



Planning &
Environment

Practice Note

*Local Infrastructure
Contributions
January 2019*

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Contents

Introduction	4
About this Practice Note	5
Purpose of this Practice Note	5
Legislative basis	5
How to use this Practice Note	6
Terminology	7
Part 1 - Legislative Framework	8
1.1 General Requirements	8
1.2 Ministerial Direction - section 7.17 of the EP&A Act	8
1.3 Requirements for an IPART reviewed contributions plan	10
Part 2 - Contributions Plan Assessment Process	11
2.1 Role of Local Councils	11
2.2 Role of IPART	12
2.3 Role of the Minister for Planning	12
Part 3 - Assessment criteria	14
3.1 What are the criteria that will be used by IPART to evaluate contributions plans?	14
3.2 Essential works list	14
Part 4 - Submission Requirements	17
4.1 What additional information will IPART need?	17
4.2 How a council can submit a contributions plan for review	17
Attachment A – Examples of detailed consideration for assessment criteria	18

Introduction

The New South Wales (NSW) local infrastructure contributions system helps provide new and growing communities with appropriate infrastructure. The *Environmental Planning and Assessment Act 1979* (EP&A Act) and the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) sets out how the local infrastructure contributions system works in NSW.

A user-pays philosophy underlies the funding of local or community infrastructure required to satisfy service demand generated by development activity. This requires developers to contribute to the reasonable cost and provision of local public facilities needed to support new development. Transparency and accountability measures in the collection and expenditure of contributions and the provision of public facilities help underpin confidence in the system.

The involvement of the Independent Pricing and Regulatory Tribunal (IPART) in the implementation of the local infrastructure contributions system continues to bring enhanced transparency and accountability to the system through an independent assessment of local infrastructure contributions plans.

In June 2017, the Premier announced the Housing Affordability Strategy for NSW. The strategy aims to facilitate the delivery of state and local infrastructure critical to enable housing supply. The adoption of the strategy has resulted in changes to the local infrastructure contributions framework which are outlined in this Practice Note.

Local Infrastructure Growth Scheme (LIGS) transition areas

As part of the Housing Affordability Strategy, the NSW Government has committed to \$369 million to the Local Infrastructure Growth Scheme (LIGS) to support the delivery of local infrastructure in high growth areas (known as LIGS transition areas). The LIGS helps support housing delivery by funding the gap between the amount councils can charge in accordance with contributions plans and the cost of infrastructure. The maximum caps in LIGS transition areas have been revised. New maximum caps are detailed in Table 1.

Contributions plans with contribution rates above these amounts must only include land and facilities on the essential works list. To be eligible to impose a contribution rate above the cap or claim LIGS funding, a Council must submit the contributions plan to IPART for assessment and implement any advice given by the Minister.

If a contributions plan for a LIGS transition area is not an IPART reviewed contributions plan then council will not be eligible for LIGS funding.

Other lands

For all lands (other than exempt land and LIGS transition areas), the following caps on contributions plan charges will apply:

- a capped amount of \$30,000 per dwelling or residential lot in greenfield areas
- a capped amount of \$20,000 per dwelling or per residential lot in infill areas.

Councils can only levy contributions above the cap if the contributions plan is an IPART reviewed contributions plan and council has implemented any advice given by the Minister. An essential works list will apply when councils are seeking local infrastructure contributions above these caps.

Exempt Land

Exempt land is not subject to the essential works list or the IPART review process.

About this Practice Note

Clause 26(1) of the EP&A Regulation requires contributions plans to be prepared having regard to any relevant Practice Notes adopted by the Secretary.

This Practice Note replaces the previous *Practice Note Local Infrastructure Contributions - January 2018*.

Purpose of this Practice Note

The purpose of this Practice Note is to provide guidance to IPART and to assist local councils to understand the role of IPART in the review of contributions plans.

This Practice Note provides guidance on the local infrastructure contributions plan assessment process by identifying:

- the contributions plans that should be submitted for review by IPART
- the assessment criteria against which contributions plans will be assessed by IPART
- the requirements for submission of contributions plans to IPART.

