November 2020

Review of Infrastructure Contributions in New South Wales

NSW Productivity Commission

Final Report

NSW GOVERNMENT

Note

General inquiries concerning this document should be initially directed to:
NSW Productivity Commission; ICReview@productivity.nsw.gov.au.

This publication can be accessed from the NSW Productivity Commission's website www.productivity.nsw.gov.au/.

The Honourable Rob Stokes MP
Minister for Planning and Public Spaces
52 Martin Place
SYDNEY NSW 2000

Dear Minister Stokes,

REVIEW OF INFRASTRUCTURE CONTRIBUTIONS

I am pleased to present to you the Final Report of the Review of Infrastructure Contributions in New South Wales (‘the Review’).

As our children grow up and our population increases, New South Wales needs more housing for families and more commercial, retail and industrial space for employment. Development and growth requires supporting infrastructure such as roads, utilities and open space. How we determine what infrastructure is needed and how it will be funded are critical issues for our planning system. Infrastructure contributions are integral to our ability to address the immediate and long-term challenges faced by State and local governments, which have been accentuated by the COVID-19 pandemic. These include a growing and ageing population, rising infrastructure demand, increasing costs, housing undersupply, and environmental challenges.

My recommendations have been guided by the lessons of the past and informed by consultation with State agencies, local government, industry, and community groups. They have been tested and validated through research and modelling.

The Review has found the current infrastructure contributions system is not fully enabling the State and councils to provide the infrastructure required to support development. Previous attempts at reform have resulted in a system that is overly complex, unpredictable, and imposes undue administration costs. Moreover, contributions collect only a small proportion of the required funding and fails to deliver services in a timely and coordinated way. Property prices are high and can rise substantially in the lead up to, and following, rezoning, which adds to the cost of land acquisition. The result is reduced housing supply, insufficient business capacity, and poorer levels of service for some communities.

Piecemeal changes to the contributions system, applied over many years, have resulted in a build-up of ad hoc measures. This has led to an opaque system with higher costs, less certainty, and weak price signals. It has forced communities to accept some combination of fewer services, more expensive housing, lower expenditure, higher taxation, or more borrowing. This holistic review is therefore timely and sets out a system that is transparent, certain, efficient, and consistent.

The Review has made 29 recommendations, which are underpinned by a set of principles setting out where infrastructure costs should be recovered from developers or landowners and where governments should rely on other sources of funding. A principles-based system is easier to understand, more transparent, and provides greater certainty to market participants.

Priority reforms are:

- removing the disincentive for councils to accept development and growth by allowing for the local government rate peg to reflect population growth
- ensuring charges can be properly factored into feasibility studies by requiring contributions plans be developed prior to rezoning
- introducing a direct land contribution obligation for landowners following rezoning to provide early and adequate funding for land
- managing costs and complexity of section 7.11 local contributions plans by using benchmark costs and focusing the role of the Independent Pricing and Regulatory Tribunal in reviewing plans
- removing barriers to construction and improving project feasibility by deferring payment of local contributions to the occupation certificate stage
- providing a simpler option for councils by increasing the maximum rate of section 7.12 fixed development consent levies, in certain circumstances
- limiting the use of state and local planning agreements to direct delivery of works and supporting infrastructure for 'out-of-sequence' developments
- addressing insufficient and ad hoc section 7.24 special infrastructure contributions through implementation of modest and simple broad-based regional charges
- ensuring the beneficiaries of major transport investments contribute to the cost by implementing an additional state contribution for rezoned properties within station service catchments
- taking pressure off household water bills by transitioning to cost reflective charges for water connections
- making the system easier to navigate and comply with by providing and maintaining clear and rationalised guidance and comprehensive digital tools
- being more transparent in reporting on how much money is collected and where it is spent.

Combined, these reforms offer net benefits to the economy of up to $12 billion over 20 years. They will be realised as better services, lower house prices, and savings for business. At a macro level, the reforms are estimated to support an additional 2,600 jobs and increase gross state product by more than $600 million each year. They will enable more efficient development and support housing affordability.

Timely adoption of my recommendations will assist our post COVID-19 recovery and help improve the conditions for employment, economic growth and higher living standards over many years to come.

Yours sincerely,

Peter Achterstraat AM
NSW Productivity Commissioner

November 2020

Table of contents

Acknowledgements

The Commission is grateful to everybody who has contributed to the Review and freely given their time and input. In particular, councils, community groups, industry and property development groups, and other stakeholders who have attended roundtables, provided written submissions and participated in follow up discussions and requests for information. The Commission would also like to express appreciation for the support and input of Government agencies, in particular the Department of Planning, Industry and Environment and staff who have been seconded to the Commission for the Review.

Abbreviations

ACT	Australian Capital Territory
CPI	Consumer Price Index
The Department	The Department of Planning, Industry and Environment
EP&A Act	Environmental Planning and Assessment Act 1979
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
GFA	Gross Floor Area
GPOP	Greater Parramatta to the Olympic Peninsula
IPART	Independent Pricing and Regulatory Tribunal
LGA	Local Government Area
LGCI	Local Government Cost Index
LVC	Lease Variation Charge
SEPP	State Environmental Planning Policy
TAFE	Technical and Further Education

Overview

What has the Productivity Commissioner been asked to do?

Public infrastructure, such as roads, utilities, open space and community facilities, plays a critical role supporting the growth and productivity of our cities and regions. Infrastructure contributions are a funding mechanism to deliver this infrastructure, signalling differences in the cost of development between locations, and ensuring communities receive services they need.

The infrastructure contributions system originates in the *Environmental Planning and Assessment Act 1979*. The legislation includes a central principle that councils can levy contributions for infrastructure with a connection—or 'nexus'—to development. Subsequent reviews and reforms have introduced additional mechanisms and regulatory requirements.

In April 2020 the Minister for Planning and Public Spaces requested the Productivity Commissioner conduct a comprehensive review of the infrastructure contributions system ('the Review'). The Terms of Reference (see Appendix A) require the Productivity Commissioner to:

- determine whether the system meets the objectives of certainty and efficiency while delivering public infrastructure required to support development
- make recommendations for reform aimed at delivering a principles-based system
- identify legislative and regulatory changes necessary to implement the proposed reforms.

Approach

A mix of consultation, research and modelling has informed the Review's findings and recommendations. Key steps in the Review include:

- an Issues Paper in July 2020 identifying initial principles and key issues with the contributions system
- extensive consultation with local government, State agencies, industry, community groups, and other stakeholders through roundtables and targeted discussions
- receipt of 87 public submissions
- refinement of system principles drawing on feedback, and assessment of the current system to identify improvements
- analysis of the legislative framework and changes required to implement the proposed reforms
- modelling the impacts on state and local revenue and development feasibility
- cost benefit analysis and economic modelling of the benefits of the proposed reforms.

The system does not adequately fund the infrastructure required for growth

Infrastructure contributions are not supporting efficient development

The Sydney metropolitan area has the highest prices for residential, commercial and industrial space of any Australian city. This is in part due to zoning restrictions, which reduce the supply of developable land. There is also evidence a lack of infrastructure can delay development, leading to more restricted supply and higher prices (Centre for International Economics, 2020). Where infrastructure contributions support efficient and timely delivery, the community will be more supportive of growth, and the supply of residential and commercial property will be enhanced.

This outcome is not supported by the current system. It is complex, inefficient, inconsistent and lacks transparency. Infrastructure planning is often disconnected from rezoning decisions, with contributions not known until late in the development process. This means contributions fail to provide market signals favouring development in lower cost areas. It also prevents developers from properly accounting for these costs in their investment decision, increasing risk and reducing project feasibility. In addition, contributions are collecting only a small proportion of the total cost of the infrastructure required for development in New South Wales. The options to better manage growth while addressing the State's other challenges are to:

- increase funding from contributions
- increase the efficiency of service delivery through better decision making or measures to control costs
- increase funding from other sources, such as taxation or borrowing, or reduce other service delivery.

The alternative is to deliver less infrastructure, with poorer outcomes for the community such as slower development, more congestion and lower service levels, further undermining community acceptance of growth.

Laying the foundations for sustainable growth

The State capital program faces competing demands and is increasingly constrained. Public perception is often that non-delivery of infrastructure is the result of poor planning. It is, however, more often lack of funding that sees infrastructure underprovided. Moreover, there are limited incentives for State and local governments to coordinate infrastructure delivery and combine their limited funding from contributions with other sources to deliver the services growing communities need.

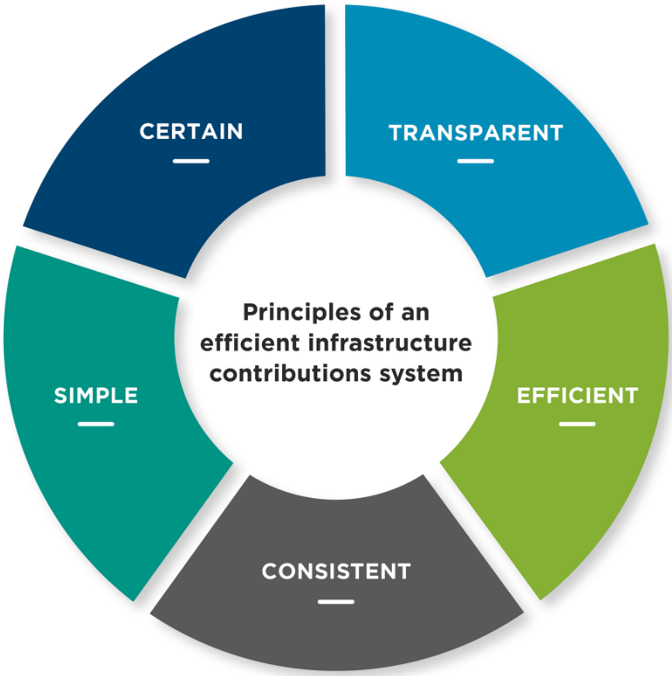
Contributions are a relatively efficient source of funding for state infrastructure when they have low administrative costs, are cost reflective, and can be factored into development decisions. The transparent and consistent application of contributions—by facilitating timely and coordinated infrastructure delivery aligned to need—will support increased housing supply and employment space. This prospective benefit, along with the huge infrastructure delivery task ahead, make it timely to reconsider the approach to infrastructure funding and the role of contributions.

COVID-19 has put additional stress on the State budget. The Government has delivered a $29 billion health and economic package (NSW Treasury, 2020a) to support households and businesses and cushion the blow to the economy from the pandemic. Revenue has also been heavily impacted, with a shortfall of nearly $15 billion. This unforeseen challenge, combined with an ageing population and the winding down of the State's asset recycling program, will weigh on the State's capacity to fund infrastructure.

But the pandemic has also provided an opportunity. Border closures have stalled overseas migration, containing growth in service demand. It has also given policymakers the opportunity to take stock of investment programs and pursue structural reform. This opportunity should not be missed—to lay the foundations for more stable and sustainable infrastructure funding arrangements that will support growth during the recovery and beyond.

The Review makes 29 recommendations covering local and state infrastructure contributions, for which a summary is provided in this Overview, with full detailed recommendations set out in the Report.

Figure O.1 Summary of key recommendations



CERTAIN

CERTAIN AND PREDICTABLE APPLICATION

- Develop contributions plans upfront as part of the zoning process (Rec 4.1)
- Introduce a direct land contribution (when rezoning land) for landowners to fund or provide land needed for public infrastructure (Rec 4.2)
- Enable landowners and developers to accurately estimate their contributions liability using a digital tool (Rec 6.1)

EFFICIENT

CREATION OF MARKET SIGNALS TO GUIDE EFFICIENT DEVELOPMENT

- Reform the local government rate peg to account for population growth and ask IPART to review the essential works list to remove items that are not development-contingent (Recs 3.1 and 4.6)
- Cost reflective section 7.11 contributions based on efficient costs (Recs 4.6 and 4.7)
- Charge for new and upgraded water connections in Sydney Water and Hunter Water service areas (Rec 5.5)
- Adopt a biodiversity contributions plan with area-specific charges (Rec 5.4)

SIMPLE

EASY TO UNDERSTAND WITH MINIMUM ADMINISTRATION COSTS

- Retain simplicity of section 7.12 contributions mechanism but with a higher maximum rate (Rec 4.11)
- Simplify contributions planning by:
  - adopting standard infrastructure costs and local contributions templates (Recs 4.5 and 4.8)
  - providing simple, clear and up-to-date guidance (Rec 6.3)
  - transitioning to digital tools (Rec 6.1)

TRANSPARENT

OPENNESS AND ACCOUNTABILITY FOR CONTRIBUTIONS COLLECTION AND EXPENDITURE

- Require public reporting of all contributions collected and spent in the digital tool (Rec 6.1)
- Expenditure of State infrastructure contributions to be aligned with the budget process with priorities to be informed by the Department of Planning, Industry and Environment, and Infrastructure NSW (Rec 5.1)

CONSISTENT

CONSISTENT AND FAIR CONTRIBUTIONS, BASED ON IMPACTOR PAYS AND BENEFICIARY PAYS PRINCIPLES

- Adopt consistent guidelines for exemptions and works-in-kind agreements (Recs 6.2 and 6.4)
- Restrict planning agreements to either out-of-sequence development or direct delivery of infrastructure (Recs 4.12, 4.13 and 5.2)
- Introduce low rate, broad based regional levies in Greater Sydney, Hunter, Central Coast, and Illawarra-Shoalhaven to fund growth infrastructure (Rec 4.2)

Recommendations

Move towards a principles-based infrastructure contributions system

Summary recommendation – Principles
2.1: Enhance efficiency of the infrastructure contributions system

A principles-based approach to contributions better supports growth and development. Over time, ad hoc changes have made the system overly complex and difficult to navigate. A reformed system should be more accessible, more consistent and be simple to administer.

Revenue should be raised in the most efficient way possible and be used to leverage State agencies' capital budgets to unlock housing supply and business capacity. It will also speed up development through reduced costs, better information flows, and timelier and more coordinated infrastructure delivery.

Over time, ad hoc changes have made the system overly complex and difficult to navigate. System wide reform will address this, based on the objectives of:

- delivering infrastructure in a timely and coordinated way
- encouraging efficient development
- raising adequate revenue to fund growth enabling infrastructure.

These objectives can be delivered through reform guided by the impactor pays and beneficiary pays principles. But there are no easy solutions. Trade-offs exist, such as between the time and resources required to determine and prepare plans with cost reflective charges and industry's need for certainty. The system must accommodate trade-offs and provide flexibility when local solutions are needed. Moreover, current and emerging fiscal pressures on government budgets support the case for enhancing dedicated funding sources.

Enhance capacity of councils to support growth

Summary recommendation – Local government rate reform
3.1: Allow councils' general income to increase with population

New South Wales' average local government rates per capita of $591 (in 2019) are below the average for all other states of $835. This is because, while the local government rate peg allows councils' rate base to increase with prices, it does not allow for increases in the volume of services demanded. Population growth provides a good measure of demand growth, since most government services are provided to people or households. Capping a discretionary revenue source in this way fails to recognise that costs generally increase with both prices and volume.

Because the peg prevents councils from raising additional rate revenue from a growing population, it creates a strong disincentive for councils to accept growth. If they do, councils must either reduce the quality and quantity of infrastructure to service their communities or recover some of the cost from infrastructure contributions. For example, a council may over specify the quality of infrastructure to reduce future maintenance costs (capitalising maintenance).

The Office of Local Government is progressing changes to the calculation of the rate peg that will allow councils' general discretionary income to grow with population. This will increase councils' capacity to service a higher population. Councils' maximum rate revenue from this change is estimated to increase by an additional 8.9 per cent, or $18.4 billion (undiscounted) over 20 years (Centre for International Economics, 2020). While most of this will go to high growth councils, lower growth councils are also expected to be better off.

Development-contingent capital costs should continue to be funded through infrastructure contributions, with the additional rate revenue used to fund the general costs from population growth. The Independent Pricing and Regulatory Tribunal is advising on a methodology to capture population growth into the rate peg. A review of infrastructure types that can be funded through section 7.11 contributions plans, consistent with the impactor pays principle, should be undertaken concurrently.

Strike a balance between efficiency, simplicity, and certainty for local infrastructure contributions

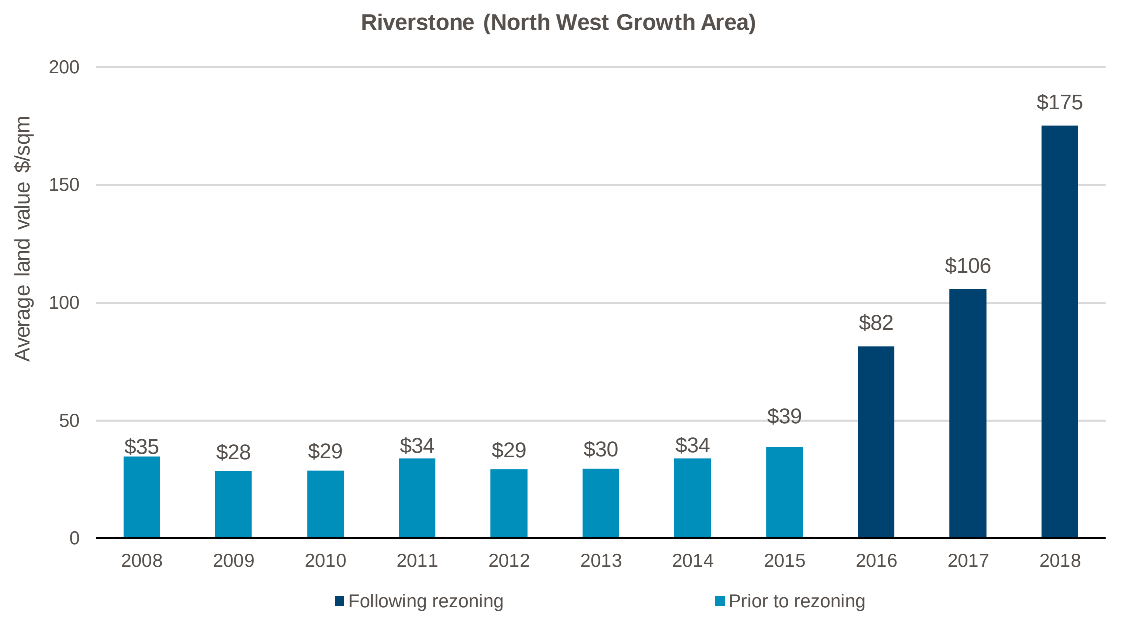
Summary recommendation – Early identification of infrastructure needs
4.1: Develop infrastructure contribution plans upfront as part of the zoning process

Infrastructure planning must be part of the strategic planning process that determines land uses and regulates development. Contributions plans should be developed concurrently with planning proposals to optimise infrastructure costs. Requiring infrastructure contributions plans be exhibited concurrently with rezoning proposals will create certainty, send clear cost-based signals to developers, and encourage efficient investment.

Summary recommendations – High and rising land values
4.2: Introduce a direct land contribution mechanism to improve both efficiency and certainty for funding land acquisition
4.3: Issue advice for land valuation to improve consistency and accuracy
4.4: Index land contribution amounts to changing land values

Land typically makes up over 50 per cent of costs in greenfield contributions plans and costs can rise rapidly following rezoning (see e.g. Figure O.2). Lags between collection of contributions and land acquisition can create funding shortfalls, a major risk for timely infrastructure delivery. Councils highlight this key problem with the existing system.

Figure O.2: Land values ($ per square metre) – rezoning from rural to residential



Note: Includes properties rezoned from RU4 to R2 or R3 in Riverstone in 2016
Source: NSW Productivity Commission analysis using NSW Valuer General data

A direct land contribution requires all landowners to contribute a common share of land required for public purposes, either by direct dedication or by monetary contribution. The obligation would be created at rezoning but not be payable until sale, or development application, whichever comes first. The prospective liability will remain, as a percentage of the land owned, consistent with the amount provided by other landowners in the area. Landowners will not have to pay anything until they either sell or develop.

With this approach, land contributions are more likely to be received in-kind, or the funds collected in the same property market in which they are to be applied. Contributions are therefore less likely to fall short due to rising land values and delays between collection of funds and development. This will help deliver open space, which typically has a lower priority than roads and drainage when there is a funding shortfall. Imposing a charge on the landowner (i.e. who benefits from an increase in land value from rezoning) is in accordance with the beneficiary pays principle.

Direct land contributions should be enforced through a statutory charge on land, which will require amendments to the *Environmental Planning and Assessment Act* (1979). Further consultation with councils and industry should be undertaken in drafting legislation. As it will take time to phase in a direct land contribution model, reform should accommodate existing contributions plans.

To further address land value escalation, the Valuer General should develop a land cost index and improved guidance for land valuations. This will ensure valuations are appropriate and land contributions better align with costs.

Summary recommendations – Section 7.11 contributions

4.5: Section 7.11 contributions plans use benchmark costs

4.6: Contributions plans reflect development-contingent costs only

4.7: Independent Pricing and Regulatory Tribunal review of contributions plans be 'by exception' and based on efficient costs

4.8: Contributions plans are prepared using standard online templates and digital tools

4.9: Encourage councils to forward fund infrastructure, through borrowing and pooling of funds

4.10: Defer payment of contributions to the occupation certificate stage

Following reform of the revised local government rate peg, works that are not development-contingent should be removed from the essential works list. Standard rates for infrastructure provision, i.e. benchmarked efficient costs, and limiting the Independent Pricing and Regulatory Tribunal review of section 7.11 contributions plans to be only 'by exception', will reduce costs and administrative complexity.

Forward funding infrastructure will also reduce costs and enable more timely delivery. But councils' uptake of low-cost loans, available through T-Corp, has been low. Addressing barriers will make financing more attractive. These include allowing interest rates to be recouped in contributions plans and legislative amendment making pooled contributions the default. Cultural change related to council attitudes to borrowing is also required; establishing a State fund to incentivise financing will help.

As a COVID-19 response, payment of contributions has been temporarily deferred to the occupation certificate stage to encourage more development projects to commence. Deferral should be permanent, subject to all contributions having been paid, before an occupation certificate is issued.

Summary recommendation – Section 7.12 contributions

4.11: Increase the maximum rate for section 7.12 fixed development consent levies

Section 7.12 fixed development consent levies are a simple and certain mechanism but are less cost reflective than section 7.11 contributions. As the current maximum allowable levy is only 1 per cent of capital cost, this contribution type is best suited to areas with low infrastructure need, or where developing a 7.11 contributions plan would be too costly.

Increasing the maximum levy to 3 per cent for residential development would better balance the benefit of a simple section 7.12 levy against the desirability of councils developing section 7.11 plans for areas of high infrastructure need. The maximum 7.12 levy for non-residential development should be maintained at the equivalent of 1 per cent. Better aligning with the likely infrastructure requirements of a development will eliminate a possible disincentive for capital intensive developments. As such, a 7.12 levy should be on a per dwelling basis for residential development, and per square metre of floor area basis for non-residential. These levies should be equivalent to 3 per cent of capital cost for residential development and 1 per cent for non-residential.

