

Department of Planning,
Industry and Environment

NSW infrastructure contributions

Guide

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Title: NSW infrastructure contributions

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Contents

1. Introduction	4
1.1 Purpose	4
1.2 Structure	4
2. Overview of the NSW infrastructure contributions system	5
2.1 What are infrastructure contributions?	5
2.2 What are infrastructure contributions used for?	5
2.3 How are infrastructure contributions collected?	6
2.4 How are local infrastructure contributions made?	7
2.5 Do all developments pay contributions?	7
3. Roles and responsibilities	7
3.1 Councils	7
3.2 Independent Pricing and Regulatory Tribunal	7
3.3 Department of Planning, Industry and Environment	8
4. Legislation, mechanisms and policy tools	8
4.1 Legislation	8
4.1.1 Environmental Planning and Assessment Act 1979 (EP&A Act)	8
4.1.2 Environmental Planning and Assessment Regulation 2000	9
4.2 Infrastructure contributions mechanisms	9
4.2.1 Section 7.11 local infrastructure contributions (formerly s94)	9
4.2.2 Section 7.12 local infrastructure contributions (formerly s94A)	10
4.2.3 Special infrastructure contributions	10
4.2.4 Planning agreements	11
4.3 Ministerial directions	11
4.4 Practice notes	12
4.5 Where you can find out about policy updates	12

1. Introduction

1.1 Purpose

This guide is designed to give you a better understanding of how the New South Wales (NSW) infrastructure contributions system works. It focuses on the funding mechanisms under Division 7.1 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

The guide provides an overview of the key aspects of the system and links the reader to more detailed information online. It is useful to anyone interested in how infrastructure is planned, funded and delivered.¹

1.2 Structure

This guide is in three parts:

1. **Overview of the NSW infrastructure contributions system** — an overview of the purpose and operation of the NSW infrastructure contributions system and the main types of infrastructure it funds.
2. **Roles and responsibilities** — an overview of the main agencies involved in the infrastructure contributions system, their roles and responsibilities.
3. **Legislation, mechanisms and policy tools** — descriptions of the main mechanisms that make up the infrastructure contributions system and the key policy tools that guide the operation of the system.

Terminology

Infrastructure contributions, development contributions and developer charges generally have the same meaning. In this document we refer to them consistently as infrastructure contributions.

¹ This guide does not have information about other infrastructure funding mechanisms, such as state government taxation, local government rates, grants or affordable housing contributions.

Note on Affordable housing contributions:

Affordable housing contributions are provided for in a separate division of the EP&A Act (Division 7.2). The Department of Planning, Industry and Environment has prepared a [guideline for developing an affordable housing contribution scheme](#), which details the process for councils to impose contributions for affordable housing.



2. Overview of the NSW infrastructure contributions system

2.1 What are infrastructure contributions?

Infrastructure contributions are payments made by developers that help deliver infrastructure needed to support their developments. They are a key source of funding for councils and the NSW Government to deliver local, regional and state infrastructure to support our communities.

2.2 What are infrastructure contributions used for?

Infrastructure contributions help fund the infrastructure that enables new development, supporting new residents and workers. Infrastructure supports homes and jobs, improves productivity and public health and strengthens new and existing communities.

As illustrated in Diagram 1, infrastructure funded through the NSW infrastructure contributions system includes state and local infrastructure, such as roads, transport infrastructure, stormwater and drainage systems, open space, sports and recreation facilities, biodiversity and environmental conservation areas and other community services.

Figure 1: Types of infrastructure funded through the NSW infrastructure contributions system



There are two types of infrastructure funded by contributions:

- local infrastructure
- state and regional infrastructure.

The table below shows the funding differences between the two types of infrastructure and shows the relationship between the different infrastructure contributions mechanisms and the section of the EP&A Act that describes how they work.

Table 1: Relationships between the EP&A Act and types of infrastructure funded through the infrastructure contributions system

Type of contribution	Collected under	Collected by	Purpose of the contribution
Contributions for local infrastructure based on scale of the development	EP&A Act Section 7.11	Councils	Fund local infrastructure to enable development
Contributions for local infrastructure based on development costs	EP&A Act Section 7.12	Councils	Fund local infrastructure to enable development
Contributions negotiated between a planning authority and a developer	EP&A Act Section 7.4	State Government and Councils	Fund innovative infrastructure solutions not funded by the other mechanisms
Contributions for state and regional infrastructure	EP&A Act Section 7.23	State Government	Fund state and regional infrastructure

2.3 How are infrastructure contributions collected?

Consent and planning authorities collect infrastructure contributions from developers using one of the options available to them under the EP&A Act:

- section 7.11 local infrastructure contributions
- section 7.12 local infrastructure contributions
- special infrastructure contributions
- planning agreements.

