



Planning

Local Development Contributions Practice Note

For the assessment of Local Contributions Plans by IPART | November 2010

Acknowledgements

This Practice Note has been prepared by the Department of Planning 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

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Contents

1	Introduction	1
1.1	Purpose of this practice note	1
2	Context.....	2
2.1	Key principles underlying local development contributions	2
2.2	Ministerial direction under section 94E of the EP&A Act.....	3
2.3	IPART's role in relation to contributions plans.....	4
3	Contribution Plan Assessment.....	5
3.1	Contributions plans that require assessment by IPART	5
3.2	When will contributions plans be assessed by IPART.....	5
3.3	How will IPART consider contributions plans?	5
3.4	Assessment criteria.....	6
4	Submission requirements.....	8
4.1	What additional information will IPART need?	8
4.2	How a council can submit a contributions plan for review.....	8
5	Appendices	9

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.

The NSW Government has announced, as part of a comprehensive strategy to improve housing supply across NSW, a revised approach to setting local development contributions and local council rates, including:

- a cap of \$30,000 per dwelling or per 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
- an essential works list that will apply when councils are seeking priority infrastructure funding or a special rate variation
- the establishment of a \$50 million Priority Infrastructure Fund as a two-year arrangement to assist those councils to which the cap applies

The changes aim to increase housing supply by lowering development contributions for infrastructure to stimulate housing construction.

Under this new regime, the Independent Pricing and Regulatory Tribunal (IPART) will be involved for the first time in the implementation of the development contributions system. This is intended to bring greater transparency and accountability to the system.

1.1 Purpose of this practice note

The purpose of this Practice Note is to assist councils in understanding the new framework for development contributions in NSW and the role of IPART in 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 the submission of contributions plans to IPART.

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

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

The *Local Development Contributions Practice Note for the assessment of contributions plans by IPART* outlines how and against which criteria IPART will assess contributions plans.

2 Context

2.1 Key principles underlying local development contributions

Under the provisions of section 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 key principles underlying the local development contributions system. Further detailed information is provided in the 2005 Practice Notes found at www.planning.nsw.gov.au.

2.1.1 General requirements

- If councils wish to seek a contribution under section 94 they are required under section 94B of the EP&A Act to prepare 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.
- Section 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 section 94 and section 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). What are public amenities and public services is not defined. Public amenities and public services are however expressly defined to not include water supply or sewerage services (s 93C of the EP&A Act).
- Generally, contributions can only be sought for:
 - Capital costs, including land acquisition costs
 - Public facilities that a council reasonably has to provide
 - 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 Reasonableness and Accountability

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 share borne by the future development. The concept of apportionment is based on ensuring that developers are only paying for the portion of demand that results from their development.
- **Accountability** relates to both public and financial accountability.
 - Accountability is a basic requirement of section 94. Public accountability may be sought through open decision making, maintenance of appropriate financial records and community involvement, while financial accountability may be sought through the works schedule to the contributions plan, annual reports and a contributions register.
 - A key issue with accountability in relation to reasonableness relates to the completion of the works program within the contributions plan and that the infrastructure is provided within a timeframe that meets the need of the development.

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

A Direction has been issued by the Minister for Planning under section 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 section 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 \$20,000 000 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 section 94E and relevant Planning Circular is available at www.planning.nsw.gov.au.

It is important to note that the section 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.

2.3 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 increased significantly.

On 4 June 2010, the NSW Government announced that IPART will be involved for the first time in the implementation of the development contributions system.

2.3.2 The role of IPART in contributions plans

IPART's role will include reviewing:

- new contributions plans which propose a contribution level above the relevant cap prior to public exhibition;
- development contributions plans which propose a contribution level above the relevant cap for those councils that are seeking priority infrastructure funding (PIF);
- development contributions plans which propose a contribution level above the relevant cap for those councils that are seeking a special variation to general income (SV); and
- as otherwise determined by the Minister for Planning.

Specifically, IPART's review will consider whether:

- the contributions plan complies with the requirements of the *Environmental Planning and Assessment Regulation 2000*, the Department of Planning'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 3.3.2); 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 to councils in relation to the contributions plans.

Note that at this stage IPART will not be reviewing section 94A contributions plans.

3 Contribution Plan Assessment

3.1 Contributions plans that require assessment by IPART

The following contributions plans require review by IPART:

- new section 94 contributions plans which propose a contribution level above the relevant cap;
- existing development contributions plans which propose a contribution level above the relevant cap for those councils that are seeking priority infrastructure funding (PIF);
- existing development contributions plans which propose a contribution level above the relevant cap for those councils that are seeking a special variation to general income (SV); and
- as otherwise determined by the Minister for Planning.