On this basis, the proposed maximum rates are:

- $10,000 per dwelling for houses (detached, semi-detached, townhouses)
- $8,000 per dwelling for other residential accommodation
- $35 per square metre for commercial uses
- $25 per square metre for retail uses
- $13 per square metre for industrial uses.

Summary recommendations – Local planning agreements

4.12: Planning agreements consistent with the principles-based approach

4.13: Publish guidelines for planning agreements for mining and energy related projects consistent with the principles-based approach

The use of planning agreements for monetary value capture on height and floor space increases should be curtailed. Instead, planning agreements should only recover development-contingent costs of 'out-of-sequence' development proposals not identified in strategic plans. They should also be allowed for direct delivery of land or works with a relationship to development.

These reforms, together with adoption of the draft revised planning agreements policy framework released in April 2020, will ensure appropriate use of planning agreements. Legislative amendments to require public exhibition and registration of planning agreements in a centralised system will increase transparency.

Mining and energy projects have significant impacts on local communities, but councils are generally not the consent authority, which generates uncertainty. Open ended negotiations for infrastructure contributions for these projects can add to project costs and delivery times. Section 7.11 contributions plans should specify infrastructure costs if possible, otherwise a planning agreement may be the most appropriate mechanism. They should, however, only recover development-contingent or development-associated costs. Moreover, the contributions system is not a vehicle for managing environmental impacts or for benefit sharing, for which there are other more appropriate mechanisms.

Summary recommendation – Affordable housing
4.14: Improve accountability for affordable housing contributions

Affordable housing costs will be incurred regardless of whether development proceeds. They therefore do not fit within an efficient infrastructure contributions system. The section 7.32 mechanism is, however, relatively new and yet to be evaluated. Improved reporting of affordable housing contributions should be required to inform a future review of their efficiency and effectiveness.

A stronger funding base for state infrastructure

Summary recommendations – State and regional contributions
5.1: Adopt regional infrastructure contributions
5.2: Improve guidance for state planning agreements
5.3: Adopt transport contributions for major projects

Special infrastructure contributions have been applied inconsistently and unpredictably, adding to investor uncertainty. Moreover, they have raised only limited revenue and have generally been unsuccessful in influencing broader State agency capital investment priorities. Stakeholders agree the ad hoc and 'stop-start' approach creates uncertainty for industry and communities and discourages development.

Greater cost recovery through broad-based state contributions will better leverage the State's capital program towards growth enabling infrastructure in an emerging environment of fiscal pressures and reduced asset recycling opportunities. A broad-based state contribution is proposed for the regions of Greater Sydney, Central Coast, Hunter, and Illawarra-Shoalhaven. Feasibility analysis suggests a relatively low charge of $12,000 per dwelling in Greater Sydney and $10,000 per dwelling in other areas, combined with a cost reflective water charge, will have limited feasibility impacts. Moreover, increased certainty and timelier, more coordinated infrastructure delivery will enable more growth and development, rather than less.

Governance arrangements are needed to ensure these contributions are directed to the growth areas most in need and towards projects with high economic benefits. This will include prioritisation by Infrastructure NSW, in consultation with the Department and Treasury, and payments by the Treasurer should be authorised through the budget process. In advising on the prioritisation of funds, Infrastructure NSW may recommend part-funding (say, 50 per cent) for projects to encourage agencies to reprioritise their capital spends on a merits-basis.

The State, like councils, may wish to retain flexibility to permit out-of-sequence developments and planning agreements may be appropriate in these cases. Mandatory guidelines will, however, be required to ensure charges and works-in-kind reflect development-contingent and development-associated costs only.

New transport projects confer significant local benefits through reduced travel times and expanded development capacity; these benefits are generally reflected in land value increases. To contain this uplift and to recover some costs from beneficiaries, a transport contributions plan—additional to regional contributions—should apply in service catchments for major projects.

Recommendation – Biodiversity
5.4: Create a new category of contributions specific to biodiversity

Biodiversity protection is an important environmental objective for the State. Urban development, however, inevitably involves some biodiversity loss, which by law must be traded off by gains elsewhere. Biodiversity loss is specific to particular areas, making it inappropriate for inclusion in recommended regional contributions plans.

An efficient biodiversity contributions system will discourage developments with impacts in geographies with higher biodiversity value. In such areas the costs of the biodiversity offsets will be higher, so a market signal for developers should be provided.

A separate biodiversity contribution should be applied to specific places, subject to biodiversity certification, additional and separate to the proposed regional contribution. This should be enabled through the creation of a new contributions' category in the EP&A Act, distinct from other categories. A state-coordinated approach to biodiversity offsetting, as has been applied for the Western Sydney Growth Centres, will avoid costs associated with individual approvals and purchases of offsets.

Recommendation – Metropolitan water
5.5: Phase in metropolitan water contributions for more efficient delivery of water infrastructure

The cost of providing water and wastewater services varies considerably by location. Remote or inaccessible areas might require substantial extensions to existing networks, while locations on environmentally sensitive waterways must treat wastewater to a much greater degree than coastal communities. Water contributions can recover these costs, send market signals about where to build, and support coordination of development with water infrastructure delivery. Zero contributions for water infrastructure, set by ministerial direction in 2008 for Sydney Water and Hunter Water, transfers new water connection costs to all water users.

A carefully phased return to cost reflective contributions will promote efficient development and reduce the pressure on average water bills. While the intent of the 2008 direction was to support the construction sector, the costs of reintroduced charges will be more than offset by benefits.

Further issues in infrastructure contributions

Recommendations – Making the system more consistent, transparent, and easy to navigate
6.1: Develop and implement a centralised contributions digital tool
6.2: Promote consistency and transparency in works-in-kind agreements
6.3: Build the capability and expertise of the planning sector
6.4: Introduce a simple, clear, standardised exemptions policy

A contributions digital tool within the NSW Planning Portal will make the system easier to understand and interact with. This will support implementation of a more transparent, certain, and simple contributions system. The tool will give industry quick and easy estimates of contributions liabilities. Councils will access a user-friendly interface and templates to make contributions plans within the system. Automating the ongoing administration, tracking and reporting will reduce the administrative burden and increase transparency. The 2020-21 Budget has committed $14.8 million to implement this digital tool.

Other recommendations to increase simplicity and consistency complement the digital tool, including providing clear and consolidated guidance materials and a consistent exemptions policy. Guidance integrated with the digital tool will make it easy to interact with the system.

Recommendations – Better align infrastructure contributions and strategic planning and delivery

6.5: Better synchronise state and local strategic planning frameworks

6.6: Incorporate the local infrastructure contributions system into the Integrated and Performance Reporting framework

6.7: Strategic planning to maximise the efficient use of land

The Integrated Planning and Reporting Framework, introduced in 2009, streamlines and integrates council strategic planning, reporting and delivery but does not include infrastructure contributions. Incorporating them into the framework will address the disconnect between fund collection and expenditure.

Open space is beneficial to the health and wellbeing of communities but high land costs and dated standards (the 2.83 hectares per 1,000 person benchmark dates from the early 1900s) make it costly. More efficient delivery will be achieved by shifting to performance-based benchmarks and a requirement to consider efficient land needs during the strategic planning process. This could, for example, include the dual use of land around creeks for both drainage and passive open space.

Strategic corridors are being identified to support the long-term growth of the State. Early acquisition of land delivers significant savings but creates a funding challenge. Continuing the planning and active management of strategic corridors will allow interim usage while ensuring long term protection.

Implementation

Recommendation – Governance

7.1: Strong governance to guide implementation

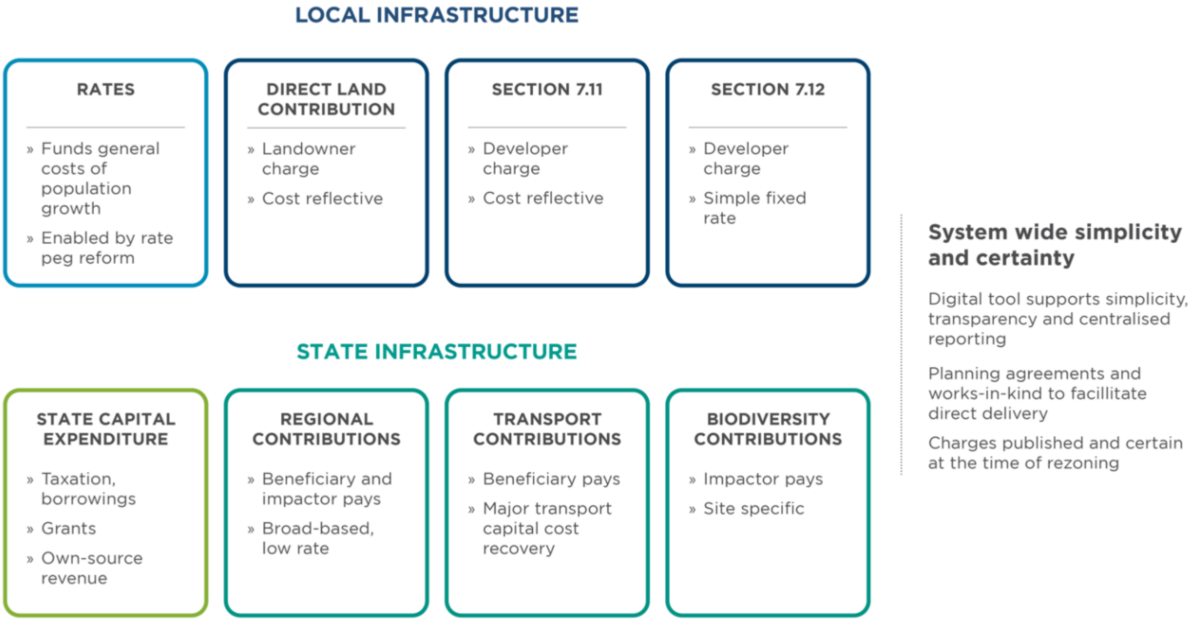
Changes to legislation, policy and digital systems are required. An Implementation Steering Committee should be established, including senior representatives from the Department of Planning, Industry and Environment and Treasury. It should monitor progress, identify risks, provide strategic direction, and report every six months to the Minister for Planning and Public Spaces. This should be supported by a Stakeholder Advisory Group, with representatives from councils and industry groups, to assist detailed design and management of implementation issues.

A consistent framework to guide future improvement

Reform of infrastructure contributions is not easy. Contributions impact funding and delivery of both state and local infrastructure and local government funding, biodiversity, and strategic planning. Previous reviews and ad hoc changes have resulted in a system that is fragmented, complex, and inconsistent. There are differing views about the best solution.

Trade-offs must be made. The recommendations do this while winding back complexity to better address the infrastructure challenges faced by State and local government. Figure O.3 provides a summary of key elements. There will be room for further system improvement, particularly as the contributions digital tool is bedded down and administrative systems improve. This framework will, however, provide a strong foundation for current and future reforms.

Figure O.3 High level implications of review recommendations



This package of reforms will deliver a transparent, certain, efficient and consistent contributions system. The proposed reforms are interlinked so care needs to be taken if specific recommendations are refined to ensure there are no unintended consequences on overall outcomes.

Benefits of reform

Enhanced ability of State and local governments to deliver infrastructure

Impacts on local government

Revenue from infrastructure contributions for local governments is expected to decrease by $90 million in 2024 across all councils (see Table O.1). Increased section 7.12 revenues will be more than offset by reduced revenue from local planning agreements and section 7.11 contributions. High growth metropolitan councils will have the largest impacts, but will also benefit the most from the rate peg reform, which will provide these councils with nearly $600 million in additional annual revenue, averaged over 20 years, more than offsetting these impacts. Additional rates revenue will enable councils to recoup the operating and maintenance costs associated with a larger population and service debt to forward fund infrastructure, improving the coordination of service delivery with development. These estimates do not include the benefits of efficient benchmarked costs or a direct land contribution, which will help councils to control costs.

Table O.1: Projected contributions revenue, local government, 2024

Council type	Baseline	Proposed reforms	Impact of reforms
	$ millions	$ millions	$ millions
High growth metro	612	548	-65
Low growth metro	180	163	-17
High growth regional	3	2	-1
Low growth regional	173	166	-7
All councils	**968**	**879**	**-90**

Source: Modelling by the Centre for International Economics (2020)

Impacts on the State

Introduction of regional infrastructure contributions in Greater Sydney, Hunter, Central Coast, and Illawarra-Shoalhaven are expected to raise approximately $630 million of revenue in 2024 (Centre for International Economics, 2020). Revenue from planning agreements will be reduced. Up to $9.4 billion in economic benefits will be generated through higher investment in quality, growth enabling infrastructure (Centre for International Economics, 2020).

Impacts on investors

Existing special infrastructure contributions (and for the Western Sydney aerotropolis) will be preserved. For new release areas, investors who may have previously seen contributions as high as $55,000 per dwelling (excluding biodiversity), will have lower state contributions. Others who have previously not paid anything will make a low and consistent state contribution. All investors will benefit from increased provision of infrastructure and increased certainty.

The overall amount of local contributions paid by investors will decrease, due to a reduction in the total amount of contributions collected by councils. A direct land contribution applied to landowners will also shift some of the cost burden away from investors.

Additional infrastructure investment and housing supply

Net economic benefits of the proposed reforms are estimated at between $2.5 billion and $11.8 billion over 20 years in present value terms (see Table O.2 and Figure O.3). This does not include benefits from the reintroduction of water connection charges, more efficient benchmarked costs for section 7.11 contributions, or the introduction of direct land contributions, given the uncertainty.

Given the excluded benefits, the overall economic benefits are likely to be closer to the high end for the range estimate. Regardless, the potential economic and productivity growth benefits provide a solid case for these reforms.

Table O.2: Estimated net benefits of the proposed reforms over 20 years

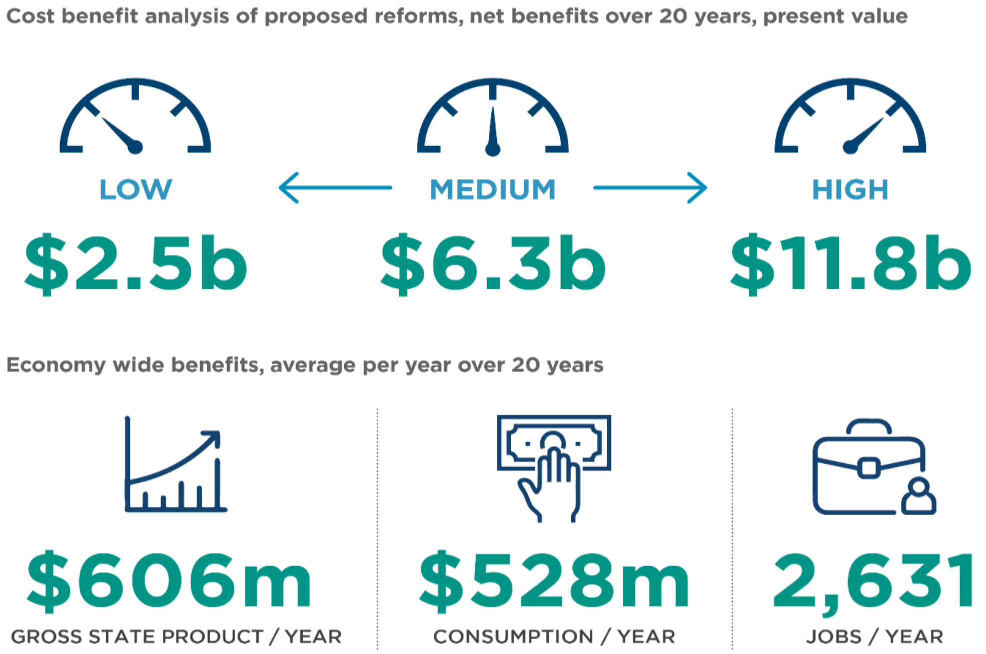
	Low	Medium	High
	$m, present value	$m, present value	$m, present value
Net benefits of additional services provided by councils	95	325	556
Better incentives for councils to accommodate growth	426	624	822
Incentives for the community to support development from state infrastructure	346	507	667
Net benefit of additional investment by the State in growth infrastructure	1,575	4,725	9,449
Reduced risk related to infrastructure contributions	47	95	236
Changes to administration costs	9	19	28
Total	**2,498**	**6,294**	**11,759**
Unquantified			
Reduced rationing of development because of water and wastewater provision	Potentially a moderate positive impact		
Adjustments to method for including land in contributions	This will better allocate risks around land prices, with some small benefits		
Benchmarked costs for contributions plans	This may reduce section 7.11 rates—overall benefits will be small		
Changes to competition in water and wastewater provision	Likely positive but small		

Note: Constant dollars discounted at 7 per cent, as per TPP17-03 *NSW Government Guide to Cost Benefit Analysis*

Source: Centre for International Economics (2020)

Economic modelling of the proposed reforms estimates that additional expenditure on infrastructure and increased housing supply will drive higher output, consumption, and employment (see Figure O.3). Over 20 years, New South Wales' Gross State Product will be $12.1 billion higher (undiscounted).

Figure O.3: Benefits of the recommended reforms



Source: Modelling by the Centre for International Economics (2020)

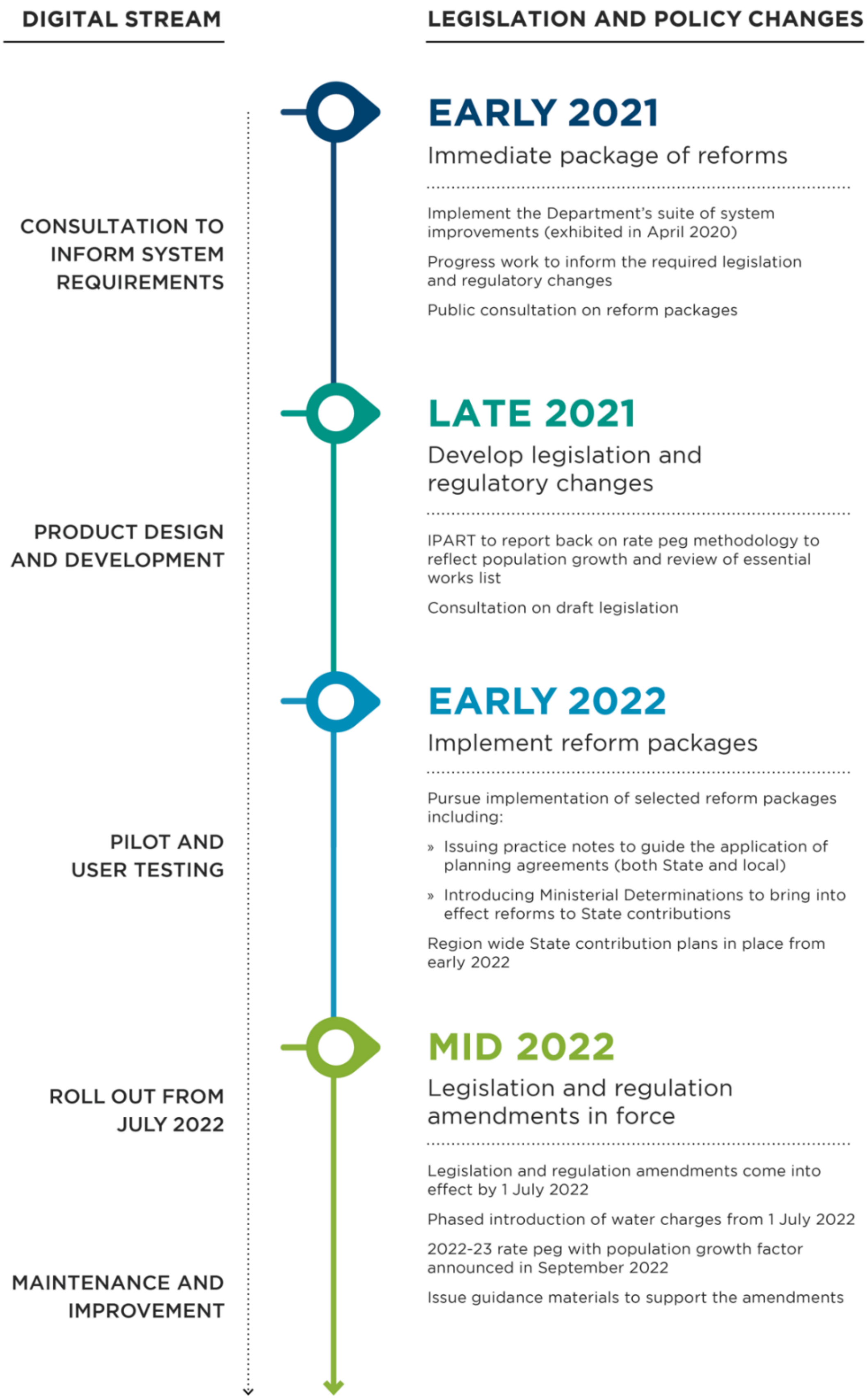
Implementation of a reformed infrastructure contributions system

In the medium term, most development will take place on land that is already zoned. Industry has existing commercial arrangements in place, and will take time to adjust to a reformed contributions system. Time is required to change legislation, implement new policy, develop guidance materials, and improve state and local administrative systems. Reform to the local government rate peg will also take time, and some changes to local contributions depend on this.

In the long run, infrastructure contributions will be factored into land values, reducing the premium currently paid for zoned land. In practice, however, land values are slow to adjust downwards, although the shift to a direct land dedication model will assist. Introducing reforms too rapidly could have adverse impacts for new housing and commercial property in the short term because landowners' expectations take time to change. Clear messaging and well-timed and predictable implementation will mitigate negative short-term impacts and maximise overall benefits.

Commencing reform now will help provide a solid foundation for the State's development and growth over the long term. The high-level implementation plan has been developed with these considerations in mind (see Figure O.4). A detailed plan for implementation and governance is in Chapter 7.

Figure O.4: Summary of implementation plan



Chapter 1: Introduction

1.1 Purpose of this Review

In April 2020, the Hon. Rob Stokes MP, Minister for Planning and Public Spaces (‘the Minister’) requested the NSW Productivity Commissioner undertake a review of the infrastructure contributions system (‘the Review’) and to make recommendations for reform. Terms of Reference for the Review are provided in Appendix A.

Request for the Review followed the Government’s announcement in November 2019 of reforms to improve the planning system. Fixing the uncertainty of infrastructure contributions is one element and requires broad consideration of funding sources, not just charges on development. Infrastructure contributions reform will help deliver the Premier’s Priority of creating well connected communities with quality local environments.

The Department of Planning, Industry and Environment (the Department) has since released a package of improvements to simplify the system (see Box 1.1). These reforms complement the more comprehensive changes recommended by this Review.

