

Draft Revised Local Development Contributions Practice Note

For the assessment of Local Contributions Plans by IPART (Revision 1) | July
2013

Acknowledgements

This Practice Note has been prepared by the Department of Planning and Infrastructure and the Independent Pricing and Regulatory Tribunal (IPART).

This Practice Note has been adopted by the Director General for the purpose of the *Environmental Planning and Assessment Regulation 2000* in so far as it relates to the preparation of contributions plans.

Local Development Contributions Practice Note for the assessment of contributions plans by IPART Revision 1

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July 2013

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1 Introduction

The NSW development contributions system helps provide new and growing communities with appropriate infrastructure. The Environmental Planning and Assessment Act 1979 (EP&A Act) and the related regulation set out how the development contributions system in New South Wales works.

A user-pays philosophy underlies the funding of local or community infrastructure whereby developers should contribute to the cost and/or provision of a reasonable level of local public facilities needed to support new development. Local governments must be accountable to the public in the collection and expenditure of funds and the provision of public facilities, and the development contributions system should be publicly and financially transparent.

In 2010, the NSW Government announced a revised approach to setting local development contributions and local council rates as part of a comprehensive strategy to improve housing supply across NSW, which included:

- a cap of \$30,000 per dwelling or residential lot in greenfield areas to recognise the higher costs of creating well-planned communities in these areas
- an exemption to the relevant cap for areas where development applications for more than 25 per cent of the expected dwelling yield under existing contributions plans have been lodged
- a cap of \$20,000 per dwelling or per residential lot in all other areas, and
- an essential works list that will apply when councils are seeking Housing Acceleration Funding¹ or a special rate variation.

The involvement of the Independent Pricing and Regulatory Tribunal (IPART) in the implementation of the development contributions system brings greater transparency and accountability to the system.

1.1 Purpose of this practice note

The purpose of this Practice Note is to assist councils to understand the role of IPART in the development and review of contributions plans, by identifying:

- the contribution plans that require review by IPART
- the criteria against which contributions plans will be assessed and
- the requirements for submission of contributions plans to IPART.

This Practice Note should be read in conjunction with the Department of Planning and Infrastructure's *Development Contributions Practice Notes*, July 2005 (2005 Practice Notes).

The 2005 Practice Notes outline the requirements for local councils in preparing and administering the contributions plans.

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¹ Funding was previously available through the Housing Acceleration Fund and Priority Infrastructure Fund. These funds have been discontinued and replaced by the Local Infrastructure Growth Scheme, which is in place until the introduction of new planning legislation.

2 Context

2.1 Legislative framework

2.1.1 General requirements

Under the provisions of section 94 (s 94) of the EP&A Act councils are able to obtain development contributions as a means of funding local infrastructure required as a result of the new development.

Following is a summary of the general requirements for local development contributions.

- If councils wish to seek a contribution under s 94 they are required under s 94B of the EP&A Act to prepare a contributions plan. The aim of that plan is to establish the relationship between the expected types of development in the area to which the plan applies and the demand for public amenities and services to meet that development.
- S 94 contributions are imposed by way of condition of consent (or complying development). The requirement for a contribution can be satisfied either by paying a monetary contribution or dedicating land free of cost. The requirement for a contribution can also be satisfied by the provision of a material public benefit (works-in-kind).
- Councils, as consent authorities, may impose conditions under s 94 and s 94A of the EP&A Act only if it is of a kind allowed by, and that is determined in accordance with, a contributions plan.
- The contribution must be towards “public amenities or services” (s 94 of the EP&A Act). While public amenities and public services are not expressly defined, they do not include water supply or sewerage services (s 93C of the EP&A Act).
- Generally, contributions can only be sought for the costs (which includes land acquisition and works, not ‘operating costs’) of:
 - Public facilities that a council reasonably has to provide, and/or
 - Public facilities that are needed as a consequence or to facilitate new development.
- The condition must only be imposed for the provision, extension or augmentation of public amenities and public services (s 94(2) of the EP&A Act). That is, generally, contributions cannot be sought for recurrent funding such as maintenance.
- A contributions plan can require the payment of a monetary contribution towards recoupment of the cost of providing the public amenities or public services (being the cost as indexed in accordance with the regulations) (s 94(3) of the EP&A Act).

2.1.2 Ministerial direction under section 94E of the EP&A Act

A Direction has been issued by the Minister for Planning and Infrastructure under s 94E of the EP&A Act that limits local development contributions.