3.2 When will contributions plans be assessed by IPART

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

- New section 94 contributions plans which require assessment are to be submitted for review prior to public exhibition.
- Existing development contributions plans which require assessment are to be submitted to IPART for review prior to the lodging of applications for PIF or SV.

Note: The application process for councils seeking priority infrastructure funding or a special rate variation will be subject to separate specific instructions.

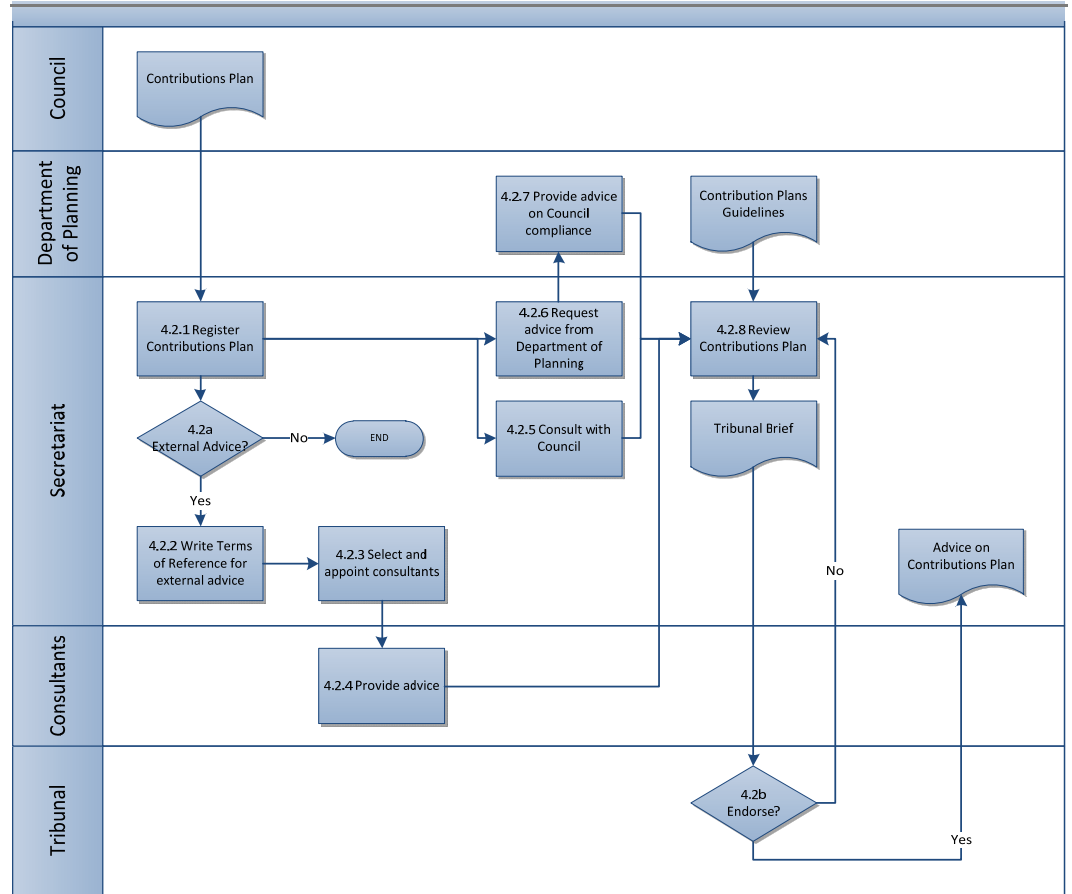
3.3 How will IPART consider contributions plans?

IPART will use the following process for assessing councils' contribution plans. This process is shown in Figure 1.

1. Councils submit contributions plans to IPART for review.
2. IPART will review the plans against the criteria listed below 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, 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 councils and the Minister for Planning with its advice. This advice will focus on:
 - a. Is the infrastructure that is included in the contributions plan consistent with the Essential Works List?
 - b. Are the costs assigned to the infrastructure reasonable?
 - c. Does the contributions plan comply with the requirements of the *Environmental Planning and Assessment Regulation 2000* and the Practice Notes?

- IPART will publish copies of the plan, the consultant’s report 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

The following criteria will be used in the assessment of contributions plans by IPART.

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

The following criteria are based on the above considerations. IPART will evaluate contributions plans against the following main criteria and advise whether:

- The public amenities and public services in the plan are on the “**Essential Works List**” as identified within this practice note (section 3.3.2)
- There is nexus between the development in the area to which the plan applies and the kinds of public amenities and public services identified in the plan
- 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
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.