This Practice Note should be read in conjunction with:

- the Direction issued by the Minister for Planning which relates to the local infrastructure contributions assessment process (detailed below)
- the Department of Planning and Environment's *Development Contributions Practice Notes, July 2005* (2005 Practice Notes) which outline the requirements for local councils in preparing and administering their contributions plans.

Legislative basis

The Minister for Planning issued a Ministerial Direction in 2012 in relation to the maximum contribution amounts that could be charged as local infrastructure contributions. The 2017 Direction amended the *Environmental*

*Planning and Assessment (Local Infrastructure Contributions) Direction 2012*¹ (the Direction) to put in place new caps for contribution rates in LIGS transition areas and across the rest of NSW. The Direction does not apply to land identified in Schedule 1 (of the Direction) referred to in this Practice Note as exempt land. The exempt land is not subject to either the essential works list or the IPART review process.

The Direction sets out the maximum amounts that may be imposed via conditions of development consent as contributions under section 7.11 of the EP&A Act for certain residential development. However, the Direction allows a council to impose contributions that exceed the capped amounts where the relevant contributions plan is an IPART reviewed contributions plan.

How to use this Practice Note

This Practice Note is structured as follows:

Part 1 provides an outline of the legislative framework for local infrastructure contributions.

Part 2 provides an outline of the respective roles and functions of local councils, IPART and the Department of Planning and Environment in the contributions plan assessment process.

Part 3 provides details of the assessment criteria including the essential works list that IPART uses to assess contribution plans.

Part 4 provides details of submission requirements for contributions plans to IPART.

¹ The Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2012, has been amended by the Environmental Planning and Assessment (Local Infrastructure Contributions) Amendment Direction 2013, Environmental Planning and Assessment (Local Infrastructure Contributions) Amendment Direction 2016, and Environmental Planning and Assessment (Local Infrastructure Contributions) Amendment Direction 2017.

These directions, as well as a consolidated version for reference, are available on the Department of Planning and Environment's website

Secretary's Practice Note: Local Infrastructure Contributions | January 2019

Terminology

The following terminology is used to convey key concepts in relation to contributions plans:

- **development application** has the same meaning as in the EP&A Act.
- **development consent** has the same meaning as in the EP&A Act.
- **IPART reviewed contributions plan** is a reference to a contributions plan that satisfies all the items in clause 5(3) of the Direction.
- **LIGS transition areas** means the lands identified in clauses 6A, 6B, 6C and 6D of the Direction and are precincts in the Blacktown, The Hills, Wollongong, Liverpool, Camden and Bayside council areas.
- **local infrastructure contribution (or development contribution)** means the provision made by a developer under a contributions plan, being a monetary contribution, the dedication of land free of cost or the provision of a material public benefit to be used or applied towards a public purpose.
- **public benefit** is the benefit enjoyed by the public as a consequence of a development contribution.
- **public facilities** mean public infrastructure, amenities and services

Part 1 Legislative Framework

1.1 General Requirements

Under section 7.11 (s7.11) of the EP&A Act, councils can obtain local infrastructure contributions as a means of funding local infrastructure required as a result of new development. A summary of the general requirements for local infrastructure contributions is provided below:

- If councils wish to seek a contribution under s7.11 of the EP&A Act, they are required under s7.13 of the EP&A Act to prepare a contributions plan. The plan needs to establish a nexus or relationship between the expected types of development in the area and the demand for public amenities and services to meet development related infrastructure demand.
- Section 7.11 contributions are imposed by way of conditions of development consent. The requirement for a contribution is generally satisfied by paying a monetary contribution, dedicating land free of cost and works-in-kind, or all of the above as determined by the consent authority.
- For contributions plans proposing contribution rates above the relevant cap, the essential works list applies (see section 3.2 of this Practice Note) and for contributions plans with rates below the relevant cap, the essential works list does not apply.
- The contribution must be towards 'public amenities or services' (s7.11 of the EP&A Act). While public amenities and public services are not expressly defined, they do not include water supply or sewerage services (s7.1 of the EP&A Act).
- Contributions plans can require the payment of a monetary contribution towards the cost of providing the public amenities or public services (being the cost as indexed in accordance with the regulations) (s7.11(3) of the EP&A Act).