The Direction applies to councils as consent authorities when they impose conditions of development consent requiring a monetary contribution under s 94 of the EP&A Act. Specifically, the Direction provides:

- a cap of \$30,000 per residential lot or dwelling for greenfield areas
- an exemption to areas where development applications have been lodged (including determined applications) and remain valid, as of 31 August 2010, for more than 25% of the expected yield from the development area or contributions plan, and
- a cap of \$20,000 per residential lot or dwelling for all other areas.

This Direction will be updated periodically, as it is intended to allow councils to apply for areas to be considered for inclusion in Schedule 3 to the Direction when an area is rezoned or a contributions plan is made, if councils can demonstrate that the area is a greenfield release area. The most recent Direction issued under s 94E and relevant Planning Circular is available at www.planning.nsw.gov.au.

It is important to note that the s 94E Direction applies to conditions imposed on development consents. A contributions plan may still be in place that contains contribution rates that exceed the relevant cap, but the cap will limit the contribution amount that can be levied.

2.2 Key principles underlying local development contributions

Section 94 contributions are based on the key concepts of **reasonableness** and **accountability**.

- **Reasonableness** relates to *nexus* and *apportionment*.
 - *Nexus* refers to the connection between the development and the demand created. The requirement to satisfy nexus is based on ensuring that there is a link between the development and increased demand for facilities. In addition, the infrastructure needs to be provided within a timeframe that meets the demand.
 - *Apportionment* refers to the division of the costs equitably between all those who will benefit from the infrastructure, including any existing population. Full cost recovery from contributions should only occur where the infrastructure is provided to meet the demand from new development only.
- **Accountability** relates to both public and financial accountability.
 - *Public accountability* may be sought through open decision making, maintenance of appropriate financial records and community involvement.
 - *Financial accountability* may be sought through the works schedule to the contributions plan, annual reports and a contributions register.

2.3 IPART's role in relation to contributions plans

2.3.1 What is IPART?

IPART is an independent body that oversees regulation of the water, gas, electricity and public transport industries in New South Wales. It was established by the NSW

Government in 1992. Initially, IPART's primary purpose was to regulate the maximum prices charged for monopoly services by government utilities and other monopoly businesses. Since then, its responsibilities have expanded. IPART administers the Energy Savings Scheme and undertakes reviews and investigations into a wide range of economic and policy issues.

Since June 2010, IPART has been responsible for several local government regulatory and review functions. These include:

- maintaining a local government cost index
- determining the maximum percentage increase in local government general revenue (rate peg)
- determining special rate variations, and
- reviewing local government contributions plans.

2.3.2 The role of IPART in reviewing contributions plans

IPART's role includes reviewing:

- new contributions plans that propose a contribution rate above the relevant cap
- existing contributions plans that propose a contribution level above the relevant cap for those councils that are seeking gap funding from the Local Infrastructure Growth Scheme, and
- existing contributions plans that propose a contribution level above the relevant cap for those councils that are seeking a special variation to general income.

The Minister for Planning and Infrastructure also retains discretion to refer contributions plans that are below the relevant cap to IPART for review.

IPART's review will consider whether:

- the contributions plan complies with the requirements of the *Environmental Planning and Assessment Act 1979*, *Environmental Planning and Assessment Regulation 2000*, the Department of Planning and Infrastructure's *Development Contributions Practice Notes* (July 2005) and this practice note
- each plan includes appropriate Essential Infrastructure as required for the proposed development (as defined in the essential works list in section 3.4.2), and
- the costs (including both land value and capital costs for construction/works) assigned to this infrastructure are reasonable.

IPART will give advice and make recommendations to the Minister for Planning and Infrastructure and to councils in relation to the contributions plans.

Note: at this stage IPART will not be reviewing s 94A contributions plans.

3 Contribution Plan Assessment

3.1 Contributions plans that require assessment by IPART

Councils are to submit the following contributions plans to IPART for review:

- new contributions plans that propose a contribution level above the relevant cap
- existing contributions plans that propose a contribution level above the relevant cap for those councils seeking gap funding from the Local Infrastructure Growth Scheme
- existing contributions plans that propose a contribution level above the relevant cap for those councils seeking gap funding from a special variation to general income, and
- any other contribution plan referred to IPART by the Minister for Planning and Infrastructure.

Where a council is amending a contributions plan that has already been assessed by IPART and adopted by Council, it is not required to submit the revised plan for assessment if:

- the scope of works remains the same or is reduced; *and*
- the geographical catchment of the plan remains the same or is reduced; *and*
- the cost estimates of the works either remain the same or are reduced or changed to actual costs; *and*
- the method of apportionment of costs remains the same; *and*
- the development yield or population projections are refined as development patterns become better defined.