Appendix A provides a more detailed list of questions that will be used to assess contributions plans against these 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 (defined in 3.4.2.1);
- land for community services (for example, childcare centres and libraries);
- land and facilities for transport (for example, road works, traffic management and pedestrian and cyclist facilities), not including carparking;
- land and facilities for stormwater management.

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).

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 recreation. This may include:

- site regrading
- utilities servicing
- basic landscaping (turfing, planting, paths)
- drainage
- basic park structures and equipment (park furniture, toilet facilities and play equipment)

but does not include structures and equipment such as lighting, shade structures and the like.

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 2005 Practice Notes and relevant Ministerial Directions.

In order to clarify the requirements for councils, **Appendix B** provides a checklist of the information needed for IPART to complete the review.

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 checklist) in hard copy and in electronic form. Once received, IPART will place the contributions plan, or a link to the contributions plan on council's website, 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 3.3.2)
2. There is nexus between the development in the area to which the plan applies and the kinds of public amenities and public services identified in the plan.
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 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 into operation (eg, land, capital, fit out, borrowing, design and project management costs)?
 - Have relevant professionals (eg, 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 CPI into account? Are the assumptions and calculations robust?
 - Has an NPV methodology been utilised? If so, has an appropriate discount rate been used?
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 that those demanding the infrastructure require it?
 - Does the plan seek to recoup funds?
 - Does the plan provide for pooling of funds?
5. The proposed development contribution is based on a reasonable apportionment between existing demand and new demand for the public amenities and public services
 - What are the kinds of public amenities and public services for which the proposed development will create demand?
 - Are the public amenities and public services located in appropriate locations for the expected types of development in the area to which the plan applies?
 - Are the estimates of population change arising from the expected types of development realistic?
 - Has the council assessed the implications of the expected types of development catered for by the contributions plan on the demographic structure?
 - On what basis have the estimates of demand for kinds of public amenities and public services been established?
 - Have infrastructure demand or needs assessments been prepared to support the conclusions about demand for the kinds of public amenities and public services identified in the plan?
 - Is the information on demand both reliable and up to date?
 - 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?
 - Can the new demand be accommodated, in whole or in part, within existing public amenities and public services?

- How is the existing community accounted for in the apportionment of costs?
 - If the expected development did not occur, would the public amenities and public services still be required?
 - On what basis have the estimates of demand for public infrastructure been established?
 - Is the information on demand both reliable and up to date?
6. Where the plan is an existing plan, 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 which may affect the underlying assumptions within the plan?
 - Does the plan comply with any other matter IPART considers relevant?

Appendix B - Checklist

1.	How long does the plan operate over?	
2.	Does the submission include brief information about when the plan was last reviewed?	
3.	What land does the plan apply to?	
4.	Does the plan incorporate a map or plan showing the land to which the plan applies?	
5.	What is the relationship with local environmental plans (LEP) and development control plans (DCP), and is there any programmed review of these instruments which may affect the underlying assumptions within the plan?	
6.	How long has the relevant contributions plan been in place and how much development has yet to occur under that plan?	
7.	Does the plan include a statement regarding land acquisition? Including size, cost and quality.	
8.	Is a complete list of infrastructure included in the plan?	
9.	Does the plan include a statement regarding design and construction standards to be used in the development and their justification?	
10.	Does the plan include full costs of each item of infrastructure, including timings of expenditure?	
11.	Does the plan include a statement about how costs have been derived (e.g. Quantity Surveyor, standard costs)?	
12.	How has the land been valued? How recently was the land valued? How is the land value being indexed?	
13.	Has the council obtained and accounted for grant funding?	
14.	What is the balance of current plan funds?	
15.	How is council funding its share due to apportionment?	
16.	Does the submission demonstrate that council has shown consistent and appropriate expenditure patterns?	
17.	Does the submission identify any existing commitments (e.g. contracts) for expenditure?	
18.	Does the plan identify and substantiate any recoupment included in the plan?	
19.	Does the plan provide details of accounting processes for s94 funds – e.g. does council 'pool' funds from other s94 accounts or use internal borrowings to deliver infrastructure projects)?	
20.	What is the program for infrastructure delivery?	
21.	Is the plan using an NPV methodology?	
22.	Does the plan provide details of NPV calculations used for costs and contributions receipts?	
23.	How will the council deal with cost fluctuations and indexing?	

24.	Does the plan include details of demand calculations for proposed infrastructure?	
25.	Is the demand and nexus based on studies and recognised information such as infrastructure studies, census data, flood modelling?	
26.	How has existing infrastructure and surplus capacity been taken into account?	
27.	Does the plan include details of apportionment calculations?	
28.	Does the submission include details of community liaison undertaken?	

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