-exhaustive list of NSW Government policies and guidelines relating to mining and energy projects.

This list is provided purely as a useful resource. While the department will periodically review and update these links, it is the responsibility of councils to ensure they are considering all the relevant policies and guidelines.

- Integrated Mining Policy.
- Wind Energy Guideline.
- Large-scale Solar Energy Guideline.
- Social Impact Assessment Guideline.
- Resources for Regions.
- Community Enhancement Funds.



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