Box 1.1: The Department’s package of system improvements (exhibited April – June 2020)

The package includes:

- amendments to the Environmental Planning and Assessment Regulation 2000 to improve transparency in accounting for, and reporting on, State and local contributions revenues
- guidance material to improve transparency of negotiations for planning agreements (section 7.4)
- criteria for when higher percentage rates for consent levies may be appropriate (section 7.12)
- reforms to how contributions plans are reviewed (section 7.11)
- guidelines to improve transparency of special infrastructure contributions (section 7.24).

Source: Department of Planning, Industry and Environment (2020a)

1.2 About the infrastructure contributions system

Contributions are integral to the infrastructure funding system

Infrastructure contributions are levied to ensure the delivery of infrastructure required to accommodate development and support growing communities. This includes a range of local, regional and state infrastructure (see Figure 1.1).

Part 7 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) prescribes the following mechanisms:

- section 7.4 planning agreements
- section 7.11 local infrastructure contributions
- section 7.12 fixed development consent levies
- section 7.24 special infrastructure contributions
- section 7.32 affordable housing contributions.

In total, these mechanisms currently generate more than $1 billion to State and local governments each year.

Figure 1.1: Types of infrastructure delivered across the State

[1] Presently, water charges in the Hunter and Greater Sydney areas are set at zero.

Infrastructure contributions in New South Wales originated with the EP&A Act as section 94 contributions. Since then, the system has been subject to many reviews (see Appendix C for further background). The most recent major legislative reforms in 2005 introduced planning agreements and fixed development consent levies (then known as section 94A levies). Further changes to the system were made in 2008 and 2009 amid the Global Financial Crisis and the economic downturn it generated, some of which remain in place.

The record of changes is mixed. Some reforms improved the system, while other ad hoc changes have undermined efficiency and increased complexity. This Review involves a comprehensive evaluation of the system in the overall context of infrastructure funding and delivery in New South Wales.

1.3 About the NSW Productivity Commission

In May 2018, Peter Achterstraat AM was appointed the State's inaugural Productivity Commissioner, to oversee the Government's regulatory framework and shape its productivity agenda.

The Productivity Commission has reviewed the State's planning system—both elements and its functioning as a whole—in the following:

- Productivity Discussion Paper (October 2019)
- Review of the Independent Planning Commission (December 2019)
- Productivity Green Paper (August 2020).

The uncertain and opaque nature of the contributions system was discussed in both the Discussion Paper and Green Paper. These reports called for a principles-based system that is not a brake on investment and growth.

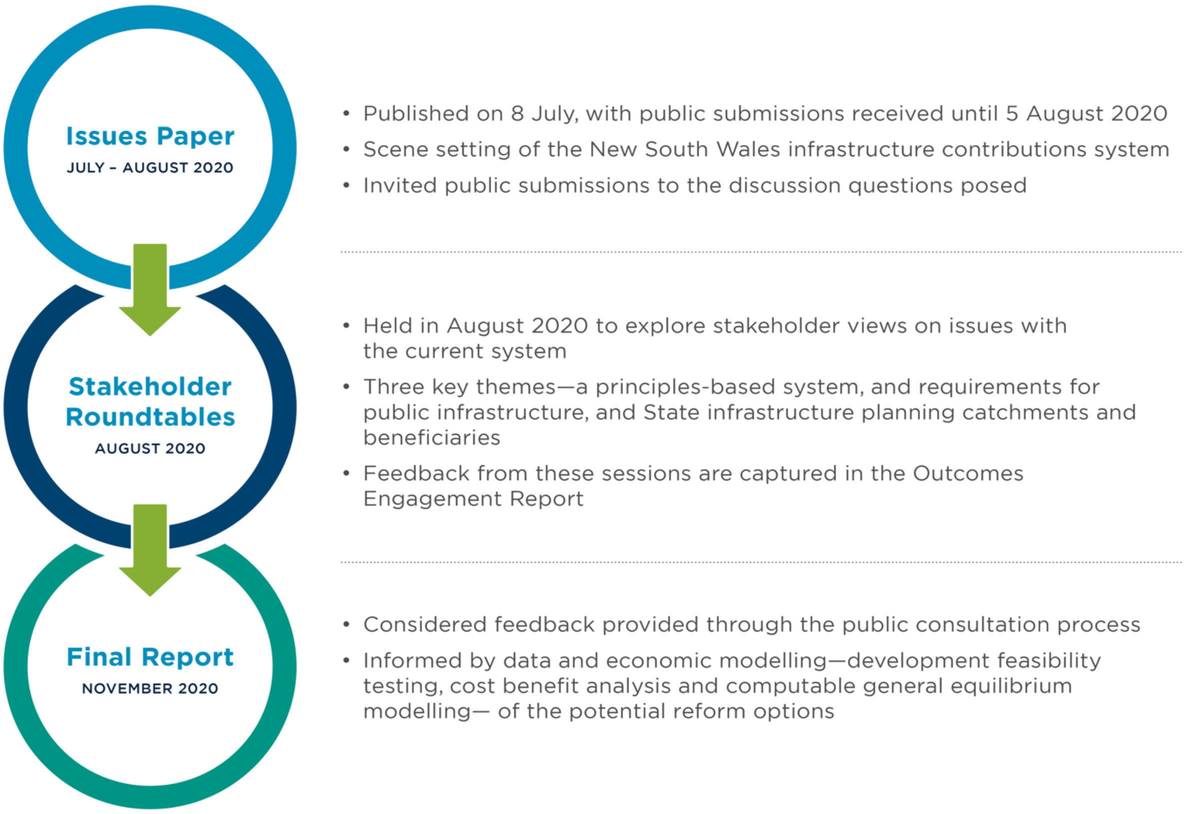
The Productivity Commission is therefore well placed to conduct this Review. The broad nature of the Review also means the Commission can extend its focus beyond the mechanisms under the EP&A Act (which the Department is limited to).

1.4 Our approach

The Review has been executed in three phases (see Figure 1.2):

- release of an issues paper inviting public submissions
- stakeholder roundtables to discuss the current system
- development of recommendations.

Figure 1.2: Approach to the Review

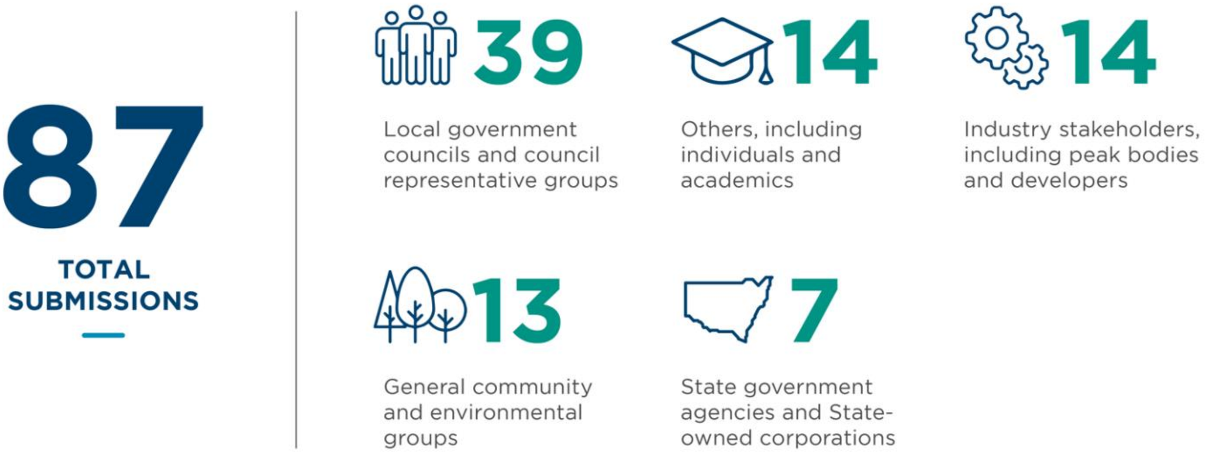


To inform its final recommendations, the Review has:

- analysed extensive source materials, including previous government reviews
- analysed infrastructure contributions elsewhere in Australia and overseas jurisdictions (see Appendix D)
- drawn on public submissions on the Issues Paper
- gained input from industry, community groups, and local government
- consulted with NSW Government agencies
- performed analysis and commissioned economic modelling to help develop the case for change and evaluate the proposed reform directions.

Appendix B lists stakeholders involved in the consultation processes. A total of 87 written submissions were received from a broad range of stakeholders (see Figure 1.3) and are published on the Productivity Commission website (except where 'confidential' or 'privileged').

Figure 1.3: A broad range of submissions were received by the Review



The main issues raised were:

- the complexity of the planning system, which makes it unclear what infrastructure charges apply and how they are calculated
- rate pegging and the restrictive 'essential works list' is impacting councils' ability to meet service needs and residents' expectations
- high and rising land values (particularly in Sydney) pose a financial risk to councils by inflating the cost of property acquisition
- infrastructure charges are not known until late in the development consent process, often after the land is rezoned, preventing developers from accurately pricing in the impacts
- property owners are pocketing windfall gains from public investment and up-zonings, which should be shared with the wider community
- a need for greater transparency and accountability of how and where contributions are spent.

1.5 Other factors impacting the Review

The need for structural reform to address challenges accentuated by COVID-19 and the national recession

When the Review was announced, the COVID-19 pandemic had already spread throughout the world, becoming the global health and economic crisis of the century.

The pandemic and containment measures have had a significant impact on the economy and society. Migration has temporarily stalled due to border closures. For the March 2020 quarter, net overseas migration fell by 18 per cent as compared to the same quarter in the previous year (Australian Bureau of Statistics, 2020a). As at June 2020, Australia was in its first recession in 29 years.

The crisis has accentuated the medium-term challenges the State faces and the need for productivity enhancing measures. The 2020-21 Federal Budget, however, was focused on immediate fiscal stimulus, rather than structural reform.

New South Wales is on the front foot with its productivity reform agenda. A three-staged process is well underway with the Productivity Discussion Paper and more recent Green Paper. This will culminate in final recommendations to Government in the forthcoming White Paper. This Review is complementary, as improvements to the infrastructure contributions system will support a planning system that helps drive productivity growth.

The planning system has an important role in the Government’s 3R staged approach to the pandemic—Respond, Recover and then Reform. In the Respond phase, temporary measures were introduced to meet the challenges of operating in a COVID-19 world. For example, relaxation of construction hours helped industry ensure social distancing on construction sites.

As the economy begins to Recover, so too will population growth and demand for housing, employment space, and infrastructure. Timely implementation of this Review’s recommendations will deliver an infrastructure contributions system that supports, rather than impedes, development and growth.

The Review has considered two recent local government reviews

In developing reforms, the Review has considered:

- the NSW Auditor-General’s 2020 report examining four councils’ management of local infrastructure contributions revenue in 2017-18 and 2018-19. Several of the Auditor-General’s recommendations for improving the reporting and monitoring of contributions have been adopted
- the Independent Pricing and Regulatory Tribunal’s (2016) review of the local government rating system. The Government’s June 2020 response included an intention to change the local government rate peg to enable rates revenue to grow with population. This will enhance councils’ capacity to respond to rising service demand. The Review’s recommendations are predicated on successful implementation by the Office of Local Government.

Chapter 2: Funding for growth and the role of a reformed infrastructure contributions system

Findings

- The State will face a constrained budgetary position as recovery from the COVID-19 pandemic gets underway, asset recycling winds down, and pressures from a growing and ageing population increases. Governments will have to reconcile the need for fiscal repair with increasing demands for infrastructure.
- Infrastructure contributions reform offers improved productivity, higher economic growth, and enhanced living standards in three respects:
  - supporting growth through efficient revenue raising that unlocks development potential
  - removing distortions and uncertainty, and reducing risk to improve development feasibility
  - better coordinating development with service delivery and improving community confidence in the planning system.
- The impactor pays and beneficiary pays principles are central to an efficient contributions system. Application of the principles is not, however, always straightforward as there are competing objectives of certainty, cost reflectivity, and administrative efficacy. Some flexibility within this framework is therefore required.

Key recommendations

- Local infrastructure contributions should require the impactor to pay and provide a market signal that reflects the cost of servicing different locations. Flexibility should, however, be provided to ensure timely and efficient infrastructure delivery.
- State contributions should combine simplicity and certainty, recovering a portion of infrastructure costs from impactors beneficiaries.
- The contributions system should be transparent and easy to understand. Where complexity cannot be avoided, detailed information should be provided, including online tools and guidance material.

2.1 Funding infrastructure for growth in New South Wales

The term ‘infrastructure’ generally refers to a wide range of assets supporting services that enable our cities, towns, and regions to properly function. Most of these services are provided by State and local government. This includes roads and freight assets, public transport, healthcare facilities, schools and universities, community services, open spaces, and more.

Government’s role in service provision ranges from direct delivery, arms-length delivery, partnerships with the private sector, and coordination of service delivery with private activity. As ‘public infrastructure’ can have many meanings, a definition is set out in Box 2.1.

Box 2.1: Defining public infrastructure

'Public infrastructure' generally refers to infrastructure where government plays a leading role to ensure its delivery. This can include, but is not limited to:

- roads and pedestrian and cycle paths
- public transport, including transport interchange facilities
- water cycle management
- open space for recreation purposes
- community facilities such as community centres and libraries, schools and hospitals
- utility services such as water and sewer, electricity, gas, telecommunications.

The *Environmental Planning and Assessment Act 1979* (EP&A Act) refers to 'public amenities' or 'public services' but notes that this does not include 'water supply or sewerage services'. These services are dealt with under other legislation. This Review, however, is concerned with the provision of all utility services infrastructure that is needed to support growing communities.

Funds for public infrastructure must ultimately come from either users and other beneficiaries or tax payers. Funding sources in New South Wales are:

- public funding from:
    - the Government budget from State tax revenue, Commonwealth funding, borrowing (debt is a call on future revenue) and the proceeds of asset transactions (through the Restart NSW fund)
    - the Commonwealth through grants
    - local government from general rates revenue
- cost recovery via:
    - direct user charges
    - infrastructure contributions.

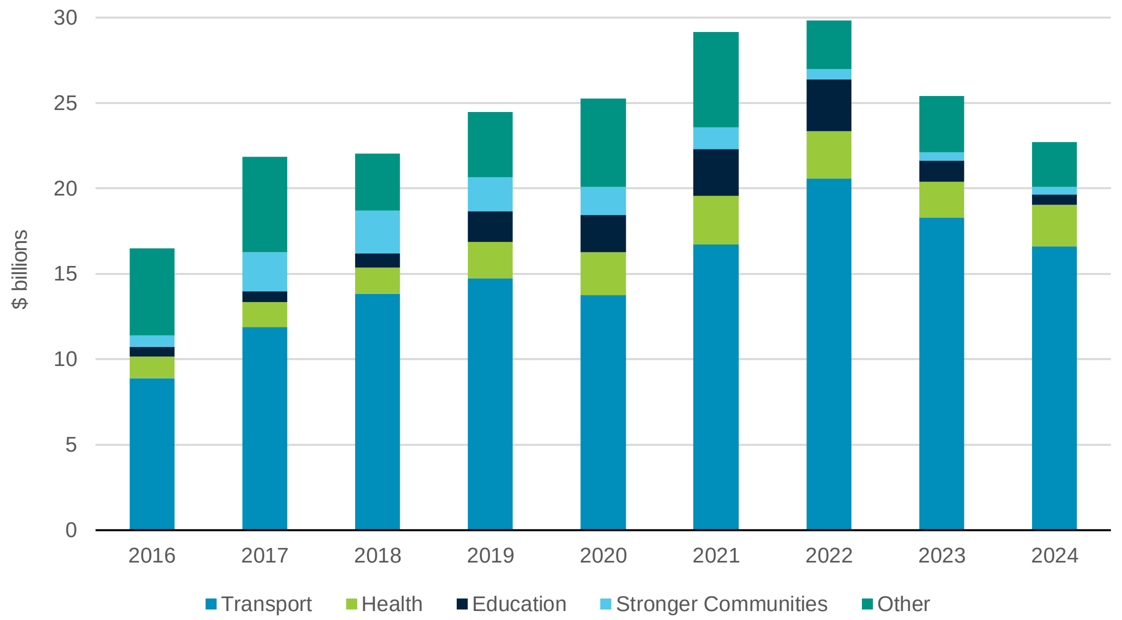
State Government capital funding is increasingly constrained

Over the four years to 2023-24, $107.1 billion has been allocated to the State's infrastructure program. This includes a $3 billion Jobs and Infrastructure Acceleration Fund, designed to fast-track shovel ready projects through the planning system and boost employment in the near term.

The State's capital program is predominantly funded through State taxation, borrowings and own-source revenues ($75.9 billion or 71.1 per cent), and Restart NSW ($7.3 billion, or 6.5 per cent). The balance is from user charges via Public Non-Financial corporations and Commonwealth grants. This funds significant projects such as Sydney Metro, WestConnex, light rail projects in Sydney, Newcastle and Parramatta, school infrastructure, hospitals, and regional road upgrades such as the Pacific Highway (NSW Treasury, 2020b).

As shown in Figure 2.1, typically well over half the State's infrastructure program is for Transport (67.4 per cent over the next four years). Health will account for around 9.5 per cent, and Education around 7.1 per cent.

Figure 2.1: State capital expenditure by cluster [(a)(b)]



Source: NSW Productivity Commission using Treasury data
(a) Clusters reflect departmental arrangements that took effect from 1 July 2019.
(b) Numbers are on a net basis.

As at 31 October 2020, Restart NSW has received $35.3 billion from asset sales and interest. Restart NSW is committed or reserved to support the State's capital program (NSW Treasury, 2020b).

As asset sales wind down and the need for post-pandemic fiscal repair rises, pressures on the capital budget will increase. This will make it more difficult to fund infrastructure to support growth.

Downward GST revenue revisions are hitting Commonwealth grants

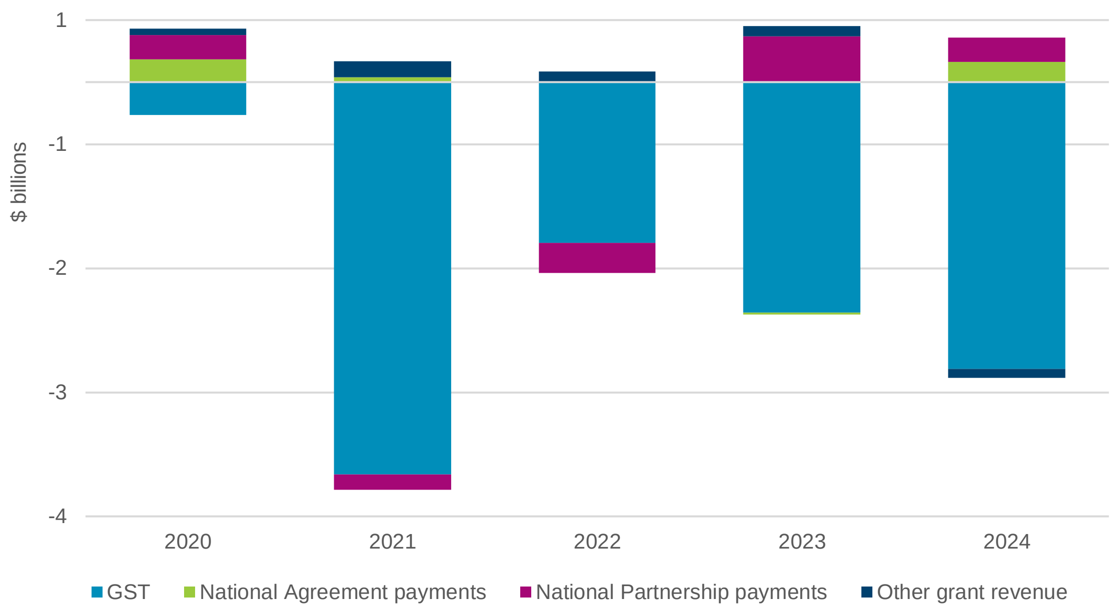
Commonwealth support primarily comes from:

- **specific purpose grants** – tied to delivery of national objectives and provided as part of National Agreements or National Partnerships
- **general purpose grants (including GST)** – untied and can be spent on any identified State or local priority. An example is the Commonwealth Financial Assistance Grants provided to councils via the Local Government Grants Commission.

The COVID-19 pandemic and associated impacts (e.g. international border closures and higher unemployment) has resulted in a smaller GST pool. This is largely due to weaker taxable consumption and private dwelling investment, and higher unpaid GST. New South Wales expects a GST revenue loss of $3.2 billion in 2020-21, with total GST revenue down to $16.3 billion. GST revenue is expected to be $8.7 billion below the 2019-20 Half-Yearly Review forecasts over the four years to 2023-24. This is slightly offset by an increase in other grant revenue (including from National Agreement and National Partnership payments) totalling $1 billion over the period (NSW Treasury, 2020a) (see Figure 2.2).

Future growth in New South Wales' GST revenue will be influenced by factors such as the timing of an effective vaccine, a pickup in net overseas migration, and the pace of economic recovery.

Figure 2.2: Change in NSW Commonwealth grant revenue from 2019-20 Half-Yearly Review

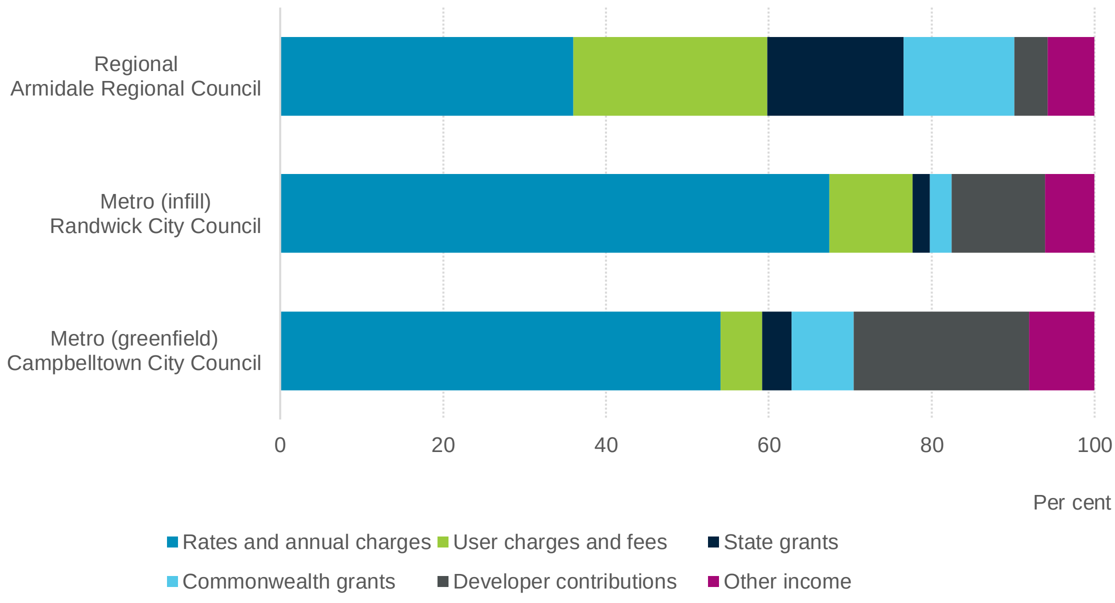


Source: NSW Productivity Commission analysis using 2020-21 Budget data

Councils rely heavily on rates revenue

New South Wales councils raise over $4.3 billion from rates annually. Rates are their largest revenue source, accounting for about 38 per cent of total council income (Office of Local Government, 2020). The remainder is from user charges, grants from other levels of government (particularly the Commonwealth), and infrastructure contributions.