The council will still be required to publicly exhibit an amended contributions plan consistent with the *Environmental Planning and Assessment Act and Regulations*.

3.2 When will contributions plans be assessed by IPART

Contributions plans should be submitted to IPART for review at the following times:

- New contributions plans that require assessment are to be submitted for review following public exhibition, but prior to adoption by council. The plans that the council submits to IPART should incorporate any changes made in response to submissions the council received during the exhibition period.
- Existing contributions plans that contain a contribution level above the relevant cap for those councils seeking gap funding from the Local Infrastructure Growth Scheme are to be submitted prior to applying for funds.
- Existing contributions plans that contain a contribution level above the relevant cap for those councils seeking gap funding from a special rate variation are to be submitted prior to lodging an application for a special variation to general income.

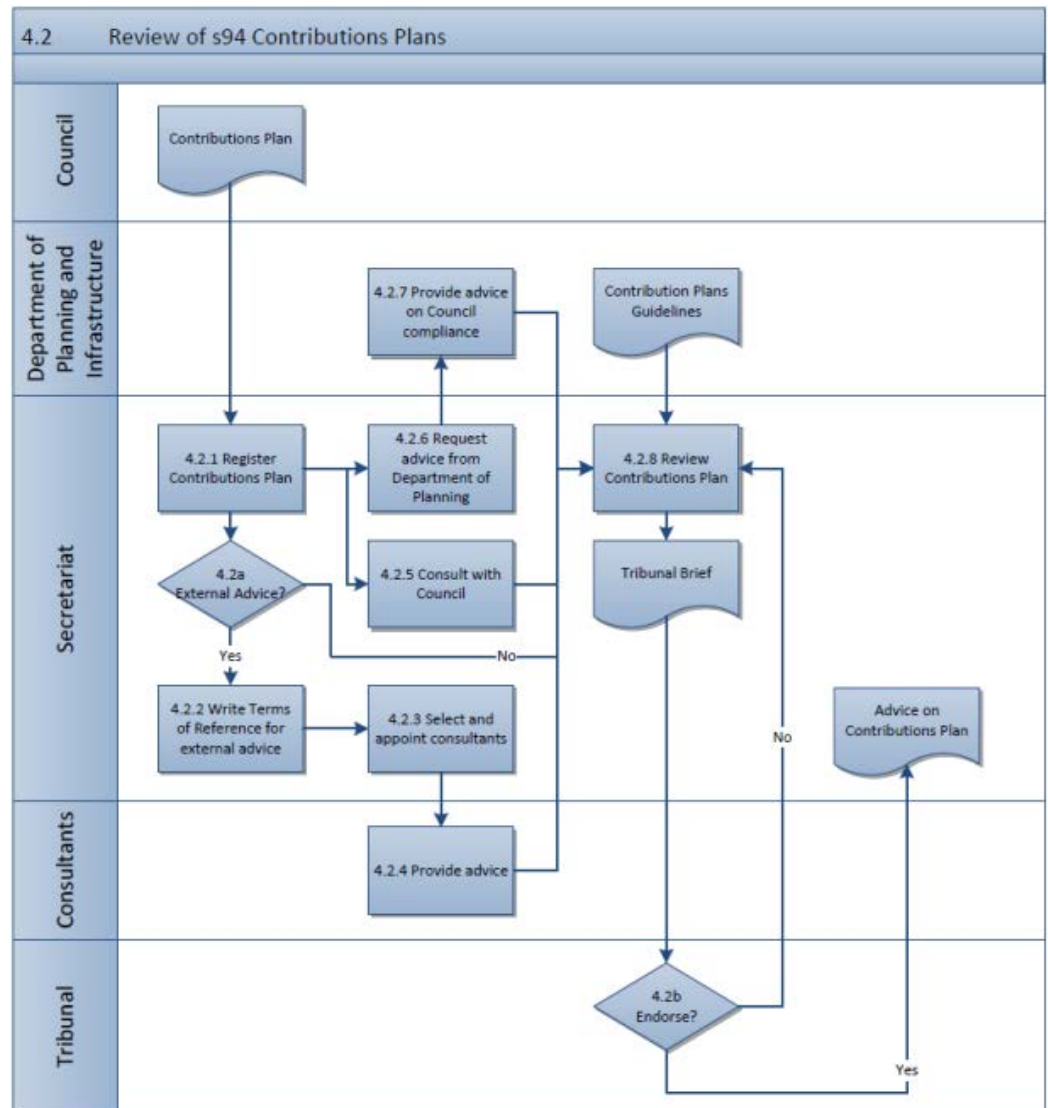
Note: The application process for councils seeking a special rate variation is subject to guidelines issued by the Division of Local Government. These guidelines can be found on the IPART website (www.ipart.nsw.gov.au).

