

1 Infrastructure contributions

1.1 What are infrastructure contributions?

Infrastructure contributions are made by developers to help deliver the infrastructure needed as communities grow. They are a key source of funding to help councils and the NSW Government deliver State, regional and local infrastructure such as roads, stormwater drainage, footpaths, cycleways, public space, social and community infrastructure.

Infrastructure contributions can be made in the form of monetary contributions, land dedications and as works-in-kind. They operate under the *Environmental Planning and Assessment Act 1979* (EP&A Act) and include:

- Planning agreements.
- Section 7.11 (s7.11) local infrastructure contributions.
- Section 7.12 (s7.12) local infrastructure contributions.
- Special infrastructure contributions.
- Affordable housing contributions.

2 NSW Productivity Commission's infrastructure contributions review

2.1 What is the contributions review?

The NSW Productivity Commission has been asked to undertake a review examining the funding of infrastructure in NSW, this includes looking at how the infrastructure contributions system can be improved.

The terms of reference and further information about the review will be made available on the NSW Productivity Commission's website at www.productivity.nsw.gov.au

3 System improvements

3.1 What is the infrastructure contributions reform package?

While the Productivity Commission is conducting its review, the Department has identified opportunities to improve how the current infrastructure contributions system works. We have developed a package of proposals focusing on increasing certainty, transparency and efficiency of the system. The exhibition package includes:

1. Draft planning agreements policy framework - practice note.
2. Improving the review of local infrastructure contributions plans - discussion paper.
3. Criteria to request a higher s7.12 percentage - discussion paper.
4. Draft special infrastructure contributions (SIC) guidelines.
5. Proposed amendments to the *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation) - policy paper and draft instrument.

These proposals are part of an ongoing conversation about infrastructure contributions reform.

3.2 Why is the Government proposing improvements to the infrastructure contributions system?

The proposed changes:

- Respond to issues raised by local government and industry stakeholders.
- Implement recommendations from recent governance reviews of the NSW planning system.
- Promote understanding of and trust in the infrastructure contributions system.

4 Draft planning agreements policy framework

4.1 What is a planning agreement?

Planning agreements are negotiated between planning authorities and developers to deliver innovative infrastructure solutions, such community facilities, open space or public infrastructure. They are legally binding documents that set out how and when infrastructure will be provided. They are associated with either a rezoning of land or a development application.

4.2 What changes are being proposed?

The Department is exhibiting a draft Secretary's Practice Note and providing policy guidance related to negotiating planning agreements.

The practice note was last exhibited in early 2017. A second round of consultation is being undertaken as the framework has undergone extensive review. The updated draft includes a stronger emphasis on the importance of strategic land use and infrastructure planning, clearer guidance on value capture, and revised requirements for explanatory notes along with an updated explanatory note template.

4.3 Why are we proposing these changes?

The Department is working towards a more transparent and strategic planning agreement framework. The draft policy framework aims to improve the negotiation and execution of planning agreements and encourage strategic planning to ensure that development is supported by the required infrastructure to meet the needs of growing communities. The changes aim to make the use of planning agreements more transparent and increase accountability.

5 Improving the review of s7.11 infrastructure contributions plans

5.1 What are s7.11 contributions?

Section 7.11 of the EP&A Act allows councils to collect contributions towards the cost of providing local infrastructure, for example local roads, drainage, open space and community facilities. To levy these contributions councils must have a contributions plan that identifies the infrastructure needed to support new development, how much it costs and how costs will be shared.

5.2 What is the review process of local infrastructure contributions plans?

Councils that propose to levy s7.11 local infrastructure contributions above thresholds set out in the *Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2012* are required to have their plans assessed through an independent review process. The Independent Pricing and Regulatory Tribunal (IPART) reviews these plans to ensure they reflect the reasonable costs of providing necessary local infrastructure to support development.

5.3 What changes are being proposed?

The proposed system improvements to the review process for higher rate s7.11 contributions plans are intended to collectively make the contributions plan review process more efficient by:

- Increasing the value thresholds that trigger the review to reflect rising costs and to keep up with inflation.
- Reviewing the terms of reference.
- Removing existing exemptions to the review process.
- Streamlining the exhibition process of plans that require review.

To support these reforms, the Minister has recently appointed a nominee to administer his functions under the EP&A Act, shortening the time required to provide advice to councils.

5.4 Why are we proposing these changes?

The proposals will collectively ensure that the contributions plan review process remains efficient. They will make sure the right s7.11 contributions plans are reviewed and reduce the time required to complete the process while ensuring transparency and accountability.

6 Criteria to request a higher s7.12 percentage

6.1 What are s7.12 contributions?

Section 7.12 fixed development consent levies are one of the mechanisms available to local councils under the EP&A Act to fund local infrastructure. They operate as 'flat rate levies', meaning they are charged as a percentage of the proposed development cost. They are an alternative to s7.11 development contributions and are generally used in rural, infill and mixed-use areas.