Figure 2.3: Composition of local government income in 2019-20, example councils



Source: NSW Productivity Commission using 2019-20 council annual reports

Figure 2.3 illustrates differences in the composition of revenue for three example councils in 2019-20; one regional and two metropolitan—'infill' and 'greenfield'—councils. A greenfield council is dominated by development on land with no previous urban footprint. Infill reflects redevelopment on land previously developed, including urban renewal precincts.

The infill development council relies most heavily on rates (67 per cent), then the greenfield (54 per cent). The regional council has a lower proportion of rates income (36 per cent) with a higher proportion of grants income. Councils with greenfield development tend to raise a larger proportion of income from the property sector (through infrastructure contributions or works-in-kind), reflecting their higher need for new infrastructure to support a growing community.

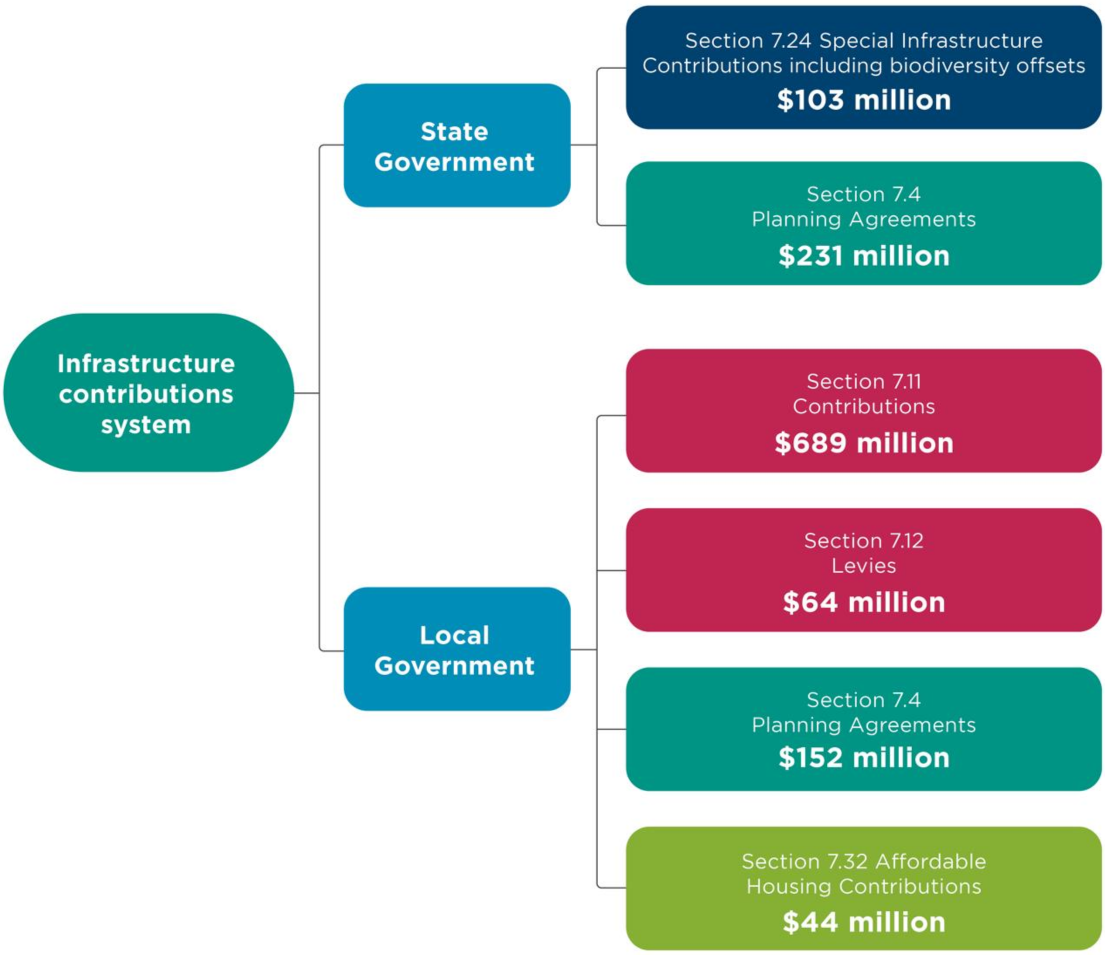
Financial sustainability is a challenge for local government. Under current arrangements, options for funding infrastructure are limited. A council's ability to maintain consistent service levels is particularly constrained for those with growing communities, more so to the extent that community expectations are increasing. A significant contributor to the lack of fiscal flexibility is the local government rate peg, which currently includes no provision for population growth.

This has created a dilemma for councils. It has forced them to place greater reliance on their other very limited discretionary funding instruments, irrespective of appropriateness. In particular it is understandable that they would try to raise revenue through infrastructure contributions beyond that required for the particular development project. Issues relating to the funding of local government are therefore integral to the consideration of the infrastructure contributions system. Given the complexity of this issue, it is considered further in a separate chapter (Chapter 3).

Infrastructure contributions are a small share of capital expenditure

As illustrated in Figure 2.4, the infrastructure contributions framework consists of five mechanisms under different sections of the EP&A Act.

Figure 2.4: New South Wales infrastructure contributions and 2018-19 collections



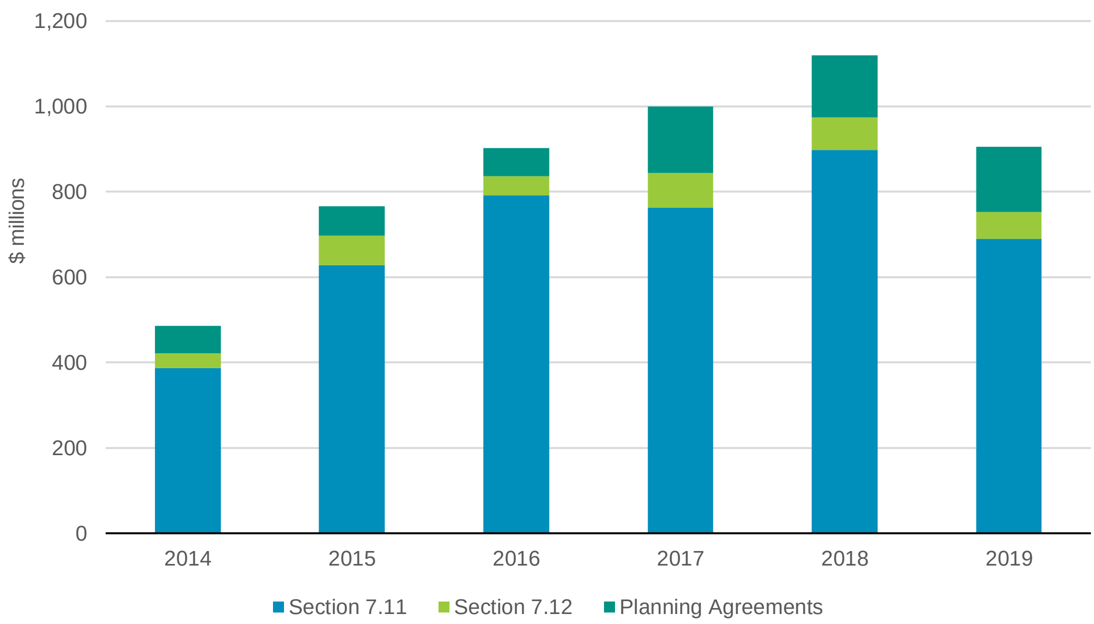
Source: NSW Productivity Commission using the Department of Planning, Industry and Environment's data

The State Government is responsible for the provision of major roads, public transport, health facilities, emergency services, schools, regional open space improvements, and some pedestrian and cycling paths. In 2018-19, the NSW Government collected approximately $334 million in infrastructure contributions (including works-in-kind)—comprising of $103 million in special infrastructure contributions and around $231 million under state planning agreements (Department of Planning, Industry and Environment, 2019).

Local government is generally responsible for local infrastructure such as open space, community facilities, stormwater drainage, local roads, footpaths, and traffic management. Infrastructure contributions collected by councils must be held in trust for delivery of the infrastructure it was collected for.

Over the period 2013-14 to 2018-19, an average of $863 million per year was collected by councils, comprised of section 7.11 contributions (80 per cent), section 7.12 levies (7 per cent) and planning agreements under section 7.4 (12 per cent) (see Figure 2.5). Total collections had been increasing, before falling in 2018-19.

Figure 2.5: Local infrastructure contributions by mechanism over 2013-14 to 2018-19



Source: NSW Productivity Commission analysis using the Department of Planning, Industry and Environment's data

A broader revenue base for infrastructure funding is needed

There is widespread agreement among industry stakeholders that the current contributions system is broken and highly unpredictable, resulting in inefficient and inequitable outcomes.

> *…the NSW infrastructure contribution system is too complex, adds significant costs to housing development projects and does not always result in infrastructure being delivered when it is needed.*
>
> Property Council of Australia submission

The many reviews undertaken over the years have delivered only piecemeal reforms, which tended to increase complexity. The hard truth is that contributions raise only a small proportion of the funding needed to meet the demands for infrastructure to support growth and development, especially in fast growing areas. The majority of infrastructure must be funded through the State budget.

State budget funding, however, is constrained. As a result, not enough infrastructure is being delivered, slowing down development and leaving growing communities with increasing congestion and poor service delivery.

Increased demands on State and local government service provision can place additional pressure on the capital budget, exacerbated by the winding down of asset recycling and the long-term impacts of COVID-19. Reforms to the infrastructure funding framework are needed to raise additional funds for growth infrastructure and better leverage the State capital program.

2.2 Challenges in State and local government service provision

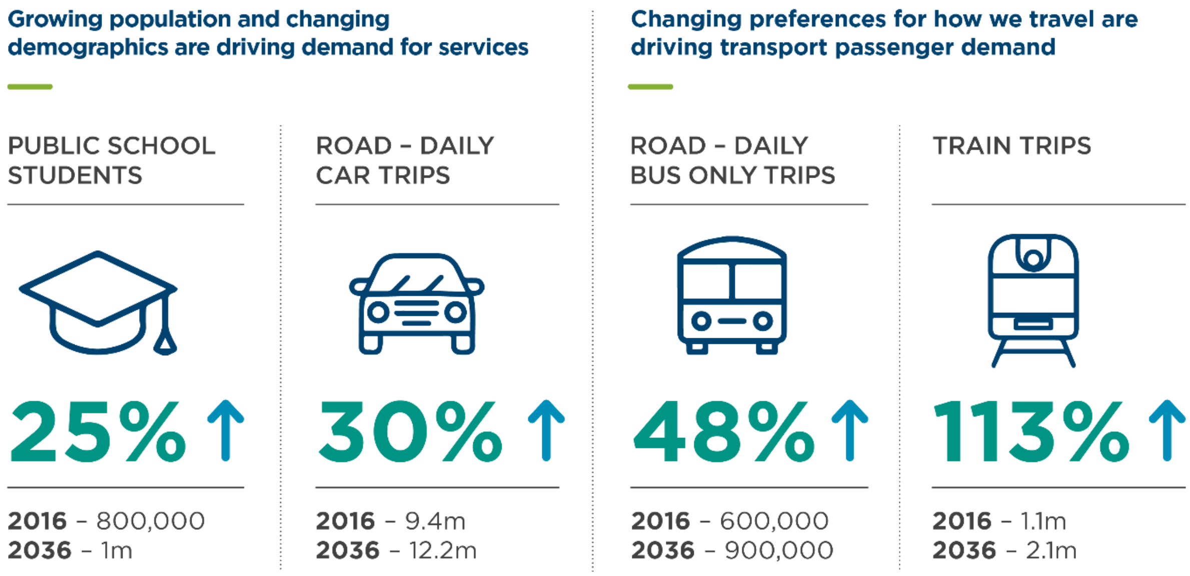
Rising infrastructure demand and costs

A growing and ageing population

As at 31 March 2020, the State's residential population was 8.2 million (Australian Bureau of Statistics, 2020a). The State Infrastructure Strategy 2018-2038 (Infrastructure NSW, 2018) assumed population would reach 9.9 million by 2036 and 12.1 million by 2056. While COVID-19 is impacting population growth, it will resume once the pandemic is over.

Residential, commercial, and industrial development is essential to delivering the homes and jobs required by a growing population. But this will bring additional infrastructure demand for schools, transport, health and emergency services, energy, and water. Figure 2.6 provides a snapshot of some of the main demand drivers between 2016 and 2036.

Figure 2.6: Main drivers of infrastructure demand between 2016 and 2036



Source: Infrastructure NSW (2018)

The 2020-21 NSW Budget included capital expenditure averaging $26.8 billion per year over four years to 2023-24. The 2016 Intergenerational Report found that over the long-term, to support population growth while maintaining living standards, annual capital investment must grow at an average rate of 4.1 per cent a year, reaching an estimated $49 billion (in nominal terms) in 2055-56 (NSW Government, 2016).

By 2056, a quarter of the New South Wales population will be aged 65 and over, up from 16 per cent in 2016. This creates an 18 per cent increase in the aged dependency ratio (those aged 65 and over, to those aged 15-64) to 42 per cent in 2056. There will only be 2.4 working age people to each person over 65 years, down from a ratio of four in 2016. The dampening of net overseas migration as a result of COVID-19 is likely to worsen this, as migrants tend to be younger.

Rising infrastructure costs

The State's infrastructure boom has been accompanied by cost pressures. These have arisen because of supply constraints in the construction sector, high property prices, and the impact of environmental and planning compliance (Infrastructure Australia, 2019). A recent global study found Sydney the most expensive Australian capital city for construction and 30th in an assessment of 100 cities globally (Arcadis, 2020).

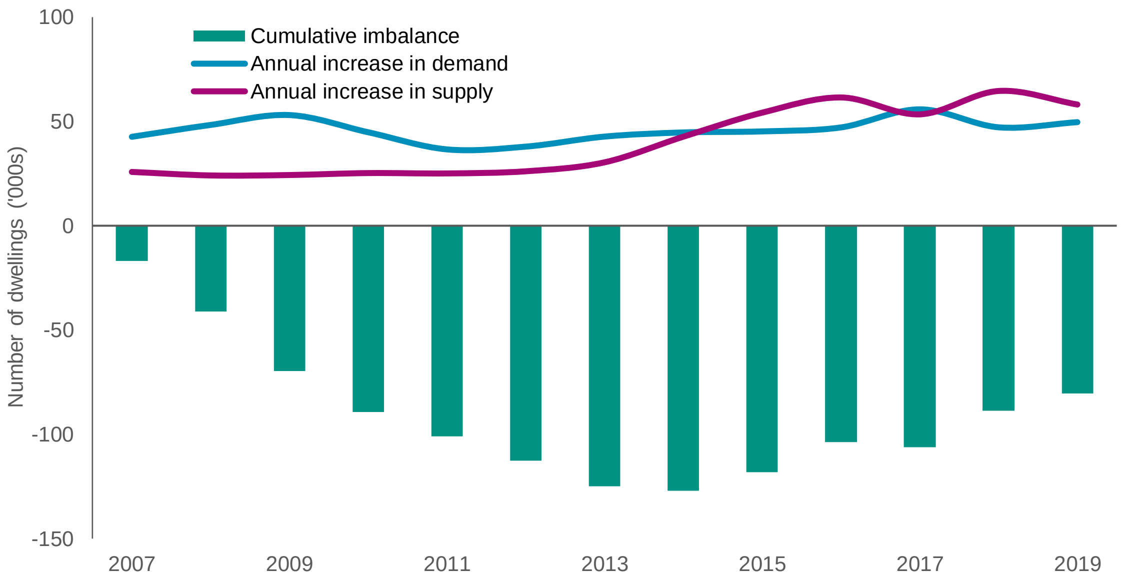
Because of interdependencies between the markets for public infrastructure and private development, risings costs pose risks to development feasibility. In designing infrastructure contributions reform, this Review recognises the need to not unduly increase costs and discourage future investment in New South Wales.

Housing undersupply and declining approvals

Over the past decade, the housing sector saw record prices driven by population growth and an extended environment of low interest rates since the 2008-09 Global Financial Crisis. This accentuated the impact of housing undersupply that accumulated over the period 2006 to 2012, when annual completions halved while net overseas migration doubled (Figure 2.7).

A surge in residential construction activity since 2011-12 has helped to reduce the housing shortage, but a net undersupply remains. According to modelling done for the NSW Productivity Commission Green Paper (2020), the housing shortage has fallen from an estimated 100,000 dwelling in 2016, to 70,000 dwellings in 2019.

Figure 2.7: Cumulative housing market imbalance (2007 - 2019) in New South Wales



Note: The housing under/over supply is calculated as the cumulative difference between the underlying demand and supply of new housing.

Source: Treasury modelling using Australian Bureau of Statistics (2020b) data

The outlook for the housing shortage is not encouraging. While housing demand is likely to be weaker due to slower population and economic growth.

Continued decline in Greater Sydney approvals in 2019-20 and a weak outlook for housing demand suggests that supply will fall further in the short term. Even before the pandemic, new housing supply was falling. Moderated housing demand may have only a limited impact on the backlog of dwellings because new housing supply is also declining precipitously. In 2019-20, just over 32,000 dwelling completions were recorded in Greater Sydney, well short of the Greater Sydney Commission's strategic target of 36,250 dwellings needed per year to meet demand by 2036.

Without improving the way we plan for and deliver new housing, the housing shortage will worsen. The Green Paper projects that undersupply could reach 170,000 dwellings by 2038, based on the State's previous performance against housing targets. The Green Paper also highlights the need to improve the efficiency and reduce the uncertainty of the planning processes involved with building new housing. Medium and high density development applications take around twice as long to approve on average in New South Wales than other jurisdictions (Mecone, 2019).

A lack of timely infrastructure provision is a barrier to development

The supply of new residential, commercial and industrial development is constrained by zoning practices and infrastructure provision. Industry has identified a lack of infrastructure as a barrier to development. Infrastructure contributions can constrain housing supply when:

- contributions plans take a long time to develop, and councils delay development
- insufficient funding is collected for timely provision of critical infrastructure, such as roads, electricity substations, water and wastewater.

Out-of-sequence rezonings and ad hoc development can make these problems worse. These sidestep the strategic planning process and burden service providers with delivering projects they did not anticipate. This can result in delays when projects are not tied to funding.

The planning system is an important lever in our economic recovery following COVID-19. By addressing existing barriers to development, projects that facilitate economic growth will be delivered. Better coordination of development with infrastructure delivery is desirable, particularly public transport, roads, and water. The infrastructure contributions system can support this by efficiently raising funding and supporting the State capital program to deliver infrastructure when and where growth requires it.

Environmental challenges

Climate change impacts will further compound New South Wales' pre-existing economic, fiscal, and infrastructure delivery challenges. The 2019-20 summer was Australia's worst bushfire season in recorded history. The likelihood of further extreme weather events—drought, heatwaves, and flooding—will detract from the State's output and productivity. These will increase disaster recovery and future maintenance costs.

Blue Mountains Council's submission reflected the need to improve resilience of critical infrastructure to withstand and adapt to environmental shocks.

> *Climate change, and the associated increase in frequency of extreme weather conditions, has implications for infrastructure provision and emergency preparedness.*
>
> Blue Mountains Council submission

Solutions including heat refuges (e.g. air-conditioned buildings) and tree canopy cover can help mitigate increasing urban ambient temperatures and improve liveability. Integrated water cycle management makes best use of a resource that is scarce away from coastal and catchment areas. For bushfire-prone areas, fire resistant building materials will minimise the risk of extensive property damage and prevent a fire's spread. These approaches, however, will tend to increase life-cycle costs for development and infrastructure.

2.3 Principles for an efficient infrastructure contributions system

An efficient infrastructure contributions system requires sound principles

Responding to the State's challenges requires improvement to how we plan, prioritise, fund, and deliver infrastructure. Infrastructure contributions reform can help improve productivity, increase economic growth, and enhance living standards in three respects:

- **Improved coordination** of growth with service delivery will increase community confidence in the planning system. Communities will be more willing to accept development as a result.
- **Removing distortions** from cost shifting and poor information flows will reduce risk, lower margins, and improve project feasibility. This will support the private sector in delivering more development, at a faster rate, within existing planning controls.
- **Efficiently raising funds and supplementing general revenue** to deliver a capital program that unlocks housing supply and business capacity.

Defining our objectives

Three objectives for the infrastructure contributions system are identified:

- ensuring timely and coordinated infrastructure delivery to support development
- providing market signals to guide development
- raising revenue to contribute to funding the State's growth.

Delivering infrastructure in a timely and coordinated way

Contributions are, in the first instance, mechanisms for the delivery of infrastructure to support development. Planning and delivery of amenities by government is essential if development is going to serve the needs of society. Industry has commercial incentives to deliver residential, commercial, and industrial space but does not always have the incentive to deliver services and amenities the community reasonably expects. Coordination of development with service delivery can address the negative impacts of development. In this way, contributions play an important role in supporting community confidence in the planning and infrastructure delivery systems.

Timely infrastructure delivery can also ensure that funds are directed when they are most needed. A lack of infrastructure provision—even for development that offers significant benefits—can act as a barrier. By supporting the link between growth and service delivery, infrastructure contributions can ensure the State gets quality development—the housing people want and jobs people need—at the right time.

Market signals to guide development

Residential, commercial, and industrial development is a critical determinant of economic growth and higher living standards. The private sector may not, however, generate a level or pattern of development that makes society better off as a whole, even if it delivers a profit for developers.

Contributions are a means of signalling where infrastructure service costs are high and where they are modest. Cost reflective signals can therefore ensure industry delivers a level and pattern of development that maximises community welfare based on market, social, and environmental considerations. These issues are further explored in Box 2.2.

Box 2.2: Development feasibility and society's welfare

Private feasibility occurs when industry can generate a return on capital that is sufficient to proceed with a project. This will arise when a purchaser's **willingness to pay** exceeds **delivery costs and a minimum acceptable profit to developers**.

If infrastructure costs were similar across all locations, contributions would not be needed to guide the level and location of development. Development in different locations and at different times, however, carries varied levels of infrastructure cost, with some locations very costly to service. This is not necessarily accounted for in the private incentives faced by developers. Left alone, industry would deliver too much development in some places, which would leave society worse off. It is therefore necessary to distinguish private feasibility from *society's welfare*.