Local infrastructure contributions are levied by consent authorities (generally local councils) in accordance with local infrastructure contributions plans, while special infrastructure contributions are required by the State government through determinations and directions made by the Minister. Planning agreements are alternative mechanisms available for funding or delivering state and local infrastructure.

2.4 How are local infrastructure contributions made?

Local infrastructure contributions (s7.11 and s7.12) are levied through conditions of development consent. The planning system allows for local infrastructure contributions to be made as:

- money paid by developers and used for the costs of buying land or providing infrastructure, and/or
- land dedicated free of cost by developers for the provision of infrastructure.

In some cases, works in kind can be accepted instead of money or land contributions. Works in kind are works that are undertaken by the developer and transferred to the government or council on completion, for example a road or a park. Works in kind can be accepted for works identified in the schedule of works (a list of the infrastructure items) in the relevant infrastructure contributions plan.

2.5 Do all developments pay contributions?

Some types of development are not required to make infrastructure contributions. These include developments that do not need consent — known as exempt development, which you can read about [on our website](#) — and developments that are exempted through a policy document or contributions plan.

Developments can be exempted from paying contributions for a variety of strategic, economic or social purposes. Local councils decide on exemptions for their individual local contribution plans. Some exemptions are made by the Minister through [ministerial directions](#). Certain types of Crown developments are also exempted through [Circular D6](#). These include educational services, law and order services, health services and some types of housing.

3. Roles and responsibilities

Multiple parties interact with the infrastructure contributions system, including State government agencies, councils, developers, property owners, community groups and interested individuals.

The following three organisations have responsibility over key steps in the infrastructure contributions process.

3.1 Councils

Councils develop and adopt local contribution plans (s7.11 or s7.12 of the EP&A Act), negotiate planning agreements and collect infrastructure levies as part of the development assessment process. They also build the local infrastructure that infrastructure levies go towards.

Information on individual local contribution plans can be found on each council's website. A list of in-force, superseded and repealed contribution plans can also be found on the [NSW Planning Portal](#).

3.2 Independent Pricing and Regulatory Tribunal

The Independent Pricing and Regulatory Tribunal (IPART) plays a key role in reviewing and approving contribution plans that propose a rate per dwelling above the relevant contributions thresholds as set out in Ministerial Directions under the EP&A Act. IPART reviews contribution plans against the criteria outlined in the [Secretary's Practice Note: Local Infrastructure Contributions - January 2019](#).

3.3 Department of Planning, Industry and Environment

The Department is responsible for advising the Minister on setting state-wide policy for infrastructure contributions. The Department also collects special infrastructure contributions to fund state and regional infrastructure.

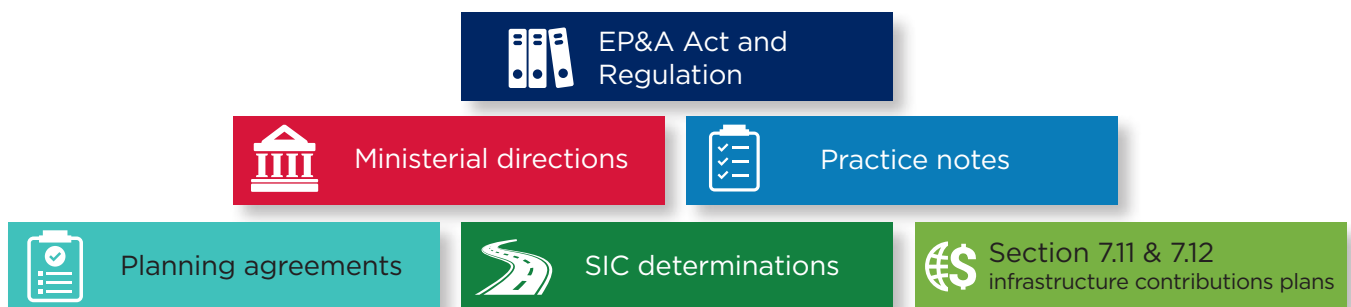
The Department reviews the IPART's Tribunal's recommendations on contribution plans, forwarding these to the Minister or Minister's nominee for their review. Following a review, the advice is provided to the council on what changes should be made to the plan.

4. Legislation, mechanisms and policy tools

The key mechanisms and tools that make up the infrastructure contributions system can be categorised as follows:

- **Legislation:** the statutory framework underpinning the infrastructure contributions system, including:
 - the *Environmental Planning and Assessment Act 1979* (EP&A Act)
 - *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation).
- **Ministerial directions and practice notes:** documents that guide and direct how consent authorities should collect infrastructure contributions, prepare development contribution plans and enter into planning agreements.
- **Infrastructure contributions mechanisms:** the delivery mechanisms by which consent authorities – such as councils, local planning panels and the Minister – require the payment of infrastructure contributions

Figure 2: Overview of instruments that make up the infrastructure contributions system



4.1 Legislation

4.1.1 Environmental Planning and Assessment Act 1979 (EP&A Act)

[Division 7.1 of part 7](#) of the EP&A Act establishes the legal framework for infrastructure contributions. Key provisions include:

- [Subdivision 2](#) – planning agreements
- [Subdivision 3](#) – local infrastructure contributions, including s7.11 and s7.12 contributions
- [Subdivision 4](#) – special infrastructure contributions.