6.2 What are the maximum percentages council can levy in a s7.12 contributions plan?

The standard maximum percentage for s7.12 contributions is 1% as defined in clause 25K of the EP&A Regulation. However, councils can request a higher maximum percentage levy for specific parts of their local government, subject to assessment and recommendation by the Department.

6.3 What changes are being proposed?

The Department is proposing to adopt consistent criteria and principles to assist with the assessment and determination of requests to increase the maximum percentage of levies in specific areas from 1% to either 2% or 3%. The discussion paper includes several proposed criteria for discussion.

6.4 Why are we proposing these changes?

The Department is committed to ensuring the process of assessing requests to increase the maximum percentage levy for s7.12 contributions is efficient and transparent.

The use of criteria will provide certainty, transparency and consistency in the Department's decision-making in response to submissions seeking to increase the maximum percentage s7.12 levy in specific areas. They will also support councils in understanding when it may be appropriate to request a higher maximum percentage levy and assist them in preparing requests.

7 Draft special infrastructure contributions guidelines

7.1 What are special infrastructure contributions, or SICs?

Special infrastructure contributions are paid by developers to help fund key elements of state and regional infrastructure in growing areas of Greater Sydney and regional NSW. They operate under Division 7.1 Subdivision 4 of the EP&A Act and are one of the tools the State government uses to ensure that new communities and employment areas are supported with the right infrastructure at the right time.

7.2 What changes are being proposed?

The draft guidelines provide guidance on the purpose and function of special infrastructure contributions. The guidelines give greater clarity about the:

- Purpose and objectives of the special infrastructure contributions framework applying to the current contributions (particularly on how to manage the expenditure) and the development and implementation of new or proposed contributions.
- Key principles guiding the State government in implementing and administering the framework.
- Method for determining a new special infrastructure contribution.
- Process for allocating the revenue collected to infrastructure projects.

7.3 Why are we proposing these changes?

The proposed guidelines reflect a stronger and more transparent place-based, collaborative and integrated approach to the operation of special infrastructure contributions.

8 Proposed amendments to the EP&A Regulation

8.1 What changes are proposed?

The EP&A Regulation contains key operational provisions for the NSW planning system, including those related to infrastructure contributions and the preparation of contributions plans. The Department is proposing changes to the EP&A Regulation relating to:

- Reporting on contributions received through contributions plans and planning agreements.
- Online publication of reports and information related to infrastructure contributions by councils and planning authorities.

- The making of contributions plans requiring IPART review.
- Administrative amendments related to s7.12 fixed levies in Gosford and Wollongong City Centres.
- Requirements for planning agreement explanatory notes.

8.2 Why are we proposing these changes?

The changes aim to:

- Improve transparency and accountability in how contributions are received and used via contributions plans and planning agreements.
- Streamline existing processes.
- Implement recommendations from recent governance reviews of the NSW planning system.

8.3 What will the changes to reporting and publishing of contributions information mean for councils and planning authorities?

The proposed changes clarify what information needs to be published by councils and planning authorities on contributions received through contributions plans and planning agreements in annual statements and financial reports. They will:

- Provide more details on contributions received and how they are used or expended for all contribution types (monetary, works in kind and land).
- Draw on information planning authorities and councils already collect and hold in their financial management systems.
- Modernise and improve public access to this information by requiring online publication.

8.4 How will the changes to the Regulation affect exhibition requirements for draft contributions plans?

The proposed amendment applies only to exhibition requirements for draft contribution plans requiring IPART review. It is proposed to retain the first 28-day council exhibition requirement as well as IPART's own consultation on their draft findings and recommendation report, but to remove the 28-day council re-exhibition requirement following IPART review.

This change does not reduce the community's ability to contribute to the IPART review process. The community is able to provide upfront input during council's exhibition of draft plan and during the exhibition of IPART's draft findings report and recommendations. The change is aimed at reducing plan-making timeframes.

8.5 What changes are proposed to clause 25K of the Regulation?

For Gosford City Centre the amendment to cl25k will achieve consistency between the intended fixed levy amount specified in the Gosford City Centre SIC and that permitted under the EP&A Regulation.

For Wollongong City Centre the amendment to cl25k will update references to the Wollongong City Centre Local Environmental Plan (LEP) needed to reflect changes to the Wollongong City Centre boundary in the 2009 LEP.

8.6 When will the proposed changes to contributions reporting come into effect?

Changes to contributions reporting are proposed to be effective from the 2021/22 financial year. This will allow time for administrative arrangements to be put into place by councils and planning authorities, and for alignment with the current financial reporting requirements.

Other changes are proposed to commence when the amendment is made.

9 Exhibition details

9.1 How can I make a submission?

The package of proposals is on exhibition until **Friday 12 June 2020**. Further information on the proposals and on how to make a submission is available at the Department's website planning.nsw.gov.au/infrastructure-contribution-reforms

9.2 What happens next?

At the end of the exhibition period the Department will review and consider all submissions on the proposed changes. The Department will publish a submission report summarising the input received and describing how submissions were considered.