By providing cost reflective market signals, the contributions system can ensure service costs are borne by developers. In areas relatively costly to service, development is discouraged, while in areas relatively cost effective to service, development is encouraged. This aligns investment decisions of industry with the interest of society.

Raising revenue to service development and growth

All infrastructure funding mechanisms should raise adequate revenue while minimising distortions. Cost reflective charges for infrastructure delivery will tend to avoid distortions. Infrastructure will, however, have ongoing costs—maintenance and operating costs. While it is reasonable for developers to be charged capital costs, recurrent costs should be met through other means.

Local government rates are among the most efficient revenue instruments in New South Wales. Land tax is also a relatively efficient source, despite its narrow base, while transfer duty, payroll tax, insurance taxes and motor vehicle taxes are relatively inefficient (see for example KPMG Econtech 2010, Commonwealth Treasury, 2015, Nassios et al, 2019). The relative efficiency of the rates base suggests it should be an integral part of the infrastructure funding system. Capital costs of local infrastructure should be recovered through contributions, while recurrent costs should be funded by rates and other sources of revenue for councils.

Infrastructure contributions can still be an efficient funding mechanism even when their purpose is not to send cost reflective market signals. This efficiency arises in cases of:

- high development feasibility
- low administration costs
- certainty—transparency, predictability, and sufficient adjustment time.

Economic modelling has found, subject to these conditions holding, contributions can be factored into land prices without impacting the State's economic growth and productivity (Centre for International Economics, 2020). This is particularly true in Sydney, where land rezoned for development tends to experience a substantial value uplift, representing a large windfall gain for the owner (who in some cases is the developer) and making development more viable (see Box 2.3).

Box 2.3: Infrastructure contributions and housing supply

One of the biggest concerns about infrastructure contributions is that they will add to the cost of housing and therefore reduce housing supply or affordability.

Economic analysis indicates that the impacts should be minimal.

Contributions do not necessarily add to the final price of new housing. The maximum price achievable for a new apartment or dwelling will be determined to a large degree by the broader housing market, with consideration of the unique characteristics of the property and its location. When a contribution is levied, to the extent that the broader housing market and characteristics of the dwelling are no different, the maximum price achievable for the dwelling would remain unchanged.

Instead, the amount of the contribution should theoretically be reflected in land values. When developers bid for a parcel of land, they will typically calculate the 'residual value' of the land based on the estimated revenue achievable from sales, less the range of costs, taxes and charges involved with delivering the development, and a profit margin (Abelson, 2018). The 'residual' then reflects the value of the land to the developer and will inform any bid that it is willing to make. Provided that the residual land value is still higher than its opportunity cost (or next best use) to the vendor, it is still in the owner's interest to sell.

The introduction of a contribution should only reduce housing supply in cases where the land is more valuable in its existing use than what a developer is willing to offer (e.g. as the existing house or farmland), and the project falls through. This is most likely to be in locations where demand, and prices, are relatively low.

As long as the contributions applied to a development are reflective of the true costs to society, for example of delivering the infrastructure, it is not necessarily a problem that unviable projects do not go ahead at a particular point in time. As demand grows, developments that were unviable may become viable.

Reality is more complicated, however. There are two further considerations for housing supply:

- While an infrastructure contribution may be well designed and cost-reflective, that is not necessarily the case for all taxes and charges. To the extent that a tax is large enough (in combination with other costs) to make a project unviable, it inefficiently distorts the development decision. Industry stakeholders raised concerns about cumulative effect of taxes and charges in submissions.
- A landowner's decision to sell will be based on the price they *expect* they will be able to sell for, which will not necessarily align with the price a developer is willing to pay. Vendor expectations will reflect a range of factors, including past offers or option agreements, recent sales in the area, and perceptions of market conditions. If land values are increasing, a vendor might opt to wait for a better price, delaying development. Industry stakeholders also raised this concern.

These factors are not reasons to avoid efficient, cost-reflective infrastructure contributions, but they are important considerations in the design and implementation of the contribution. Making the adjustment gradual and predictable will enable vendor expectations to adjust.

Principles that serve our objectives

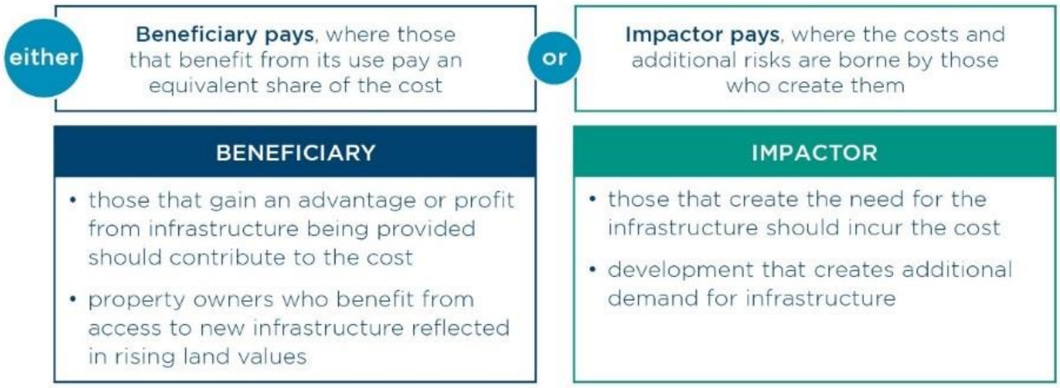
As discussed in Section 2.1, options for infrastructure cost recovery includes both user charges and infrastructure contributions. The principles supporting these mechanisms are:

- *Impactor pays*, where those creating the need are charged
- *Beneficiary pays*, where those benefiting from the service are charged.

These concepts are illustrated in Figure 2.8.

Generally, levying infrastructure contributions on developers reflects the impactor pays principle. Specific developments can also directly benefit from government investment. In these instances, the beneficiary pays principle also justifies levying a contribution.

Figure 2.8: Overview of beneficiary pays and impactor pays principles



Source: NSW Productivity Commission

Where a clear impactor or beneficiary can be identified, there is a relationship between development and the infrastructure—often referred to as 'nexus' (see Box 2.4).

Box 2.4: Nexus between infrastructure and development

Nexus is the relationship between development and need for additional public facilities, and has casual, temporal, and spatial dimensions.

In the case of local infrastructure contributions, councils must demonstrate the relationship between expected development and infrastructure need, including:

- whether the anticipated development creates an increase in service demand
- the types of facilities required to address that demand
- the extent to which existing facilities have capacity to provide for that demand
- when new facilities would be provided to meet the demand.

Source: Department of Planning, Industry and Environment (2005)

Some infrastructure is unquestionably linked to a specific development; for example, a road or water pipe linking a development to a broader network. Others, such as sporting stadiums or public housing, have a broad base of potential beneficiaries and it is near impossible to identify the benefits to any specific development.

In considering nexus, it is useful to distinguish between **development-contingent** costs, **development-associated** costs, and **general** costs.

Development-contingent costs

This category builds on the impactor pays principle and encompasses infrastructure costs with a causal connection to a development because they would be avoided if the development did not proceed. The developer, in other words, has created these infrastructure costs because of its activities; it should therefore bear them.

Development-contingent costs could include, for example:

- within-development open space, road, and pedestrian facilities
- network connections for water facilities (potable, waste, and stormwater)
- facilities shared between multiple developments, e.g. local roads and open space.

Where nexus is shared between multiple developments, the relative demand each development places on infrastructure can be quantified through apportionment. This is defined in Box 2.5.

Box 2.5: Apportionment in development and infrastructure contributions

Apportionment means costs are shared equitably between benefiting developments, based on the level of demand they generate.

Development-associated costs

These arise where infrastructure costs would be incurred regardless of whether a development proceeds, but nevertheless have a clear relationship to that development.

Whereas, with development-contingent infrastructure, development drives infrastructure costs, in this case, infrastructure drives development in a particular location. An investor (in most cases, the State) would not have committed to the infrastructure were it not for the promise that development would follow. Apportionment can also be used in these cases when determining the relative demand each development places on the committed infrastructure.

Integrated transport and land use projects, such as Sydney Metro, are an example. These projects open-up significant growth potential in their station catchments. Station construction costs will be incurred regardless of whether individual developments proceed. Nonetheless, had the Metro not been built, development would not have followed.

The beneficiary pays principle justifies recouping some of the costs from affected developers. Moreover, it could generally be more efficient than funding from State taxation, if that is the alternative.

General costs (including population-related costs)

These costs would arise regardless of whether any specific development proceeds. These 'general costs' are, instead, driven by other factors, including:

- change in the composition of the population and services it demands, such as through ageing
- community preference for higher service levels
- the need to meet new environmental standards
- an increase in the State's or local government's population.

The distinction between these categories of costs is not always clear as the examples of water connections and sporting stadiums highlighted earlier. In particular, the close relationship between development and population growth makes it challenging to determine whether infrastructure is driven by population growth or whether infrastructure drives population growth.

Given this challenge, nexus needs to be determined on a case-by-case basis, drawing on the principles outlined above.

Practical issues in designing an efficient contributions system

In general, an efficient contributions system should be:

- simple
- reflect the efficient cost of infrastructure provision
- certain in the setting of charges
- flexible enough to provide solutions for specific circumstances.

Challenges emerge when these principles compete with one another. When trade-offs emerge, they should be identified and balanced as part of a reform package.

Errors in estimating project costs and infrastructure charges

Efficient, cost reflective charges can take significant time and resources to develop due to the complexity of cost estimation for different types of infrastructure and the specialised expertise it requires. Establishing section 7.11 contributions plans, for example, is highly resource intensive. It includes:

- time and staffing required by councils to develop and administer plans
- time and staffing for the Independent Pricing and Regulatory Tribunal to review plans where required
- quantity surveyors and engineers to identify required works and estimate costs
- legal and accounting advice to ensure probity and compliance.

Generally, the more time and resources spent on planning, the more precise the design and the more accurate the cost. Planning costs vary from council to council (with costs ranging from $1.9 million to $5.8 million). Centre for International Economics (2020) estimates the contributions system cost $56 million to administer, or around 5.3 per cent of total funds collected in 2018-19. But even with a significant allocation of planning time and resources, cost estimates carry error margins. These arise because of scope creep, inaccurate forecasts for capital cost escalation, unanticipated increases in property acquisition costs, and poor assessment of the risk profile of projects. Error margins are likely to be greater for contributions plans made well before the infrastructure is delivered, as circumstances change over time.

Even when costs are estimated accurately, apportionment can be a challenge. Development-contingent infrastructure such as local roads and parks can be used by the broader community even though their original requirement arises because of development. Infrastructure that does not depend on a new development, such as community centres and libraries, may also support both new and existing residents. Determining apportionment can require additional time and resources, though likely with diminishing returns.

Cost reflectivity versus certainty

Contribution rates need reasonable certainty so developers and landowners understand their obligations and can factor them into decision making. Because, however, circumstances can change, this is not always feasible. State and local authorities can re-visit and update contributions plans and charges for changed circumstances, which will have a cost for them.

The trade-off between accurate cost recovery and certainty is an ongoing challenge for the contributions system. The cost of updating plans may outweigh benefits. A practical and flexible approach to implementation is therefore needed. Governments should determine where to strike the balance between:

- cost reflectivity that provides accurate signals about the merits of development in different locations
- certainty and predictability to ensure contributions do not create unmanageable shocks that could compromise development feasibility.

Principles-based system design versus practical flexibility

If too rigid, it will be difficult to achieve satisfactory trade-offs that ensure the system is as efficient as reasonably possible. The benefits from consistency in application can be set against the benefits of flexible approaches. These include local solutions, such as negotiated planning agreements for unsolicited development proposals and works-in-kind agreements when cost savings are available.

Having a system that provides options that can be applied to specific circumstances, but in a consistent way, can be a good compromise. Examples within the current system include section 7.12 fixed development consent levies as an alternative to section 7.11 contributions plans, and scope for works-in-kind agreements. But there is still scope for improvements to these arrangements to enhance consistency in application, and to improve trade-offs.

Stakeholder views

There is broad agreement that contributions should reflect the reasonable cost of providing necessary infrastructure for new development, and to create a price signal to help influence its location. This is balanced with an acknowledgement that these price signals are dependent on having enough information readily at hand, and the desirability of transparency and certainty.

> *It is important the developer contributions are cost-reflective, for reasons of economic efficiency and equity; while the system also provides a reasonable level of certainty and minimises administrative costs.*
>
> Independent Pricing and Regulatory Tribunal submission

> *It is important to promote reform that improves the transparency and predictability of the amount of all development contributions payable and send a market signal for the desired form and location of development.*
>
> Waverley Council submission

Some submissions support the impactor pays principle. IPART suggests that a hierarchy should be applied that favours 'impactor pays', followed by beneficiary pays, then taxpayer pays. Other submissions note the issue is more complex and that a binary choice may not always work.

Stakeholders generally recognise that site specific calculations for section 7.11 contributions plans facilitate clear attribution and apportionment and send a more precise market signal, but this comes at a higher cost of administration. Precision, however, is at a point in time and may be subject to error or change.

There is strong support from councils for a consistent conceptual framework applied across the State, but with flexibility for tailoring according to local conditions to appropriately balance efficiency and certainty. A small number of submissions highlight that tailored solutions could add complexity to a system that is already difficult to interpret.

> *Greenfield concentrated urban renewal sites and dispersed urban infill each need different approaches to manage the different local dynamics at work such as supply and demand interactions.*
>
> Southern Sydney Regional Organisation of Councils submission

> *A one size fits all approach risks imposing excessive contributions on some development and insufficient on others.*
>
> Blacktown City Council submission

Industry and council stakeholders have a broad interpretation of equity, with a view that the system should consider the role of development, and who the beneficiaries are, across the State.

An equitable system will see all those contributing to the infrastructure that facilitates economic growth contributing. New home buyers should make a contribution, as should developers and original owners of land in greenfield locations.

Workshop participant comment, Engagement Outcomes Report

The proposed approach

This Review has been asked to recommend a principles-based system of infrastructure contributions in New South Wales. It has adopted efficiency as the overriding objective to determine what those principles should be. It has also identified a range of trade-offs that arise in the application of a contributions policy. No system is going to be perfect. Instead, the best will deliver satisfactory trade-offs without losing sight of its overriding objectives. It will also have the flexibility to adapt to new conditions. The proposed approach reflects this pragmatic philosophy.

- An efficient contributions system is characterised by **certainty** and **cost reflectivity**, **simplicity** in design, **consistent** application, and **transparent** funds management, acknowledging that these features may sometimes be at odds with each other, necessitating **trade-offs** between features to maintain **efficiency**.
- Contribution rates should reflect the **efficient capital costs** of infrastructure delivery, defined as the most cost-effective means of creating assets that provide the minimum acceptable level of service.
- **Local infrastructure costs** largely <u>reflect development contingent costs and are therefore justified on an impactor pays</u> basis. Contributions support timely and efficient service provision, provide market signals to developers, and are an efficient funding mechanism. Items within section 7.11 plans or local planning agreements that are not development contingent should be removed. They should not be funded through section 7.12 levies.
- **State infrastructure costs** tend to be a <u>combination of development contingent and development associated costs</u>. Not all costs to the State will be avoided when individual developments do not proceed, so the impactor pays principle does not always apply. Developments, however, can benefit significantly when individual projects proceed, so the <u>beneficiary pays principle justifies a contribution</u>. Even in cases where infrastructure commitments have been made ahead of development approvals, nexus between development and individual projects can be strong.

Above all, an efficient contributions system must be supported by a **strong supporting system**. This should be provided through **digital tools and clear guidance** to ensure investor confidence for project development and public trust in infrastructure funding and delivery arrangements. Confidence in the system is maintained through **public accountability** and **transparency** through all stages of the contributions process.

The current framework for local contributions, with flexibility between cost reflective section 7.11 and simple fixed rate section 7.12 contributions, is consistent with the proposed framework. There are, however, improvements to the overall system structure and operation that would better align the overall system with the proposed approach.

Recommendation 2.1: Enhance efficiency of the infrastructure contributions system

Implement reform to deliver an efficient infrastructure contributions system so:

- local contributions are cost-reflective charges on impactors, applied through a consistent framework but with flexibility for adaptation to local circumstances
- state contributions are simple and certain charges on impactors and beneficiaries of State service delivery.

Chapter 3: Local government rates

Findings

- Local government is constrained in its ability to service growing communities due to the long-standing practice of rate pegging. Currently, the formula does not allow councils to increase their rates revenue with population. This has resulted in declining per capita revenue for high growth councils and is a disincentive for councils to accept development.
- Reform to allow for population growth within a rate peg should enable general population costs to be removed from infrastructure contributions. A methodology will be developed by the Independent Pricing and Regulatory Tribunal (IPART).
- Rate peg reform is expected to increase aggregate council revenue by $18.5 billion over 20 years. Short term impacts are moderate, however, and will need to fund a range of costs.
- The additional revenue will fund local operating and maintenance costs of providing services to a growing population. It can also service debt to forward fund infrastructure. This will enable councils to better coordinate infrastructure with development.
- Along with the rate peg reform, IPART should establish benchmark costs based on 'efficient' delivery and review the essential works list to ensure only development-contingent items are funded from infrastructure contributions (see Recommendations 4.5 and 4.6 for more detail).

Recommendation

- Subject to review by the Independent Pricing and Regulatory Tribunal, reform the local government rate peg to allow councils' general income to increase with population.

3.1 The rate peg has constrained local government fiscal flexibility

Councils play an important role in the provision of local infrastructure to support the needs of their communities and those of the general population. Councils deliver services and perform ancillary and regulatory functions as prescribed under the *Local Government Act 1993*. Other statutory provisions prescribe responsibilities of councils, including those under the *Environmental Planning and Assessment Act 1979* (EP&A Act). These include acting as consent authority for development applications and levying infrastructure contributions on developers for the provision of public services and amenities.

Councils face pressure from the growing demand and rising expectations of their communities to deliver more and better quality services and amenities. Fiscal sustainability is also challenge facing local government. Councils with faster population growth are constrained in their ability to maintain consistent service levels because of the local government rate peg.

Rate pegging limits council ability to raise revenue

Rates are the single largest source of revenue for New South Wales councils, accounting for almost half of total income. The *Local Government Act 1993* requires rate assessments to be based on a percentage of the unimproved land value of the rateable property, estimated on a 3-year rolling average by the NSW Valuer General. The unimproved value excludes the value of buildings and other embellishments to the land.

The amount of funds councils can levy through rates is limited by the rate peg set by the Independent Pricing and Regulatory Tribunal (IPART) under delegation from the Minister for Local Government. The allowable increase is based on the change to a local government (average) cost index (LGCI) less a productivity adjustment, estimated by IPART each year. While the rate peg accommodates changes in the price of services faced by an average council, it does not include changes in the volume of services required. This is likely to increase for councils experiencing population growth.

The rate peg adjustment was set at 2.3 per cent in 2018-19, 2.7 per cent in 2019-20, and 2.6 per cent for 2020-21. Councils can seek approval from IPART for a 'special variation' to their rates revenue over and above the increase in the rate peg, within the terms of guidelines set by the Office of Local Government.

Since 2011, there have been 158 special variation applications. The average number of applications fell to 9.4 for the five years to 2020-21, 51 per cent of which were approved as requested. This was down from an average of 22.2 applications per year in the preceding 5-year period, with a 73 per cent approval rate (see Table 3.1).

Table 3.1: Special rate variations applications

Year	Total councils	Councils applied		Applications approved			Rate peg
		No	%	No[a]	No[b]	%	%
2011-12	152	21	13.8	9	10	42.9	2.8
2012-13	152	13	8.6	7	6	53.8	3.6
2013-14	152	23	15.1	20	3	87.0	3.4
2014-15	152	32	21.1	28	3	87.5	2.3
2015-16	152	22	14.5	21	1	95.5	2.4
2016-17[c]	128	12	9.4	9	3	75.0	1.8
2017-18	128	8	6.3	4	2	50.0	1.5
2018-19	128	13	10.2	9	2	69.2	2.8
2019-20	128	13	10.2	8	3	61.5	2.7
2020-21[d]	128	1	0.8	0	0	0.0	2.6

Notes: a approved as requested, b approved in part, c No determination was made for two councils that were dissolved under amalgamation, and d withdrawn application.

Source: NSW Productivity Commission's analysis based on Independent Pricing and Regulatory Tribunal's data

The annual rate assessment for a property comprises:

- a fixed (base) amount − which is paid by every rateable property regardless of land value, and
- a variable (ad valorem) amount − based on the NSW Valuer General's land valuation.

Since councils have limited alternative sources of discretionary income, rate pegging limits their overall ability to raise revenue. If overall land values rise, or the number of ratepayers increases, ad valorem rates must fall so total revenue does not exceed the approved increase. Within the rate peg, councils have discretion over the distribution of rates between the categories of rateable properties (i.e. farmland, residential, mining and business).

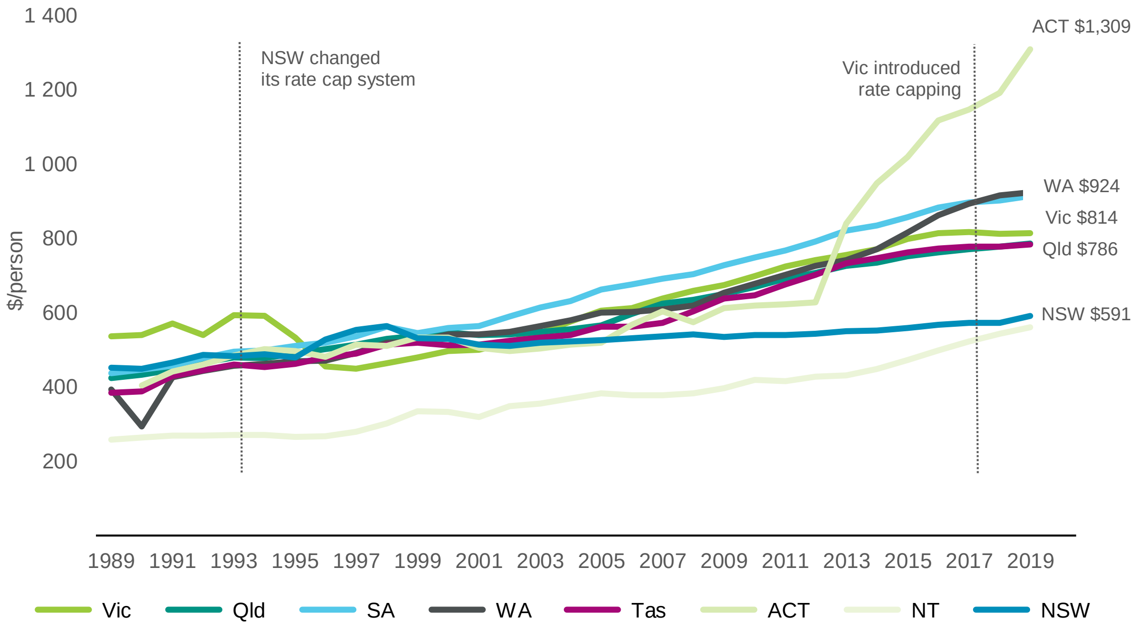
The special variation process to increase general income above the prescribed rate peg appears to be underutilised by councils. This is attributed to the level of resourcing required to develop a satisfactory application, the lengthy timeframes involved, and community backlash from a council increasing its rates by more than other councils.