1.2 Ministerial Direction - section 7.17 of the EP&A Act

Review requirements for contributions plans

The Direction allows councils to submit any contributions plan² that proposes to charge a contribution rate above the amounts specified in the Direction to IPART for assessment (see Table 1).

² If council has an existing contributions plan that has been assessed by IPART and the plan is being amended as under Clause 32(3) of the EP&A Regulation, then the Direction does not require the council to resubmit the plan to IPART to continue to charge contributions in accordance with the IPART assessed plan.

For councils in LIGS transition areas (refer to Table 1), IPART must assess the contributions plan and the council must make any changes advised by the Minister before councils can access LIGS funding or charge the new contribution rates.

Contribution caps

The Direction applies to consent authorities when a consent authority imposes conditions of development consent requiring a monetary contribution under s7.11 of the EP&A Act. The Direction also applies to accredited certifiers and the issue of complying development certificates. The maximum allowable contributions, as outlined in the Direction, are summarised in Table 1.

Table 1 – Explanation of Clauses in the Direction

Clause in Direction	Explanation of Clause	Where does it apply to
<p>Staged increase of the caps in places identified as LIGS transition areas</p> <p>Clauses 6A, 6B, 6C, 6D</p>	<p>In the LIGS transition areas the caps (per lot or dwelling) are as follows:</p> <ul style="list-style-type: none"> • \$35,000 in greenfield areas and \$25,000 in infill areas on 1 January 2018; • \$40,000 in greenfield areas and \$30,000 in infill areas on 1 July 2018; • \$45,000 in greenfield areas and \$35,000 in infill areas on 1 July 2019; and • lifted entirely on 1 July 2020. <p>From 1 July 2020 there will be no cap on contributions if imposed in accordance with an 'IPART reviewed contributions plan'.</p>	Transition areas
<p>Areas exempt from the Direction</p> <p>Clause 4 and Schedule 1</p>	<p>The Direction does not apply to the areas set out in Schedule 1 (Land where there is no cap). These areas are where generally more than 25% of development had already occurred prior to September 2010.</p>	Exempt land
<p>Provision for contributions that exceed the caps of \$30,000 or \$20,000 per dwelling /lot where the relevant plan is an IPART reviewed contributions plan (as defined below).</p> <p>Clauses 6 (2), (3) and (5)</p>	<p>Contributions may exceed an amount based on the caps of \$20,000 per dwelling or lot (infill areas) or \$30,000 (greenfield areas) per dwelling/ or lot if imposed in accordance with an 'IPART reviewed contributions plan'.</p>	All areas except for LIGS transition areas and exempt land

1.3 Requirements for an IPART reviewed contributions plan

As defined in clause 5(3) of the Direction an IPART reviewed contributions plan is a contributions plan that satisfies all the following:

- a. IPART has reviewed the contributions plan (or a draft of the plan) in accordance with assessment criteria set out in any applicable practice note, including whether the facilities to which the contributions plan relates are on any essential works list set out in the practice note,
- b. IPART has published a report of its review on its website and forwarded it to the Minister for Planning,
- c. following the forwarding of the report to the Minister, the Minister (or a nominee of the Minister) has advised the relevant council as to any amendments required to the contributions plan,
- d. the Minister's (or nominee's) advice to the council has been published on the website of the Department of Planning and Environment,
- e. the relevant council has approved the plan, and has made any amendments to the plan, in accordance with the written advice of the Minister or the Minister's nominee.

Part 2 - Contributions Plan Assessment Process

The respective roles and functions of local councils, IPART and the Department of Planning and Environment in the contributions plan assessment process are outlined in this section below. The process for assessing contributions plans is detailed in Figure 1.