3.3 How will IPART consider contributions plans?

Figure 1 outlines the process that will be followed by IPART when assessing contributions plans.

The following is a summary of this process:

1. Councils submit contributions plans to IPART for review.
2. IPART will review the plans against the criteria listed below (section 3.4) and in **Appendix A** and may engage the services of consultants to advise on particular aspects of the plans.
3. IPART will conduct formal consultation with other government departments, such as the Department of Planning and Infrastructure, to obtain specialist advice regarding particular aspects of the contributions plan. IPART will use this advice to inform its decision-making process.
4. On completion of the review IPART will provide its advice to councils and the Minister for Planning and Infrastructure. This advice will focus on whether:
 - a. the contributions plan complies with the assessment criteria set out in section 3.4 of this practice note.
 - b. the contributions plan complies with the requirements of the EP&A Act, *Environmental Planning and Assessment Regulation 2000* and the 2005 Practice Notes.
5. IPART will publish copies of the contributions plan, consultants' reports (if relevant) and IPART's final report of recommendations on its website.

Figure 1 Process for IPART review of Contributions Plans

Data source: IPART

3.4 Assessment criteria

3.4.1 What are the criteria that will be used by IPART to evaluate contributions plans?

When undertaking its evaluation of contributions plans IPART will assess whether:

1. the public amenities and public services in the plan are on the essential works list as identified within this practice note (section 3.4.2)
2. the proposed public amenities and public services are reasonable in terms of nexus (the connection between development and the demand created)
3. the proposed development contribution is based on a reasonable estimate of the cost of the proposed public amenities and public services
4. the proposed public amenities and public services can be provided within a reasonable timeframe
5. the proposed development contribution is based on a reasonable apportionment between:
 - existing demand and new demand for the public amenities and public services, and
 - different types of development that generate new demand for the public amenities and public services (e.g., between different types of residential development such as detached dwellings and multi-unit dwellings, and between different land uses such as residential, commercial and industrial).
6. the council has conducted appropriate community liaison and publicity in preparing the contributions plan, and
7. the plan complies with other matters IPART considers relevant.

Appendix A provides a detailed list of matters that IPART may consider when making its assessment against each criteria.

3.4.2 Essential works list

The following public amenities or public services are considered **essential works**:

- land for open space (for example, parks and sporting facilities) including base level embellishment (Section 3.4.2.1)
- land for community services (for example, childcare centres and libraries) (Section 3.4.2.2)
- land and facilities for transport (for example, road works, traffic management and pedestrian and cyclist facilities), but not including carparking
- land and facilities for stormwater management, and
- the costs of plan preparation and administration (Section 3.4.2.3)

The essential works list is relevant only to those contributions plans that propose a contribution level above the relevant cap (unless otherwise directed by the Minister for Planning and Infrastructure).

The essential works list does not apply to contributions plans currently below the relevant cap or to those contributions plans that are exempted from the relevant cap.

3.4.2.1 Base level embellishment

Base level embellishment of open space is considered to be those works required to bring the open space up to a level where the site is secure and suitable for passive or active recreation. This may include:

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

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

3.4.2.2 Community services

For the purposes of these Practice Notes, 'community services' means a building or place:

- (a) owned or controlled by a public authority or non-profit community organisation, and
- (b) used for the physical, social, cultural or intellectual development or welfare of the community,

but does not include an educational establishment, hospital, retail premises, place of public worship or residential accommodation.

These may include (but are not limited to):

- community centres/halls
- libraries
- neighbourhood centres
- youth centres
- aged persons facilities (Senior Citizens centres, Home and Community Care centres)
- childcare facilities
- public art gallery, and/or
- performing arts centres.

3.4.2.3 Plan administration

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 of project managing the plan in much the same way as the project management costs that are incorporated into the cost estimates for individual infrastructure items within a plan.

Plan administration costs may include:

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

Note: Plan administration costs include only those costs that relate directly and solely to the preparation and implementation of the plan and do not include costs that would otherwise be considered part of a council's key responsibilities such as core strategic planning responsibilities.

3.4.2.4 Environmental works

The acquisition of land and the undertaking of works for environmental purposes e.g., bushland regeneration or riparian corridors are **not** defined as essential works for the purposes of this Practice Note.