Rates are low in New South Wales compared to other states

Since its inception in 1977, rate pegging in New South Wales has constrained local government rates revenue rises below other Australian jurisdictions that don't limit rates increases (see Figure 3.1). Between 1989 and 2019, New South Wales rates per capita grew by $139 to $591, an average increase of 1 per cent per annum, the lowest in Australia. This has left rates per capita about 29 per cent lower than the Australian average of $835 per capita.

Experience from the other jurisdictions (except for the Australian Capital Territory[1] for which there are special circumstances) demonstrate a gradual increase in rates over time. Adjusting the rate peg so that it accommodates population growth will provide New South Wales councils with greater ability to meet the needs of growing communities. This will also reduce excessive dependence on contributions.

Figure 3.1: Jurisdictional comparison of rates revenue per capita



Note: Municipal rates revenue measured on a cash basis up to 1997-98, and on an accrual basis thereafter. Each state's council rates adjusted using the All Groups consumer price index for that state's capital city.

Source: Centre for International Economics (2020) based on Australian Bureau of Statistics' data

The rate peg impedes the fiscal sustainability of growing councils

The Commonwealth Productivity Commission's Research Report on Assessing Local Government Revenue Raising Capacity (2008, p.92) observed the "fiscal capacities of local governments depend, to a large extent, on the underlying characteristics affecting the aggregate income of their local community." These characteristics include the size and demographic attributes of the population as well as the nature and scale of economic activity.

Generally, there is a direct relationship between a local government's fiscal capacity (and thus its revenue-raising potential) and its population. In studying the diverse local government responses to the rate peg, IPART (2009) made the following observations:

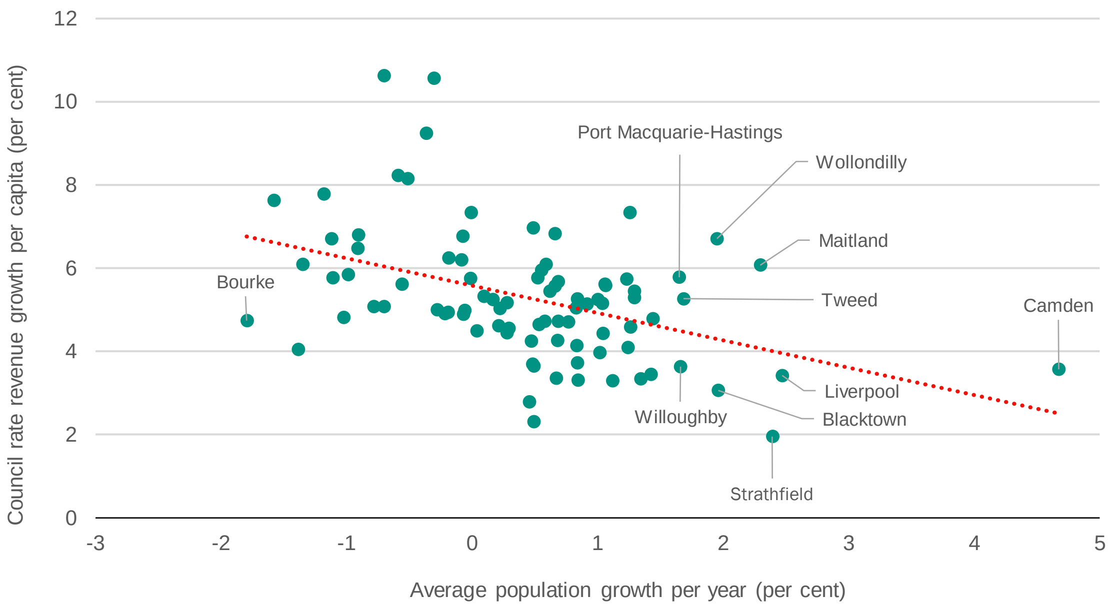
- A majority of councils (mainly metropolitan) that rely on rates as their principal revenue source have strong objections to rate pegging as it restricts their fiscal autonomy.
- Small rural councils support rate pegging as the regulated rate increases provides them with a robust basis for making adjustments.

[1] As the Australian Capital Territory does not have a separate local government, the Australian Capital Territory's land taxes are classified as council rates in the Australian Bureau of Statistics taxation revenue release. The sharp increase in recent years reflects in part that the Australian Capital Territory has been increasing land tax collections in order to fund a reduction in property transfer duty.

- A small number of councils are unaffected as they rely primarily on grants and subsidies to service their community needs. These councils are characterised by a declining resident population with limited incomes who cannot afford significant rate increases.

For councils servicing high growth areas, the rate peg imposes a revenue constraint that amounts to a decline in revenue collected per ratepayer (see Figure 3.2). Over the period 1998-99 to 2018-19, for every percentage point increase in population growth, there was a corresponding reduction in rates revenue per capita growth (Centre for International Economics, 2020).

Figure 3.2: Growth in rates revenue per capita, 1998-99 to 2018-19



Note: Excludes local government areas that did not exist for the entire sample period (i.e. excludes Albury, Lithgow & Oberon, whose borders changed in 2004, and Hills & Hornsby, whose borders changed in 2016).

Source: Centre for International Economics (2020) based on the Office of Local Government data

This lack of fiscal flexibility means the higher a local government area's population, the lower is the resources available for council to provide services to each individual resident. This incentivises councils to either oppose development or attempt to shift general costs to the infrastructure contributions system, or a combination of the two. Both these behaviours, while rational, are inefficient and inconsistent with the interests of the community overall.

3.2 Stakeholder views

Councils are fully aware of the constraint rate pegging poses to their fiscal flexibility and ability to service growth.

> *It should be noted that rate capping under the Local Government Act applying since 1977, makes no allowance for Council's to raise general rate revenue to provide new essential/ community infrastructure necessary to support population growth.*
>
> North Sydney Council submission

Some stakeholders suggest that, as an unintended consequence of the rate peg, cost shifting occurs as councils attempt to offset foregone rates revenue through higher infrastructure contributions and user charges.

Others suggest that the practice be abolished entirely, with councils given full autonomy over their revenue raising, noting that the 4-year electoral cycle maintains their accountability.

This position was supported by the Henry Tax Review (2009, p.71) which supported giving local governments “a substantial degree of autonomy to set the tax rate applicable to property within their municipality.”

> *Councils that experience significant population growth are hampered by rate pegging and caps on development contributions. Rate Pegging should be removed to provide councils with greater financial flexibility and capacity to fund infrastructure maintenance, renewal and new infrastructure to support development.*
>
> Local Government NSW submission

IPART and NSW Farmers, however, support the rate peg. IPART notes that it drives efficiency in local government operations and protects ratepayers from excessive rate hikes. NSW Farmers argue that amending the rate peg to reflect population growth will favour high growth councils in metropolitan areas.

Stakeholders also acknowledge the underutilisation of the special rate variation process due to the significant cost to councils in applying.

> *For any Council, the process of seeking a Special Rate Variation is onerous and time consuming with no certainty that favourable consideration will be given by IPART.*
>
> The Hills Shire Council submission

The general findings from consultations are that, over the long term, rate pegging has resulted in:

- an under provision of local infrastructure and services required to service a growing community
- some infrastructure maintenance costs being capitalised into contributions plans
- increasing cross-subsidisation through alternative funding streams including infrastructure contributions
- pricing distortions resulting from councils imposing higher user-charges.

These observations are consistent with the Commonwealth Productivity Commission’s Research Report on Assessing Local Government Revenue Raising Capacity (2008).

3.3 Improving local government fiscal flexibility by relaxing the rate peg

Local government rates are widely accepted as being significantly more efficient than the overall State and Commonwealth tax bases (Henry Tax Review, 2010 and Commonwealth Productivity Commission, 2008). Additionally, they are cost effective to collect and are stable over time.

Allowing for population growth within the local government rate peg will reduce reliance on less efficient funding mechanisms (including infrastructure contributions as a *de facto* tax on development). It should also improve service provision.

Process improvements are in train

In June 2020, the Minister for Local Government released the Government’s response to IPART’s 2016 *Review of the Local Government Rating System: Final Report*. The response reaffirmed a commitment to delivering an equitable rating system that is responsive to changing community expectations. Among other things, it accepted a recommendation to include population growth in rate pegs (Office of Local Government, 2020).

Reform should reduce the disincentive rate pegging has created for councils to accept development. This would move the local government funding system closer toward the principles outlined in Chapter 2, with infrastructure contributions being the vehicle for funding development-contingent and some development-associated costs. Councils have cautioned increased flexibility in rates should not be a replacement for infrastructure contributions. It would be inefficient to spread the cost of new development across the broader ratepayer base.

IPART has been requested to report to the Minister for Local Government recommending a methodology to account for population growth. In doing so, IPART should also establish benchmark costs based on ‘efficient’ delivery (see Recommendation 4.5 for further detail). Finally, rate peg reform should not leave any council worse off; those with declining population should be able to raise at least the same revenue as under the existing rate peg.

Rate peg reform is welcomed as a critical improvement in the fiscal capacity of local government and is a necessary condition for successful reform to the infrastructure contributions system.

Cost impacts of population growth are complex and may vary across councils

The existing rate peg methodology requires IPART to determine the change in the value of the local government cost index. Like any cost index, this requires a basket of ’goods’, each of which can be costed and weighted. For local government, IPART defines a ’basket of inputs’ the average council needs to provide local government goods and services, with weights for each input to reflect its cost share. These inputs include staffing costs, capital costs, and operating and maintenance costs. IPART then determines the change in unit costs for each type of input using an index published by the Australian Bureau of Statistics. The cost share weights enable the calculation of a single overall cost change. As IPART determines only a single rate peg that is applied to all New South Wales councils, the method involves averaging cost shares. This means the local government cost index is more appropriate for representative councils than for outliers.

In practice, rates revenue only covers a proportion of council costs, which range from less than 40 per cent for some regional councils to close to 70 per cent for some metropolitan councils. To some extent this reflects history, including the pattern of revenue sources when rate pegging commenced, and the extent to which special variations have affected rates revenue growth between councils. This means the ’base’ for adding in population growth will vary between councils.

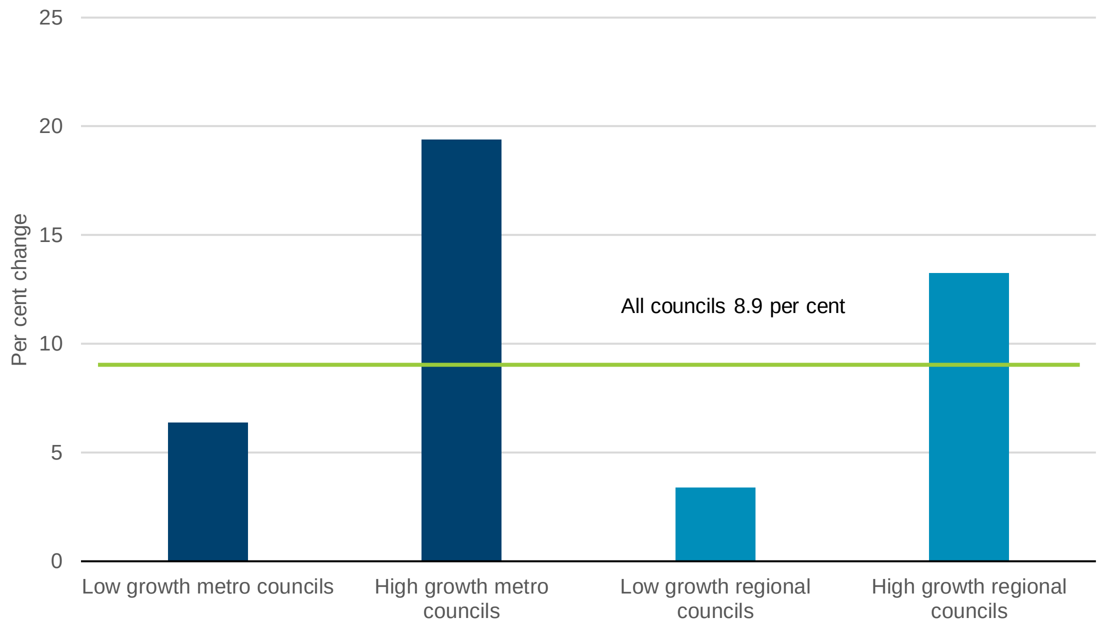
Allowing for population growth will possibly require IPART to adjust both the content of the basket of inputs in the cost index and the weights. But these adjustments should not include development-contingent costs covered by infrastructure contributions. IPART should ensure adjustments are sufficient to cover operating and maintenance costs, as well as for servicing new debt incurred from councils to service the bigger population. Further discussion is included in Chapter 4.

Reforms will benefit high-growth councils

Modelling of the revenue impacts of local government rate peg reform has been undertaken by Centre for International Economics, covering 20 years from 2023-24 to 2042-43.

Collectively, councils will receive a modest increase in aggregate rates revenue (up 8.9 per cent or $18.5 billion over 20 years, undiscounted) under the reform scenario. The revenue impacts differ between council types. High growth councils (defined as those with forecast population growth exceeding the State’s average of 1.1 per cent) would benefit more than low growth councils (see Figure 3.3).

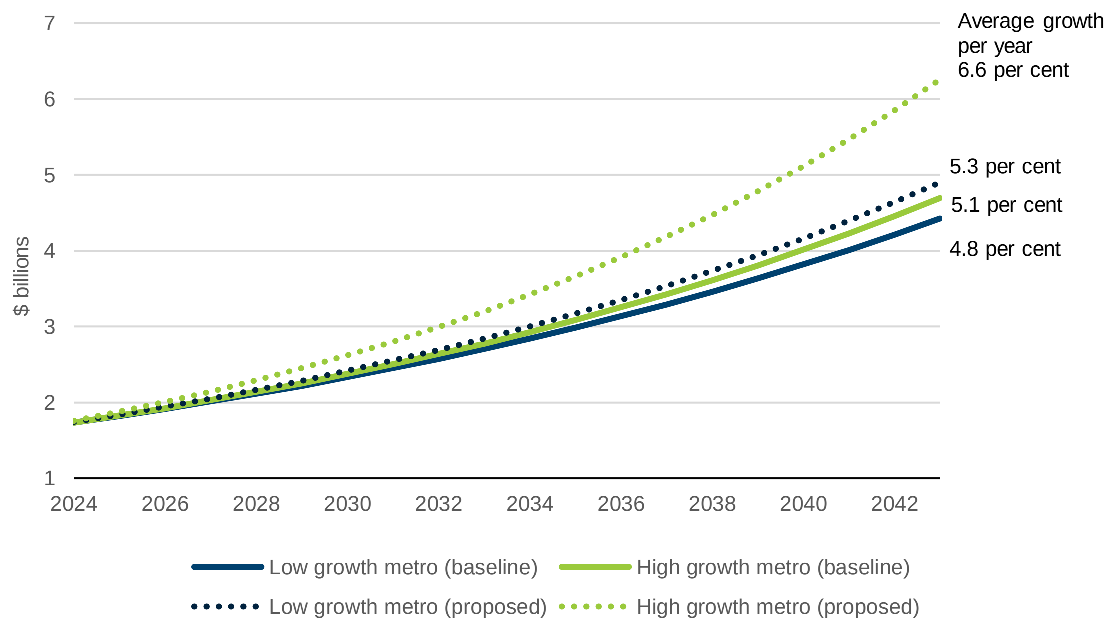
Figure 3.3: Percentage change in rates revenue for different council types (2023-24 to 2042-43)



Source: NSW Productivity Commission's analysis based on Centre for International Economics' data

For metropolitan councils, Figure 3.4 illustrates the growth trajectory between the current baseline scenario and the proposed scenario (with the rate peg reform). Over 20 years to 2042-43, high growth councils will collect an additional $11.6 billion in rates revenue through reform, while low growth councils will receive an extra $3.7 billion.

Figure 3.4: Growth in rates revenue for metro councils (2023-24 to 2042-43)



Source: NSW Productivity Commission's analysis based on Centre for International Economics' data

Rate peg reform must be combined with review of the essential works list and benchmark costs

Additional rates revenue will enable councils to recoup the operating and maintenance costs associated with providing services to a larger population. In addition, extra revenue can help service debt to forward fund infrastructure, improving the coordination of service delivery with development. These additional funds will help councils with delivering the infrastructure required for new development.

Along with rate peg reform, IPART should establish and maintain benchmark costs based on 'efficient' delivery (see Recommendation 4.5) and review the essential works list to ensure only development-contingent items are funded from infrastructure contributions. Subject to IPART's review, the Department should provide an updated practice note that includes the approach to 'efficient' infrastructure design (see Recommendation 4.6).

Aggregate financial impacts on councils of rate peg reform over 20 years are significant. It will take time, however, to ramp up to meet the needs of maintaining existing service levels and delivering additional infrastructure for growing populations.

Recommendation 3.1: Allow councils' general income to increase with population
Subject to review by the Independent Pricing and Regulatory Tribunal, reform the local government rate peg to allow councils' general income to increase with population.

Chapter 4: Local infrastructure

Findings

- Infrastructure needs and costs are generally unknown at the time of development decisions. This uncertainty means they cannot act as a "price signal", which can result in inefficient development.
- High and rising land costs are a major issue, which the current contributions system is not well equipped to address. This impedes the ability of the system to support efficient and cost effective delivery of the infrastructure growing cities and regions need. A new approach is needed to address this problem.
- The share of infrastructure costs levied on development has been increasing, fuelled in part by rate pegging that constrains councils discretionary funding. Under the proposed principles-based approach, local infrastructure contributions should primarily fund development-contingent infrastructure and not general costs.
- Complexity in the system has led to inefficiencies and inconsistent practice. But some detail is unavoidable to ensure that contribution rates accurately reflect the efficient cost of providing infrastructure, with a substantiated nexus, and with appropriate apportionment. Simplifying the system is required for efficient administration, while still aligning to the underlying principles.

Key recommendations

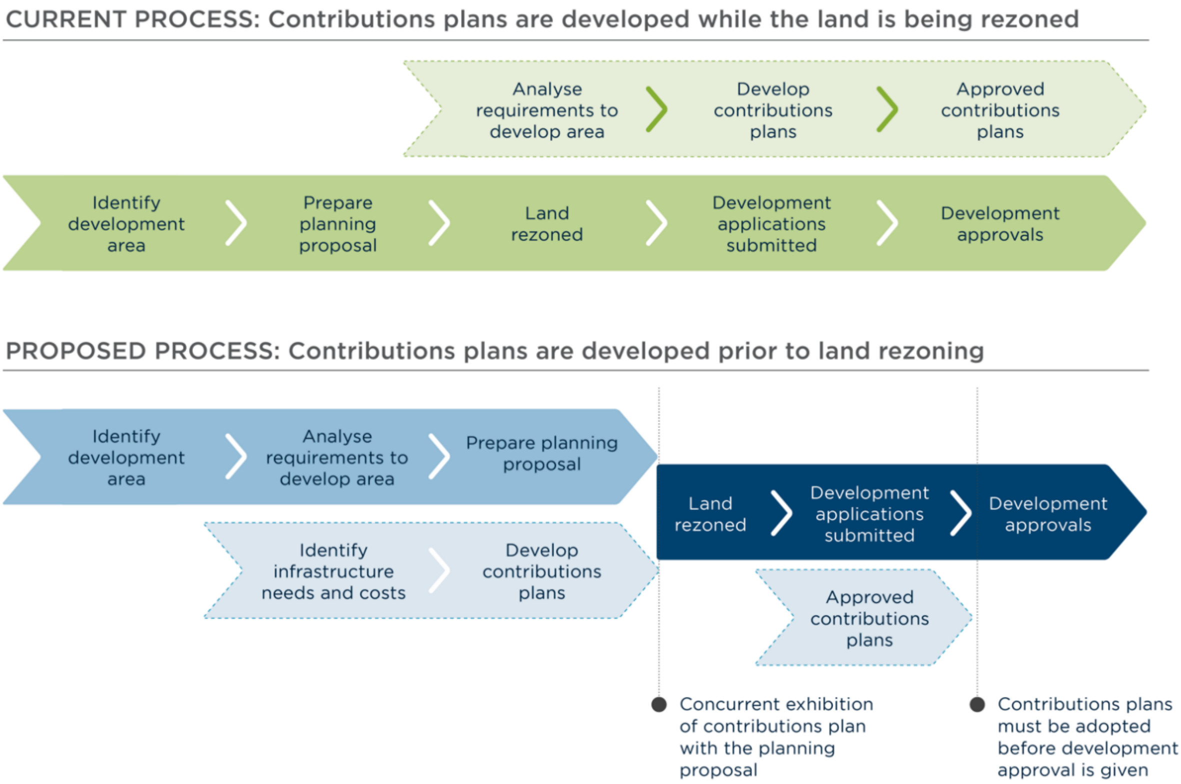
- Develop and identify infrastructure contributions upfront as part of the zoning process to increase certainty and allow costs to be factored into decision making.
- Introduce a direct land contribution so that landowners contribute a percentage of land required for public purposes to make land funding more efficient and certain.
- Enhance the ability of the existing system to control land costs through introduction of consistent and appropriate indexation of land contributions.
- Improve the ability of the contributions system to fund appropriate local infrastructure by:
  - realigning section 7.11 local infrastructure contributions to deliver development-contingent infrastructure only
  - increasing the maximum rate for section 7.12 development consent levies
  - ensuring planning agreements are only used for direct delivery and innovative infrastructure outcomes.

4.1 Early identification of infrastructure needs to inform land use planning

Infrastructure contributions plans are developed post rezoning

The current development framework under the *Environmental Planning and Assessment Act 1979* (EP&A Act) permits rezoning without an infrastructure contributions plan in place. Figure 4.1 illustrates the current land development process whereby the analysis of infrastructure requirements and development of infrastructure contributions plans are often completed after rezoning occurs.

Figure 4.1: Development process (current versus proposed)



Source: NSW Productivity Commission

The current approach presents potential risks to infrastructure planning including:

- failure to consider infrastructure needs and costs as part of the land use planning process can result in the rezoning of land that is relatively expensive to provide with infrastructure. It is difficult to address once the land is rezoned. After rezoning councils are required to determine development applications and may be unable to impose infrastructure contributions if they do not already have a contributions plan in place.
- contributions obligations are not known creating potential for under-estimation, or to not be factored in at all when making land acquisition decisions, with consequences for development feasibility later on.