2.1 Role of Local Councils

Local councils prepare and exhibit the draft contributions plans in accordance with the EP&A Act and EP&A Regulation. Council may submit the contributions plan (or a draft of the plan) to IPART for review as either:

- a new contributions plan
- a new contributions plan that seeks to amend an existing contributions plan consistent with clause 32 of the EP&A Regulation.

The local council may adopt (or re-adopt) the contributions plan after it has implemented the advice received from the Minister. The Minister's advice will consider the recommendations from IPART's review.

Once the amendments have been made and council has adopted the plan, the council may impose the contributions s conditions of development consent, consistent with the plan (subject to the relevant caps in the Direction for development in LIGS transition areas). In LIGS transition areas, a council is then able to apply for LIGS funding.

Local councils do not need to submit a contributions plan (or draft of the plan) to IPART for assessment if the contributions plan falls wholly within the areas listed in Schedule 1 of the Direction.

The timing of when to adopt a contributions plan is a matter for Council having regard to the 2005 Practice Notes and the Ministerial Directions (Local Contributions). Consideration should be given to whether reexhibition of the plan is required. The following guidance is provided to assist Council in determining the appropriate time to adopt a contributions plans when IPART review is required:

Where there is not an existing IPART reviewed contributions plan in place.	Adoption before IPART review would enable Council to levy contributions subject to the maximum cap amount as set out in the Ministerial Direction. Note: Council should consider including a statement in the contributions plan expressly referring to the effect of the Direction, being that contributions are capped at the maximum cap amount until the plan is an IPART reviewed contributions plan.
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<p>Where there is an existing IPART reviewed contributions plan in place.</p>	<p>Adoption after the IPART review process is complete would enable Council to continue to levy under the existing IPART reviewed contributions plan while the new plan is under assessment.</p> <p>Note: If Council were to adopt a new or revised plan before the IPART review is complete, then contributions levied under this plan will be subject to the maximum cap set out in the Ministerial Direction.</p>
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2.2 Role of IPART

IPART is an independent body that oversees the regulation of the water, gas, electricity and public transport industries in New South Wales. IPART is an economic regulator and provides independent economic advice to the Minister for Planning in relation to the assessment of contributions plans that propose contributions that exceed capped amounts.

IPART will review the contributions plan against the assessment criteria, including the essential works list (refer to section 3.2 and Appendix A) and may engage the services of consultants to advise on aspects of the draft contributions plan.

IPART may also consult with other government departments, such as the Department of Planning and Environment, to obtain specialist advice regarding aspects of the contributions plan (or a draft of the plan). IPART will use this advice to inform its decision-making and recommendations to the Minister for Planning.

On completion of the assessment, IPART will provide its advice to councils and the Minister for Planning. This advice will focus on whether the contributions plan (or a draft of the plan):

- meets the assessment criteria set out in Part 3 of this Practice Note
- complies with the requirements of the EP&A Act, EP&A Regulation and the 2005 Practice Note.