The only exception to this is where it can be demonstrated that the land and/or works in question serve a dual purpose with one or more of the categories of works that meet the definition of essential infrastructure outlined above. In this situation, only the component of land and/or works that serves the dual purpose can be considered as essential works.

3.5 Process following assessment by IPART

For new contributions plans, when IPART has completed the assessment it will provide the Minister with advice regarding the contributions plan. After consideration of this advice the Minister may:

- determine no further action is required, or
- request the council to make changes to the contributions plan prior to it coming into effect.

The Minister will advise the council of the outcome in writing. The council should not proceed with adoption of the plan until such time as they have received confirmation in writing that all issues raised have been satisfactorily addressed in the plan.

For existing contributions plans, the advice of IPART will be taken into consideration when determining access to gap funding through the Local Infrastructure Growth Scheme or for assessing applications for special rate variations.

4 Submission requirements

4.1 What additional information will IPART need?

IPART's review of contributions plans will be based upon this practice note, the *Environmental Planning and Assessment Act 1979* and *Environmental Planning and Assessment Regulation 2000*, the 2005 Practice Notes and relevant Ministerial Directions. In order to clarify the requirements for councils, IPART's application form provides a checklist of the information needed for IPART to complete the review. This application form can be found on IPART's website (<http://www.ipart.nsw.gov.au>).

Councils should insert answers to the questions and/or details of where each piece of information can be found within the contributions plan or supporting information and must include the completed checklist with the submission.

4.2 How a council can submit a contributions plan for review.

Councils are to submit their contributions plans and relevant documentation (including a completed application) in electronic form and may provide a hard copy. Once received, IPART will place the contributions plan on IPART's website.

Submissions are to be made to:

Local Government Team

IPART

PO Box Q290

QVB Post Office 1230

Electronic copies may be sent to: localgovernment@ipart.nsw.gov.au

5 Appendices

Appendix A – Examples of detailed consideration for assessment criteria

1. The public amenities and public services in the plan are on the essential works list as identified within this practice note (section 3.4.2).
2. There is nexus between the development in the area to which the plan applies (the development area) and the kinds of public amenities and public services identified in the plan.
 - What are the types of public amenities and services for which the proposed development will create demand?
 - On what basis have the estimates of demand for the public amenities and public services been established? Is there a needs assessment?
 - Has the council assessed the implications of the expected types of development catered for by the contributions plan on the demographic structure of the development area?
 - Is there a clear and acceptable methodology for estimating population change arising from the expected types of development?
 - Is the information on demand both reliable and up-to-date?
 - Can the new demand be accommodated, in whole or in part, within existing public amenities and public services?
 - Are the public amenities and public services appropriately located for the expected types of development in the area to which the plan applies?
 - If the expected development did not occur, would the public amenities and public services still be required?
3. The proposed development contribution is based on a reasonable estimate of the cost of the proposed public amenities and public services.
 - How were the plan and cost estimates for the land and works prepared?
 - Are the costs up-to-date?
 - Do the cost estimates include all of the costs required to bring the public amenities and public services on the essential works list into operation (e.g., land, capital, fitout, design and project management costs)?
 - Have relevant professionals (e.g., quantity surveyors, chartered surveyors, land valuers) been engaged to provide an independent assessment of the costs of providing the public amenities and public services?
 - How has the council taken Consumer Price Index (CPI) into account?
 - Are the assumptions and calculations robust?
 - Has an Net Present Value (NPV) methodology been utilised? If so, has an appropriate discount rate been used?
 - Does the plan seek to recoup funds?
4. The proposed public amenities and public services can be provided within a reasonable timeframe.
 - Is the timeframe (year or threshold) for provision relevant for the specific kinds of public amenities and public services?
 - Will the public amenities and public services be provided at a time when those demanding the infrastructure require it?

- Does the plan provide for pooling of funds?
- 5. The proposed development contribution is based on a reasonable apportionment of costs.
 - Are the public amenities and public services only required to meet the need of the new development or will it also serve the existing community?
 - How is the existing community accounted for in the apportionment of costs?
 - How are costs apportioned between different types of land use (e.g., residential, industrial and commercial land uses)?
- 6. The council has conducted appropriate community liaison and publicity in preparing the contributions plan.
- 7. The plan complies with other matters IPART considers relevant.
 - When did the contributions plan come into effect? When was the plan last reviewed? When was the plan last amended without the need to review the plan?
 - What is the relationship with Local Environmental Plans (LEP) and Development Control Plans (DCP), and is there any programmed review of these instruments that may affect the underlying assumptions within the plan?
 - Does the plan comply with any other matter IPART considers relevant?