4.1.2 Environmental Planning and Assessment Regulation 2000

[Part 4](#) of the EP&A Regulation provides details on day-to-day processes for a range of infrastructure contributions matters, including:

- [Division 1A](#) (planning agreements) sets out the form and subject matter of planning agreements and the process for making them, including how to give public notice and facilitate public inspection.
- [Division 1B](#) (development consent contributions) sets out how to index the costs of s7.11 contributions, how to determine the proposed cost of development for s7.12 levies and the maximum percentages that can be charged as part of a s7.12 levy.

Other key divisions of Part 4 of the EP&A Regulation include rules for the preparation of contributions plans ([Division 1C](#)), public participation requirements ([Division 2](#)), approval of plans ([Division 3](#)), amendment and repeal of contributions plans ([Division 4](#)), accounting requirements for contributions and levies ([Division 5](#)) and public access to contributions plans ([Division 6](#)).

4.2 Infrastructure contributions mechanisms

4.2.1 Section 7.11 local infrastructure contributions (formerly s94)

[A section 7.11 contribution](#) is a contribution (either monetary or in the form of land) for the provision or extension of infrastructure where development creates the need for that infrastructure. It is determined by the increased demand for infrastructure the development has created (that is, where there is a **nexus** between the development and the infrastructure) and the share of the total demand that the developer must pay (called **apportionment**). Once this demand has been established, the developer must pay for a certain portion.

Councils can only charge s7.11 contributions if they have prepared and adopted a contributions plan for an area. The plan outlines how much they are going to collect and what they will spend it on, in this way contributions can only be spent on the purpose for which they were collected.

Terminology

Two concepts determine the amount paid by developers under a s7.11 plan:

Nexus is the relationship between the expected types of development in the area and the demand for additional public facilities to meet that demand.

Apportionment ensures that new development only pays for the proportion of the demand that it generates.

IPART review thresholds

If a council wishes to charge a contribution rate above the review thresholds outlined in the Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2012, the Independent Pricing and Regulatory Tribunal (IPART) must review the plan (refer to Section 4 – Roles and responsibilities). Currently the thresholds are \$20,000 per lot/dwelling and \$30,000 per lot/dwelling in identified urban release/greenfield areas. More information on the IPART review threshold can be found on our [website](#).

A development cannot be subject to contributions under both a section 7.11 contributions plan and a section 7.12 plan.

Where to find more information on s7.11 contributions

Refer to pages 13–54 of the [Development contributions practice notes – July 2005](#).

For a diagram showing the detailed process of making a infrastructure contributions plan, refer to the [Secretary’s Practice Note: Local Infrastructure Contributions – January 2019](#).

Local s7.11 contribution plans are on individual councils’ websites.

A list of some current s7.11 contribution plans from councils are on the [NSW Planning Portal](#).

4.2.2 Section 7.12 local infrastructure contributions (formerly s94A)

Section 7.12 contributions are a percentage levy based on the cost of development. This is usually not more than 1% of the cost but it can be higher in certain circumstances. They are an **alternative** to s7.11 contributions and are usually used when it is difficult to determine nexus and apportionment (see terminology box above).

Section 7.12 contributions are largely applied in regional areas and established areas where future development is difficult to predict. They are also useful in areas with high levels of mixed-use and non-residential uses, such as town centres.

Councils can choose to have a s7.11 or a s7.12 infrastructure contributions plan or both, but only one can apply to a specific development. Like s7.11 contributions, s7.12 contributions are applied through a condition of development consent.

Where to find more information on s7.12 contributions

Refer to the [Section 7.12 Fixed Development Levies Practice Note](#)

Local s7.12 contribution plans can be found on individual councils’ websites.

A list of councils’ current s7.12 contribution plans are on the [NSW Planning Portal](#).

4.2.3 Special infrastructure contributions

Special infrastructure contributions are covered under sections [7.23](#), [7.24](#) and [7.25](#) of the EP&A Act. They help fund the delivery of state and regional infrastructure, such as hospitals, schools, state and regional roads, public transport infrastructure, cycling paths, emergency services, biodiversity management and open space improvements.

Special infrastructure contributions are paid **in addition to** local infrastructure contributions for specific areas where a special infrastructure contributions determination applies. The scheme for special infrastructure contributions is administered by the NSW Government.