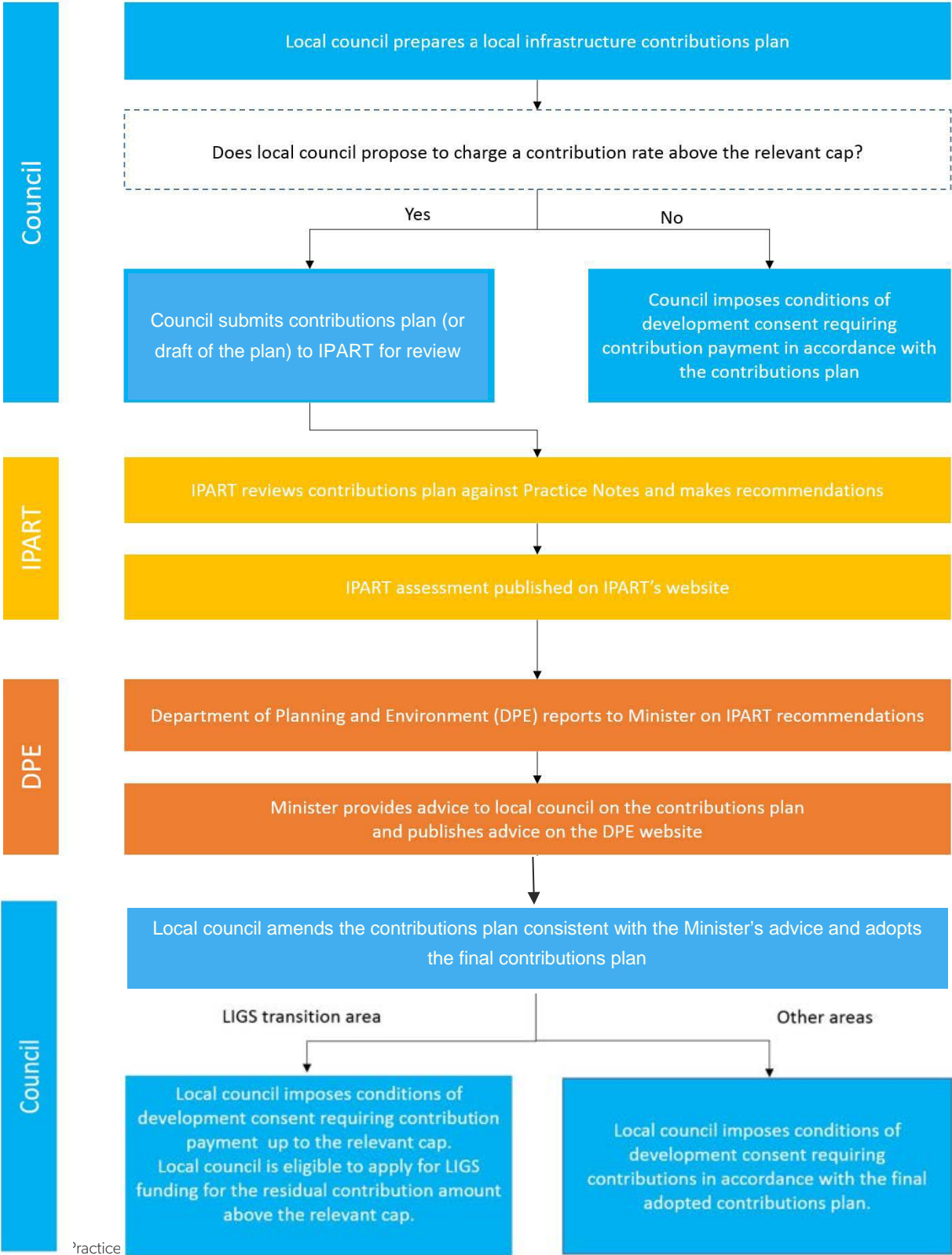
IPART will publish copies of the contributions plan (or a draft of the plan), consultants' reports (if relevant) and IPART's final report of recommendations on its website once the assessment process is finalised.

2.3 Role of the Minister for Planning

The Minister for Planning considers the report and recommendations of IPART. The Minister for Planning provides advice to council on the contributions plan, particularly on whether it should make any changes to the contributions plan and publishes the advice on the DPE website.

Council must make changes and adopt the revised contributions plan in accordance with the Minister's advice.

Figure 1 Process for assessing local infrastructure contributions plans



Practice

Part 3 Assessment criteria

3.1 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
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
7. the plan complies with other matters IPART considers relevant.

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

3.2 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
- 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), but not including carparking
- land and facilities for stormwater management
- the costs of plan preparation and administration.

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.

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
- 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.

Community services

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

- owned or controlled by a public authority or non-profit community organisation,
- and 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
- performing arts centres.

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
- 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 council's key responsibilities such as core strategic planning responsibilities.

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.

Part 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 EP&A Act and EP&A Regulation, 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 K35

Haymarket Post Shop 1240

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

Attachments

Attachment 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.
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 a 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?