Stakeholder views

There is agreement that all stakeholders should know what their obligations will be at the time an investment decision is made. As highlighted in the following submissions, this involves upfront identification of infrastructure needs and charges before land is rezoned:

> *Land should not be rezoned without a contribution plan or infrastructure funding mechanism being in place. The current framework under the* Environmental Planning and Assessment Act 1979 *permits a precinct to be rezoned without a contribution plan or [development control plan] being adopted.*
>
> The Hills Shire Council submission

> *In contrast, in a well-functioning developer contributions system, a developer should be able to estimate the contribution amount, along with other known construction costs, and factor this into the price they are willing to pay for the raw land.*
>
> Western Sydney Planning Partnership submission

State Government rezoning investigations must be tied to planning for infrastructure. Rezoning should not occur until a contributions plan is adopted and in force.

Northern Beaches Council submission

Stakeholders also flag the adverse effects of announcing potential zoning changes prior to the adoption of infrastructure contributions plans, and with limited information about the timing or firm commitment that the rezoning will proceed. This drives up land values in anticipation of the rezoning, adding cost to the uncertainty.

Infrastructure contributions plans should be exhibited concurrently with rezoning plans

Planning proposals that are supported by infrastructure contributions plans will send clear market signals of the likely costs of development and provide clarity over developers' contributions obligations. As a result, the full implications of development can be factored into land values and resulting development feasibility studies. This supports economically efficient outcomes as areas with high development costs including public infrastructure are discouraged, and vice versa.

Infrastructure contributions plans must be adopted prior to issuing development approval

The Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) requires the adoption of an infrastructure contributions plan prior to a determination being made on a development application for land relating to the Western Sydney Employment Area (clause 270) and Sydney Region Growth Centres (clause 270A).

Exceptions to this requirement include where a development application is of a minor nature, or if a planning agreement has been entered into between the developer and the planning authority to address matters that may be subject to an infrastructure contributions plan.

A similar clause could be included in the EP&A Regulation to give legislative force to a contributions plan being in place prior to issuing development consent. This would address the risk of developments proceeding prior to having an approved contributions plan in place, thereby providing industry and community with greater certainty upfront over their contributions obligations and infrastructure provision respectively.

Recommendation 4.1: Develop infrastructure contributions plans upfront as part of the zoning process

Amend legislation to require:

- where land is being rezoned, the draft infrastructure contributions plan must be publicly exhibited at the same time as the planning proposal
- adoption of the infrastructure contributions plan before any determination is made on a development application.

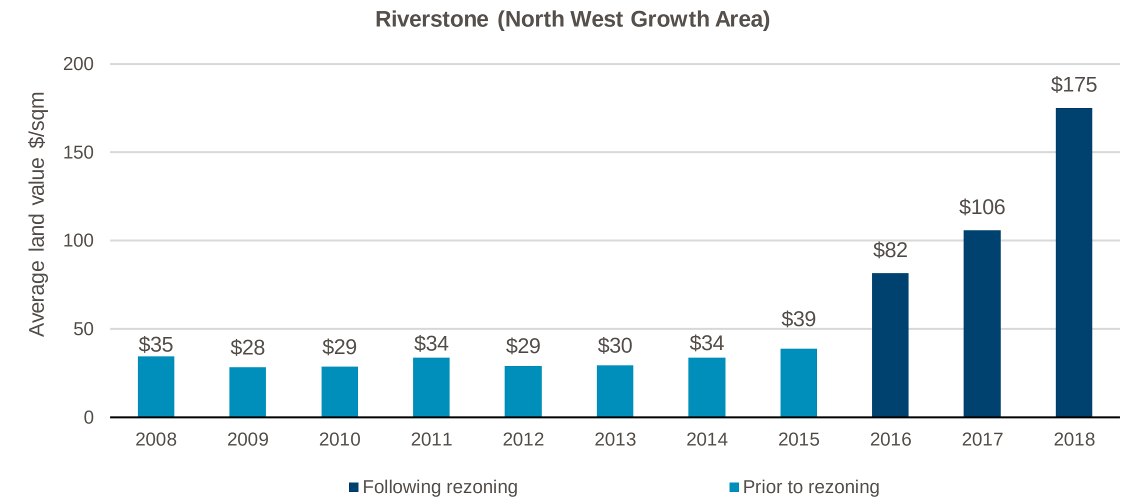
4.2 Land acquisition and rising land values

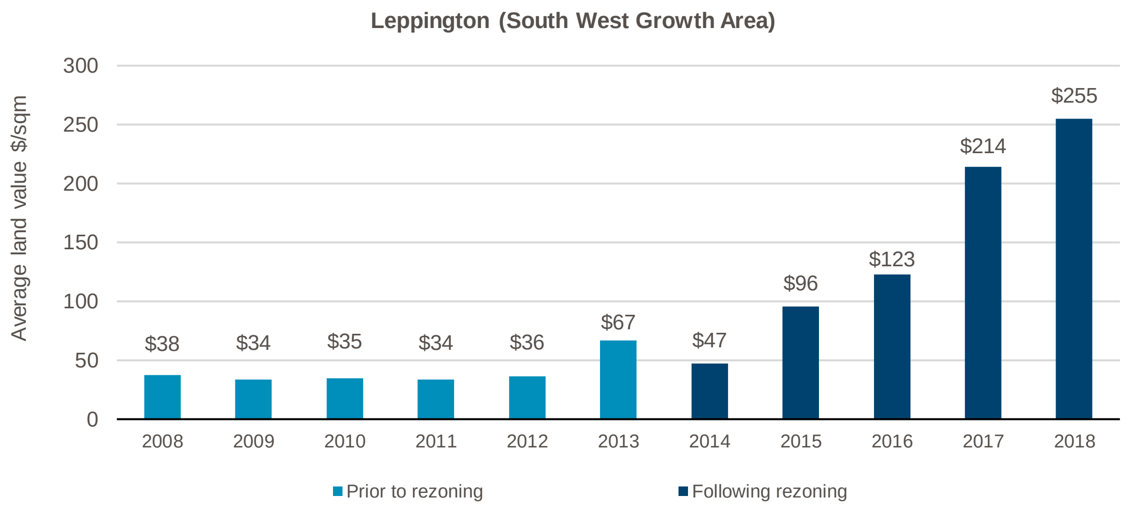
Land acquisition costs are high and can rise rapidly

Land values can increase significantly—and rapidly—in response to, or through speculation about, government announcements on future urbanisation, potential transport investments and zoning changes. Figure 4.2 illustrates the steep land value increases experienced where land is rezoned in the Sydney North West and South West Growth Areas.

Because land for infrastructure is not acquired until a later time, there tends to be a lag between when contributions are calculated, collected and acquired. Escalating land values are a major financial risk that can leave councils short when delivering the infrastructure communities need.

Figure 4.2: Land values ($ per square metre) – rezoning from rural to residential





Note: Includes properties in Leppington rezoned from RU4 to R2 or R3 in 2014 and properties rezoned from RU4 to R2 or R3 in Riverstone in 2016
Source: NSW Productivity Commission analysis using Valuer General data

Stakeholder views

Rising land costs are recognised by councils as a significant issue, particularly in metropolitan areas. Both councils and industry support early acquisition to control costs and create better outcomes, but recognise a range of challenges with early acquisition, including:

- lack of funds, and a reluctance by local councils to borrow for early acquisition
- insufficient capability and capacity within councils to develop and implement early land acquisition plans
- potential costs for councils for maintenance between purchase and delivery of infrastructure.

Early acquisition of land for public infrastructure, would keep the costs of a contributions plan low, however access to suitable funding is generally not available.

Penrith City Council submission

Pooling of contributions for land acquisition is generally supported and already in place for some councils. Some councils point out that pooling is unlikely to be enough to support early acquisition. Borrowing is another option, and some councils suggest developing incentives that encourage councils to borrow to fund early acquisition. However, borrowing comes with risk, such as overprovision if development takes longer than anticipated, and incentives would need to carefully balance the risk-reward pay-off.

Both councils and industry support in-principle direct dedication of land. Some councils already have these arrangements in place for large, single owned sites. The majority, however, see direct dedication as being difficult where ownership is fragmented and are concerned about increased complexity and administrative burden. Some support the use of pooled contributions or borrowing in these circumstances, while others point to potential solutions such as an 'equalisation scheme' to ensure owners are not disproportionately burdened.

> *While early dedication of land is a cost in the development process, it improves certainty and addresses land cost inflation.*
>
> Southern Sydney Regional Organisation of Councils submission

> *Land dedication tends to be easier in large consolidated sites. In fragmented areas, UDIA urges earlier land acquisition by borrowing, pooling, and considering compulsory acquisition.*
>
> Urban Development Institute of Australia submission

Application of the *Land Acquisition (Just Terms Compensation) Act 1991* is also identified as an issue. Some stakeholders suggest reforms to support valuation of land based on its undeveloped value rather than highest and best use to avoid overvaluation for highly constrained land (e.g. flood plains). Some council submissions suggest that guidelines to establish a base level of costs, including method of valuation and dealing with constrained land will be of assistance.

> *There is an equity and efficiency argument for valuing land on the basis of its undeveloped value rather than its highest and best use post the provision of infrastructure and up-zoning.*
>
> Planning Institute of Australia submission

Councils consider the indexation methodology for land values a problem that further contributes towards difficulty controlling land costs. Some, however, support improved land indexation coupled with measures to acquire land early to fully address to issue of cost escalation.

> *If contribution rates cannot be increased to reflect rapid increases in land value it is not possible to fully fund the cost of all works and land listed in the contribution plan.*
>
> Blacktown City Council submission

Some councils already index land costs through their own land price indices, while others seek more guidance about appropriate indexation. Councils update costs while updating plans, including updating land valuations, but note that the time taken to prepare, review and update plans can be an issue.

> *Many councils struggle to keep their plans up to date which contributes to potential revenue shortages.*
>
> Western Sydney Planning Partnership submission

Regardless of the mechanism there is support for greater guidance and consistent approaches, including a role for the Valuer General in developing an appropriate set of price indices.

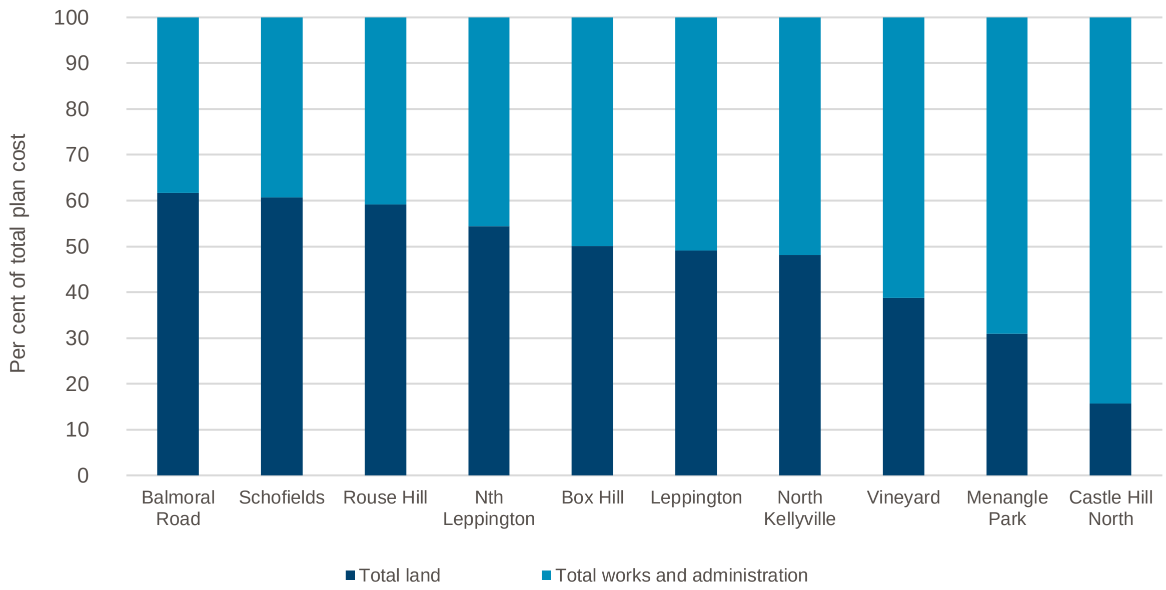
> *One avenue that could be pursued is to commission the Valuer General to derive a suitable property price index…*
>
> Canterbury Bankstown Council submission

Finally, the capability and capacity of councils to undertake strategic land acquisition at a low cost is seen as an issue by many, compounded by a perception of system complexity and inconsistent interpretation of the rules. There is general agreement there should be better system support, through clear standards and guidance, and supporting local council capacity. Some councils suggest a greater role for the Government to assist with strategic land acquisition planning, valuation and negotiations. Others suggest locally led capacity building, for example pooled resources across councils.

Rising land acquisition costs can undermine system outcomes

Land costs generally represent the single largest component of contributions plans. The cost varies by location, but for many contributions plans over half of the total cost is for land acquisition (see Figure 4.3).

Figure 4.3: Independent Pricing and Regulatory Tribunal assessed reasonable land costs



Source: Treasury analysis using Independent Pricing and Regulatory Tribunal data for reviews completed in 2018 and 2019

Further exacerbating this issue is the commonplace increase in the cost of the land over the period from when the plan is established, to when money is collected, and finally to when land is acquired. Lags and uncertainties make it difficult to collect the actual costs of land in advance and councils must absorb any financial shortfalls. A sample of 10 properties in the Blacktown local government area, covering 181 hectares of land acquired for drainage and open space, had a valuation at the time the contributions plan was made totalling $37 million. The final acquisition costs totalled $65 million, an increase of 75 per cent. The consequence of this is a lack of amenity and open space, as roads and drainage take priority where funding is short.

There are a range of possible solutions to address the land cost and acquisition issue; there are also some incremental changes to make the current system operate better for existing precincts. Because contributions plans tend to remain in place for a long time, reforms need to provide a better way forward for new plans and improve the operation of those that are already in place.

Figure 4.4 compares some alternative models to the current system.

Figure 4.4: Overview of land models

	CURRENT MODEL	VICTORIAN DIRECT DEDICATION MODEL	DIRECT LAND CONTRIBUTION MODEL
LEGAL MECHANISM	Condition of development consent with incidence on developer	Condition of development consent with incidence on developer	Enforced by a statutory charge on the land with incidence on the landowner
CONTRIBUTION AMOUNT	Equal monetary contributions (scope for direct dedication under section 7.11)	Land contribution percentage, with equalisation amounts / credits where ownership fragmented	Percentage value of land, based on total public purpose land requirements, payable by direct dedication or monetary contribution
TIMING	Time of development approval	Time of development approval	Obligation created at time of rezoning but payable on first of sale of the land or development application
ADMINISTRATION	Council administration	Plans made by the Victorian Planning Authority and administered by councils	State collection and distribution to councils

Source: NSW Productivity Commission

The Victorian direct dedication model adds considerable complexity

A direct land dedication model, like that recently introduced for Victoria's Infrastructure Contributions Plans, is a possible option (see Box 4.1). Under this, direct land contributions are made, with those contributing more public purpose land compensated by those contributing less.

The direct contribution model has some appeal as it removes the need to undertake compulsory acquisition of land. This would substantively address the issue of rising land costs and would ensure that landowners contribute equally. On the other hand, it would add significant complexity. The Victorian Planning Authority plays a central role in development of the Infrastructure Contribution Plans and those developed to date are detailed and complex. In New South Wales, councils would be required to develop similar plans, and develop new systems to link land valuation and calculation of equalisation amounts to their existing processes for development approvals and collection of contributions. This would compound system complexity and exacerbate skill shortages within the sector.

Implementation of the model in Victoria is in its early phases, with roll out in seven local government areas. Consultation with stakeholders has suggested some implementation challenges related to administrative complexity and the application of new valuation methodologies. Policy review is currently underway and will likely suggest amendments to address these issues. Overall, the benefits of the direct dedication model appear to be outweighed by the implementation challenges and administrative risks and costs.

Box 4.1: The Victorian land contributions model

Infrastructure Contributions Plans were introduced by amendment to the *Planning and Environment Act 1987* (Vic) in 2015. The objective of the changes was to standardise levies, increase transparency, reduce risk of infrastructure cost increases and simplify processes. The program applies to greenfield areas in metropolitan and regional areas, as well as strategic development areas in metropolitan Melbourne. To date they have been implemented in seven local government areas. Further amendments in 2018 introduced a land contributions model, with the intention of protecting councils against escalating land prices.

There are two components:

- a monetary levy to fund infrastructure and services
- the direct provision of land required for public purposes (i.e. open space, community and recreation facilities, transport infrastructure and other essential development infrastructure).

Where uneven amounts of land are contributed by different developers, an equalisation occurs with those contributing less paying a levy (a “land equalisation” amount), which is used to compensate those who over-contribute (a “land credit” amount). Over time, payments to and from developers should balance so that council receives the right amount of land and relevant landowners have made an equal contribution.

The legal framework for the system under the *Planning and Environment Act 1987* (Vic) Part 3AB is supported by a Ministerial Direction. An Infrastructure Contributions Plan is the statutory document that is incorporated into the relevant planning scheme to enforce the infrastructure contributions. The legislative framework includes:

- detailed definitions and requirements for Infrastructure Contributions Plans
- power for the Minister to provide written directions for a range of matters, including valuation and indexation methods
- alters the application of the *Land Acquisition and Compensation Act 1986* (Vic) such that compensation is payable is the equivalent to any land credit amount
- sets out a detailed process for valuation and dispute resolution for land valuation.

Source: Based on Department of Environment, Land, Water and Planning (2019)

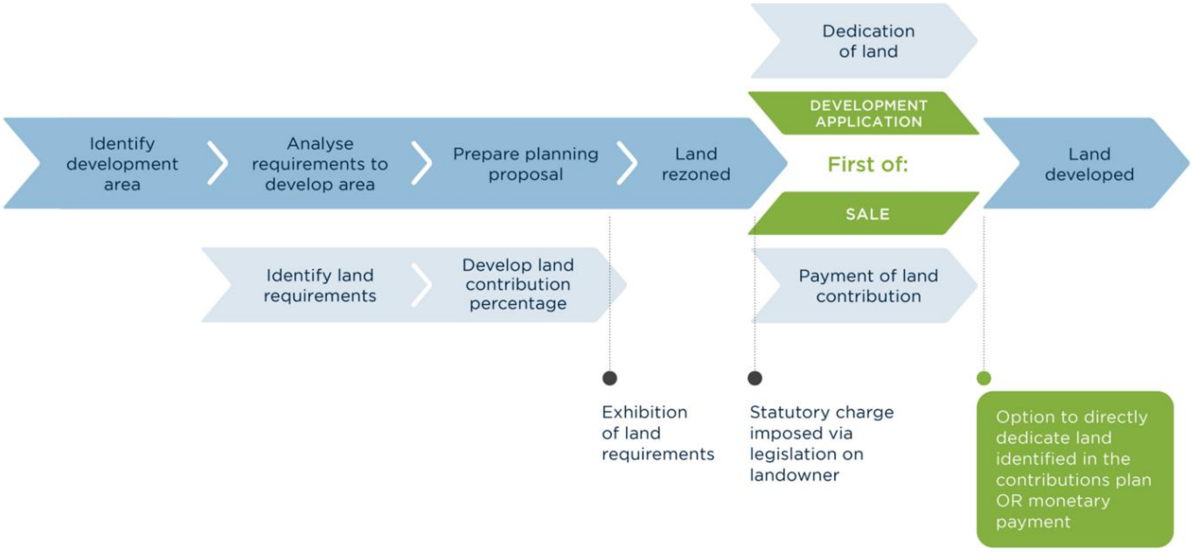
A direct land contribution could provide an equitable and efficient funding approach

A direct land contribution would be a proportion of the share of the total precinct area required for public purpose infrastructure, as identified in the contributions plan. The contributions plan, exhibited alongside planning proposals, would also identify the required contribution share. Each landowner would be required to provide that share of the value of their land on sale or transfer of the land, but with opportunity to directly dedicate land as part of subdivision of the land (whichever comes first). This approach would avoid distortions as either the land is being directly provided on subdivision, or the relevant percentage of the sale price is provided to the council as a contribution that is being made at contemporaneous ‘market rate’.

The direct land contribution would need to be narrowly applied, such that it is limited to greenfield or infill precincts following a rezoning. The approach would shift the levying and payment of land contribution amounts from being a condition of development consent, to an obligation attached to the land. The obligation is on the landowner, who can sometimes also be the developer. Enforcement via a statutory charge, like that used to secure land tax and council rates, could travel with the land title. A purchaser would be incentivised to ensure the obligation is fulfilled prior to settlement.

Figure 4.5 illustrates how the model could operate, aligned with the proposed development process (outlined in Section 4.1). Exhibition of land requirements and the contribution share in the contributions plan at the time of rezoning would provide landowners with certainty and transparency about the obligation.

Figure 4.5: Overview of a potential land contribution charge



Source: NSW Productivity Commission

The land contribution would have a clear nexus to the development. It would not, however, be a typical impactor pays infrastructure contribution. By levying on the landholder, direct land contributions would be in accordance with the 'beneficiary pays' principle. That is, public purpose land is necessary to a development and the subsequent increase in land values, to the benefit of the landholder. So a direct contribution of the relevant land, or equivalent monetary value, captures a share of that benefit.

Earlier dedication or payment of contributions, at the point of sale rather than at the time of development, would enable councils to acquire land earlier and at a lower cost. There would still be some potential for delays to create a mismatch where compulsory acquisition is required. This would, however, be smaller than for the current system. Application of a percentage of the land, rather than a dollar sum based on values at a point in time, which must be indexed, would also insulate contributions from changes in land values, and avoid indexation.

Implementation requires working through detailed issues and challenges

A direct land contribution could not be imposed under current legislation. Amendments to the *Environmental Planning and Assessment Act 1979* (EP&A Act) would be required to establish the direct land contribution requirement, the statutory charge, and provide for monitoring and enforcement mechanisms.

Where landholders own the relevant land, direct dedication, rather than monetary contribution, should be incentivised to reduce the need for compulsory acquisition. Implementation will need to minimise complexity and administrative costs, and arrangements for where the direct dedication was less than the required share.

Box 4.2 illustrates how this could work for different types of landholder. Other considerations include how to manage works-in-kind on the land, and how to most efficiently manage any land that is dedicated early.

Box 4.2: Operation of direct land contribution in lieu of payment: example

A 1,000 hectare greenfield precinct is rezoned from rural to residential. The precinct requires 150 hectares (15 per cent of total land) for public infrastructure. The necessary land has been identified and publicly exhibited in the contributions plan. A 15 per cent direct land contribution is applied to the entire precinct at rezoning.

Landholder A owns 5 hectares, none of which is required for public purposes. No direct dedication is possible. On sale of the land 15 per cent of the total sale price is paid to satisfy the obligation.

Landholder B owns 100 hectares, of which only 10 hectares is required for public purposes. Landholder B opts to dedicate 10 hectares to council as part of the subdivision development application. A partial clearance certificate is provided for the 10 per cent dedicated. A further 5 per cent of the market value of the land would be required to be paid at sale to fully satisfy the obligation.