The Minister determines the amounts payable as special infrastructure contributions. The Minister’s determinations are published in the Government Gazette, as well as being available on the Department’s website.

Where to find more information on special infrastructure contributions

For more information on special infrastructure contributions and current special infrastructure contributions determinations, visit the department’s [website](#).

4.2.4 Planning agreements

[Planning agreements](#) are described in section 7.4 of the EP&A Act and can be entered into **in addition or as an alternative** to s7.11 and s7.12 contributions. They are negotiated and agreed between a planning authority —such as a council or the Minister — and a developer and they operate as a contract with obligations imposed on the developer.

Planning agreements can provide greater flexibility to address the infrastructure needs of proposed development. They need to relate to either a development application or a change of zoning or planning controls (known as planning proposals).

Planning agreements could replace part or all of the payment of local infrastructure contributions or special infrastructure contributions. At a state level, planning agreements are entered into generally to fulfill satisfactory arrangements clauses in a Local Environmental Plan (LEP) or in the *State Environmental Planning Policy (Western Sydney Employment Area) 2009*.

Satisfactory Arrangements

Some Local Environmental Plans (LEPs) and State Environmental Planning Policies (SEPPs), prevent consent authorities from determining a development application unless satisfactory arrangements have been made to contribute to designated State public infrastructure.

A planning agreement may be entered into to meet satisfactory arrangements requirements for certain development such as subdivision in Urban Release Areas, metro infill areas or under the *State Environmental Planning Policy (Western Sydney Employment Area) 2009*. The consent authority (generally local councils) is required under the relevant instrument to obtain a Satisfactory Arrangement Certificate from the Department prior to consent being granted.

If the Developer has a special infrastructure contributions item located on or adjoining the development site, then the developer may elect to do the work via a works-in-kind agreement.

Where to find more information on planning agreements

[Refer to the Planning Agreements Practice Note.](#)

Specific planning agreements can be requested from individual local councils.

You can find state planning agreements — those that relate to state significant development or state significant infrastructure — on the [NSW Planning Portal](#).

4.3 Ministerial directions

Ministerial directions give consent authorities instructions around the processes and contents of contributions plans and planning agreements. The Minister issues directions that are legally binding and, once a direction is issued the relevant consent authorities must comply with it.

Table 2: Descriptions of types of ministerial direction

Type	Description
Ministerial directions for local infrastructure contributions	Contributions can be imposed only if they meet the requirements of Ministerial directions under section 7.17 (for example, do not exceed the amounts set out in those directions). Infrastructure contributions plans must be consistent with those Ministerial directions also. In addition, the Minister can give a direction to a council to approve, amend or repeal a contributions plan under section 7.19. Section 7.17 directions can be accessed on the department's website .
Ministerial directions for special infrastructure contributions	Section 7.24 of the EP&A Act authorises the Minister to direct a consent authority to impose a condition in accordance with a determination of special infrastructure contributions for a special contributions area. Current directions for special infrastructure contributions can be found on the department's website .
Ministerial directions for planning agreements	The Minister may issue directions under section 7.9 of the EP&A Act relating to planning agreements . Currently there is only one Ministerial direction for planning agreements in force, and it can be accessed on the department's website .

4.4 Practice notes

Practice notes help councils, applicants and the community understand the NSW infrastructure contributions system. They give detailed guidance and establish parameters around planning agreements and infrastructure contribution plans (for the purposes of s7.11 and s7.12 of the EP&A Act).

Consent authorities are required to consider relevant practice notes when preparing and administering infrastructure contributions. There are currently four sets of practice notes in place, which you can find [on the department's website](#):

- [Development contributions practice notes – July 2005](#) are a comprehensive set of guidelines on infrastructure contributions which assists planning authorities to prepare s7.11, s7.12 and planning agreements.
- [Secretary's Practice Note: Local Infrastructure Contributions – January 2019](#) relates specifically to the review of plans by the Independent Pricing and Regulatory Tribunal.
- [Planning agreements practice note](#) is made for the purpose of clause 25B of the EP&A Regulation to assist parties in the preparation of planning agreements.

- [Section 7.12 fixed development consent levies practice note](#) provides information on s7.12 contributions and guidance on maximum percentage levies.

Where to find more information on planning agreements

For more information on the practice notes, visit [the department's website](#).

4.5 Where you can find out about policy updates

Planning circulars are the key document used to inform stakeholders including local councils, certifiers and building industry practitioners about any changes to policy and operational instruments that relate to infrastructure contributions policy. They provide information about various planning policy matters, including new legislation, regulations, ministerial directions, practice notes and other tools.

All planning circulars can be found [on the department's website](#). Alternatively, contact the department on 1300 305 695.



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