Landholder C owns 50 hectares, of which 10 hectares (20 per cent) is required for public purposes. On subdivision development application, Landholder C opts to dedicate 7.5 hectares of land to council and a full clearance certificate is provided for the landholder's 15 per cent share. The remaining 2.5 hectares required is purchased by council using cash collected from other landholders such as B. Alternatively, the landowner may be able to dedicate the remaining 2.5 hectares as an offset against their total payable contribution.

Implementation would need to consider a range of detailed issues related to administration, process and enforcement, including:

- mechanisms to avoid gaming the system, for example through sale of land to a related party for below market value
- ensuring that landowners are made aware of the direct land contribution requirement
- mechanisms to ensure correct amounts are paid where transfer price does not reflect market value, or the land is sold after development
- how the requirement would impact other interests in the land, for example a lessee or a mortgagee
- practical challenges involved with administration and enforcement
- the appropriate State body to collect, monitor and enforce any charges
- administrative costs and development and integration of relevant systems, at both the State and local level
- systems for both councils and the State to monitor land that has a charge against it and when obligations are fulfilled
- transitional arrangements to avoid any adverse consequences for commercial arrangements already in place between developers and landowners.

The direct land contribution model was developed late in the Review process and was not covered by the issues paper or submissions. Targeted consultation has, however, suggested in-principle support from councils and industry, noting the need for further input during implementation. Further feedback and engagement will be important to ensure an appropriate design and risk management. Chapter 7 provides further commentary on implementation and establishment of a Stakeholder Advisory Group.

Recommendation 4.2: Introduce a direct land contribution mechanism, to improve both efficiency and certainty for funding land acquisition

i. Amend legislation to introduce a direct land contribution mechanism to:
   - apply a statutory charge on the land at the time of rezoning that requires a land contribution be made
   - require the contribution on sale of the land, or subdivision development application, whichever comes first
   - allow the contribution to be satisfied as a monetary payment, or dedication of land.

ii. Consult with key stakeholders from councils and industry in the design and implementation of a direct land contribution mechanism.

Appropriate land valuation and indexation can control costs and help contributions keep pace with the market

Ensuring robust and transparent valuations are applied

The *Land Acquisition (Just Terms Compensation) Act 1991* (Land Acquisition Act) provides the valuation method for the compulsory acquisition of land for State agencies and councils. The same methodology applies for owner-initiated acquisition in cases of hardship. The market value is based on the highest and best use of the land, disregarding public purpose zoning. The methodology is based on the principle that the landowner ends in the same or similar position they were prior to the acquisition.

Acquisition of land based on its undeveloped value at a defined point in time is one avenue to control land acquisition costs. Some stakeholders suggest that the Land Acquisition Act should be 'switched off' for land subject to uplift from rezoning.

There are, however, equity issues from applying valuations not based on market rates. Landowners would bear the opportunity cost of lost development potential. This is not an issue if all landowners bear the same opportunity cost and are compensated equally through lower contributions. However, where ownership is fragmented and unequal, those that hold the most land within a precinct will bear a disproportionate share of costs. It is preferable to ensure the contributions system can provide sustainable and fair funding towards the real cost of land acquisition.

On the other hand, it is not appropriate to value land based on speculation, such as about possible rezoning or engineering solutions that will make flood prone land developable. There are instances of this occurring. For example, in a sample of 10 properties acquired in Blacktown local government area, a 75 per cent difference in valuation at the time of the contributions plan and the final acquisition cost was in part due to differing assumptions made by the Valuer General and the Land and Environment Court about the extent that constraints could be engineered away. But 'market value' is not always clear. Ideally it would price in rezoning potential, net of infrastructure costs, but approaches are likely to vary.

Additional guidance relating to methods and assumptions that should be applied, and terminology, would help ensure consistency and that valuations are not overly speculative. This could be by a practice note issued by the Department of Planning, Industry and Environment (the Department), in consultation with the Valuer General. This must be consistent with the Land Acquisition Act and case law.

Recommendation 4.3: Issue advice for land valuation to improve consistency and accuracy

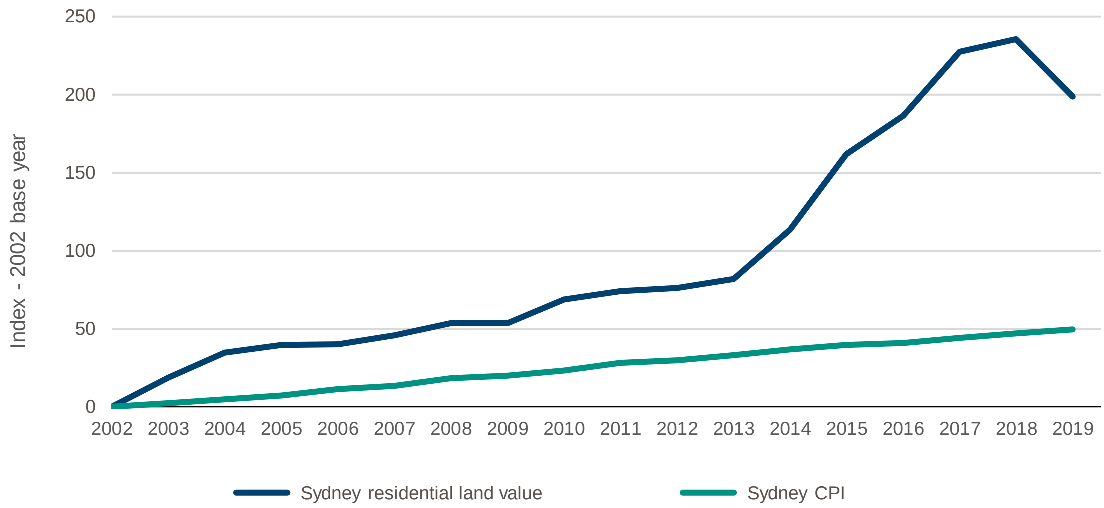
Develop a practice note, in consultation with the Valuer General, to guide land valuation, including assumptions and methodology, particularly for land that is yet to be rezoned and may be constrained.

Ensuring land valuations keep pace with rising costs

Land values not only rise quickly, but usually well in excess of the Consumer Price Index (CPI) (commonly used for indexation of land contributions). Insufficient land indexation with rising land values further compounds the difference between contributions collected and land acquisition costs. Improvements to land indexation must go hand in hand with other improvements to support early and efficient land acquisition.

For example, the special infrastructure contribution for the Western Sydney Growth Areas applies the Sydney CPI annually to adjust the land and works costs. In 2010, the land to be acquired had a value of $1 billion. By March 2020, this land acquisition provision increased to $1.2 billion with CPI indexation, far below the actual increase in land cost. With the Residential Property Price Index (Sydney), the acquisition cost would have been more appropriately escalated to $1.7 billion, recovering an additional $500 million. This shortfall is borne by the State. The difference between the two indices is shown in Figure 4.6.

Figure 4.6: Movement in Sydney residential land value against Sydney CPI



Source: Australian Bureau of Statistics 6401.0, Valuer General's Report on Long Term Land Value – Trends Residential
Note: Valuer General land valuations for 2020 are yet to be released

The EP&A Regulation allows for contributions to be adjusted by an index or indices, quarterly or annually as specified in the contributions plan. While CPI is commonly used, there is scope for councils to use other indexes (such as Producer Price Index) that are a closer match to the types of infrastructure costs incurred. While construction cost indices may be used for the indexation of the infrastructure costs they are not appropriate for land acquisition.

There is a need for more appropriate and consistent indexation to replace a range of bespoke indices and better reflect rising land values. Developing and requiring the application of a transparent and consistent land value index would be a simple and beneficial reform supporting the collection of more cost reflective contributions. While forecasts of land price movements are not readily available, the indexation of contributions to take account of previous land value changes would be a step forward. For example, the Valuer General in Victoria prepares a land value index for metropolitan greenfield areas, based on recent benchmarked englobo sales (i.e. land that would allow subdivision).

For new contributions plans, section 7.18 of the EP&A Act allows the prescriptions of an indexation methodology by regulation. A ministerial direction could do the same for existing contributions plans. Separate identification of the land and works components in contributions plans would be required to apply different indices to the land and construction components. This will need to be carried through to development consent conditions, so that land and works components can be indexed separately between consent and payment dates.

Recommendation 4.4: Index land contribution amounts to changing land values

i. The Valuer General prepare a methodology and publish appropriate land value indices.

ii. Amend legislation to require new contributions plans to separately identify and escalate land contribution amounts by the appropriate index.

iii. The Minister to direct councils to separately identify and escalate land contribution amounts by the appropriate index when reviewing contributions plans.

4.3 Section 7.11 local infrastructure contributions

Section 7.11—previously known as section 94—was the original mechanism under the EP&A Act to recover the costs of local infrastructure. Section 7.11 contributions plans are based on the principles of:

- reasonableness (comprising concepts of fairness, equity, sound judgement and moderation)
- nexus (the connection between proposed development and the demand created)
- apportionment (the share of the total demand that the developer must pay).

Councils are required to prepare a local infrastructure contributions plan setting out the 'nexus', or relationship, between a development and the infrastructure required to service it. The contribution charged is determined by apportioning costs attributable to additional demand created by development. These contributions can only be applied to the capital costs of new facilities and extending or augmenting existing facilities. They cannot be applied for maintenance or operating costs (with the limited exception of roads impacted by extractive industry operations).

Contributions plans that propose charges above a threshold set by the Minister for Planning and Public Spaces (currently $20,000 per lot or dwelling, and $30,000 for specified urban release areas) are reviewed by the Independent Pricing and Regulatory Tribunal (IPART). This assesses the reasonableness of the contributions plan and ensures only 'essential' local infrastructure is included. Councils can then apply the approved charge as a condition of development consent.

Contribution rates are variable across New South Wales with amounts in high growth areas being a concern. Some greenfield areas, for example, are experiencing contributions of $80,000 per dwelling or more.

Infrastructure funding should come from both contributions and general rates revenue

The cost of providing local infrastructure and the resulting contributions are increasing. High contributions may be appropriate, provided they cover only development-contingent costs and are known early in the development cycle, allowing them to be factored into feasibility calculations and investment decisions. If this is the case, they act as cost signals which encourage efficient development decisions.

High contribution rates which are not known early in the process can risk a subsequent impact on the feasibility of some developments, leading to requirements for higher margins and pushing up the price of housing.

State government subsidies towards local infrastructure have been used to address this high cost. This was done to limit the impact of infrastructure costs on development feasibility and stimulate construction. But contributions plans that cover all development-contingent infrastructure reflect the actual cost of servicing the area. As such they provide an appropriate price signal that encourages more cost-efficient development to be prioritised. Subsidies distort this price signal and encourage more inefficient development to take place that has higher cost infrastructure.

Furthermore, not all infrastructure included in contributions plans is strictly ‘development-contingent’. Imposing the costs of providing this infrastructure does not reflect the most efficient outcomes.

Stakeholder views

Many council stakeholders recognise the impact that rate pegging has on their ability to fund the infrastructure and services required by their communities.

> *The rate peg acts as a financial disincentive for councils to accept development … Greater flexibility is needed to better reflect the costs being borne by councils and respond to challenges in delivering the service levels sought by residents. In the long term Council will continue to face challenges in funding increased levels of service in new areas unless an adjustment to Council’s income base is achieved with certainty.*
>
> The Hills Shire Council submission

Development industry stakeholders note that the balance of infrastructure costs being apportioned to new development is becoming increasingly uneven and that in some cases new development is paying for demand more rightly attributed to the existing population.

> *It is HIA’s position that the housing industry should only be required to pay for infrastructure which is project specific, or infrastructure that provides essential access and services provision. This is considered by HIA to be the core requirements for housing development and includes local roads, stormwater drainage, and land for neighbourhood open space.*
>
> Housing Industry Association submission

Stakeholder feedback demonstrates that there is a tension between the need of councils to fund the infrastructure required to support their growing communities and the limits placed on council funding sources. This creates an incentive for councils to fund as much as they can from the contributions system. Policy measures are already underway to address this issue by the application of a population growth factor within the rate peg calculation (see Chapter 3). This creates the opportunity to apply a more principles-based approach in terms of the infrastructure funded through infrastructure contributions, and that which is more appropriately funded by general rates revenue.

Develop standard benchmark costs

As discussed earlier, local infrastructure is generally a development-contingent cost, as it would not be required if the development did not proceed. Community preference for higher standards, such as a higher order playing field embellishment, is a general cost as it does not arise because of a particular development.

Contributions plans should only include development-contingent costs at a base standard for the infrastructure needed to support development. A standardised set of benchmark costs for development-contingent infrastructure would help to ensure that contributions plans are costed efficiently. Standard benchmark costs should cover the different infrastructure needs for infill, greenfield and regional development, and should reflect the base standard of infrastructure that is appropriately funded by development.

The benchmarked costs should be used unless a specific efficient cost estimate has been prepared or actual costs based on efficient design are determined following construction. This will increase consistency across local government areas, encourage efficient provision, and will ensure that contribution charges provide an appropriate price signal for development. The inclusion of a population factor in the rate peg will provide councils with the ability to fund infrastructure above the base standard.

Although some council stakeholders argue that infrastructure maintenance costs should be included in contributions plans, this is not consistent with the proposed principles-based contributions system. Maintenance is an ongoing general cost that should be funded through rates revenue. Funding maintenance has been difficult for councils due to the rate peg, which has incentivised councils to capitalise maintenance costs by over-specifying infrastructure design.

Recommendation 4.5: Contributions plans use benchmarked costs

Independent Pricing and Regulatory Tribunal to develop and maintain standardised benchmark costs for local infrastructure that reflect the efficient cost of provision.

IPART has identified stormwater management infrastructure as an area where costs could be reduced, particularly by encouraging adjacent councils to work together. Stormwater management is one of the largest components of contributions plans, and a piecemeal approach leads to both higher costs and inefficient drainage outcomes. While joint stormwater infrastructure and contributions planning between councils is currently possible, it is not common practice as councils often have their own stormwater management plans, standards of provision and timelines for delivery.

The Department and councils should work together to develop more efficient ways of providing stormwater management infrastructure. The scope for more efficient provision of stormwater infrastructure should be recognised in the development of benchmark costs.

The essential works list should be revised and applied more broadly

The IPART review process was introduced to ensure contributions plans include only the infrastructure required to facilitate development and that the cost of providing this is reasonable. Plans subject to IPART assessment are limited to items on the 'essential works list' (see Box 4.3).

Infrastructure not on this list must be funded by other means, such as council rates, fees and charges, or grants. There are, however, several issues with this process:

- inequitable application of the essential works list between councils. The essential works list operates as a constraint more on 'greenfield' councils than infill or regional councils. This is because of greenfield councils' high demand for infrastructure and high land acquisition costs can easily see their contribution charges exceed the threshold for IPART review. Additionally, the essential works list does not consider the differing infrastructure needs for infill development
- unintended consequence of some restrictions. For example, councils are prevented from acquiring strata title property instead of land, even where strata acquisition is more cost effective.

Box 4.3: Essential works list

Items on the essential works list include:

- land for open space, including base level embellishment
- land for community services
- land and facilities for transport, but not including carparking
- land and facilities for stormwater management
- the costs of plan preparation and administration

Source: Department of Planning, Industry and Environment Local Infrastructure Contributions Practice Note (2019)

Stakeholder views

In the context of continued rate pegging, there is general support for lifting IPART's review thresholds and expanding the essential works list to include the costs of constructing community facilities. Councils emphasise that consideration should be given to the difference in infrastructure requirements between infill and greenfield areas, in particular the upgrading of existing infrastructure should be allowed to accommodate how infill councils might address community need.

Western Sydney Planning Partnership identifies that the essential works list does not align with state or local strategic planning priorities. Other council and community stakeholders highlight that the essential works list removes a council's ability to provide the infrastructure required by their communities and to respond to the unique challenges faced in different areas. For example, community infrastructure such as libraries and pools are identified as essential by councils in Western Sydney to help mitigate the impact of urban heat.

> *Extreme heat events and heatwaves are two of the greatest resilience challenges facing the Greater Western Sydney region with critical impacts for community health, household budgets, economic productivity, infrastructure and the environment. A key contributor is rapid urban development whose design exacerbates an already hot region. The use of heat refuges (air-conditioned public buildings [like libraries]), tree canopy cover and the use of water to mitigate increasing urban ambient temperatures are critical tools to maintain liveability throughout the region.*
>
> Western Sydney Regional Organisation of Councils submission

Developers acknowledge the importance of community infrastructure and its role in high quality development, but many worry that adding infrastructure types to the essential works list would increase the cost of housing, and impact on project viability.

The nature of built form community facilities are changing, potentially becoming more regional in their nature. UDIA considers that council rates are the appropriate mechanism to fund the built form. We support the current restriction to land acquisition only.

Urban Development Institute of Australia submission

Despite criticisms, many local government stakeholders indicate they are not opposed to retaining some form of essential works list. This list must:

- be based on a clear policy distinguishing what infrastructure is considered essential and what is not, and why (if an item is excluded from the list, an alternative funding source should be identified)
- recognise the different infrastructure needs of infill, greenfield and regional areas and allow for differences in infrastructure provision, for example by allowing alternatives to land acquisition (for example, permitting councils to include the costs of strata for a community facility, or upgrades to existing open space and community facilities to allow them to service a higher population base).

> *The COVID-19 pandemic has highlighted how important open space provision is in densely populated areas, with many people opting to use them for exercise and recreation. For infill areas where land acquisition can be prohibitive, it would seem reasonable for the essential works list to include upgrades and improvements to existing infrastructure.*
>
> City of Sydney Council submission

Apply the essential works list to all section 7.11 contributions plans

Issues raised by councils around the essential works list appear to stem from councils' lack of fiscal flexibility due their restricted ability to lift rates revenue with population growth. Councils highlight increasing community expectation around infrastructure provision, while developers raise concerns over new development being unevenly burdened by the cost.

The rate peg has exacerbated this issue and led to an over-reliance on infrastructure contributions to fund some infrastructure that would more appropriately be funded from rates revenue. The essential works list was introduced to help address this but it is only partially effective.

The incorporation of a population growth factor into the rate peg calculation will help to ameliorate council's reliance on contributions to fund general costs. The approach to determining costs that can be included in a contributions plan will need to be determined through a combination of the essential works list and the principles-based framework. The infrastructure must be development-contingent and planned to ensure efficient delivery. As an example, a water-crossing may be required to support a development, by providing access. Whether that water-crossing needs to be a bridge or a culvert, requires an assessment of efficient delivery options.

Box 4.4: Funding a local sports field in a greenfield development area

Council has planned and identified the recreation needs of a new development, which includes a sports field. This will be used by both the new residents and nearby existing residents. The funding for this sports field should be drawn from a variety of sources.

Land: The land required for the sports field is in a contributions plan and the apportioned share can be charged to the new development.

Base level embellishment: The council can also charge an apportioned infrastructure contribution to fund the work needed for 'base level' embellishment. This could include:

- any works required to make the land safe for public use and could include site works such as grading and remediation
- basic turfing, line marking and fencing
- basic public toilet block.

Higher order embellishment: Embellishment above base level reflects community preferences and council choice and should be funded through general rates revenue. Higher order embellishment for a sports field might include:

- upgrades to make the turf more durable such as synthetic turf or automatic watering systems
- upgrades to extend the hours the field can be used for, such as lighting systems
- changerooms and amenities blocks, self-cleaning public toilets
- grandstand seating and clubhouse.

The essential works list may include a range of infrastructure, but this doesn't automatically mean that it can be included in the contributions plan, as a further consideration of whether this is the most efficient delivery option is required. For example, open space is generally only development-contingent when it is to a base standard of provision; higher order embellishment is a general cost. Synthetic sports fields may, however, be appropriate in areas (such as infill) where there is a shortage of land for active open space facilities—as a trade-off between quantity and quality—and not appropriate in other areas. An example of funding a sports field in a greenfield development context is shown in Box 4.4.

IPART should review the essential works list, in light of their work on the reformed rate peg approach, to determine the development-contingent items that should be funded from infrastructure contributions, and remove those items that should be funded from rates revenue (see Recommendation 3.1). The IPART review should include consideration of the role of land, as it may be appropriate to retain land acquisition through the contributions system, to secure the opportunity for infrastructure needed to support population. This could include strata floor space instead of land, as this aligns with the intended outcome of securing space for a community facility in an efficient way while allowing for differences in provision between infill and greenfield councils.

Following the review by IPART, the Department should issue a revised practice note to clarify the essential works list, and provide policy advice on applying the principles of nexus and efficient infrastructure design and delivery.

Recommendation 4.6: Contributions plans reflect development-contingent costs only

i. Apply the essential works list to all section 7.11 contributions plans.
ii. Independent Pricing and Regulatory Tribunal to review the essential works list and provide advice on the approach to considering efficient infrastructure design and application of nexus.
iii. Subject to review by the Independent Pricing and Regulatory Tribunal, issue a revised practice note.

Improve the process for IPART review

The trigger for review of a contributions plan by IPART is a monetary contribution per lot threshold set by the Minister for Planning and Public Spaces (currently $20,000 per lot or dwelling, and $30,000 for specified urban release areas). Stakeholders have expressed the view that this threshold is arbitrary and leads to inequitable outcomes. Additionally, the current review process takes a significant time to complete. Analysis by the Department indicates that—including steps undertaken by councils, IPART and the Department—it can take in excess of 12 to 18 months (Department of Planning, Industry and Environment, 2020a). This delays development and results in plans being out of date by the time they are approved, leading to under-collection of funds.

Stakeholder views

Most stakeholders agree there is a need for some independent review of contributions plans, but there was also general agreement that the current process for IPART review is overly complex and drawn out. Many note that using a monetary threshold for IPART review unfairly penalises greenfield councils, as land acquisition makes up a significant proportion of their infrastructure costs.

As the essential works list … creates a lack of equity across the system based on an arbitrary dollar figure. If a council's contribution rates are below the threshold they can fund a full range of infrastructure … under the plan but if they cross that threshold they can no longer levy for certain items. The demand for the items is the same regardless.

Shellharbour City Council submission

Many stakeholders, including councils and IPART, argue that review of contributions plans by IPART should be the exception rather than the rule, and should not be linked to an arbitrary dollar figure. Some council and industry stakeholders suggest that IPART or another independent body should be brought in as early as the precinct planning and design phase. A small number of development industry stakeholders hold an opposing view; that all contributions plans should be reviewed by IPART, regardless of the contribution rate, and that IPART's review should be extended to section 7.12 plans.

The Productivity Commission [should] consider the problems an independent review of contributions plans was trying to solve and whether the IPART review function remains the best way of dealing with any of these problems that persist … It would be more efficient to utilise the skills of IPART, not so much in the detailed review of plans but instead in the provision of quality advice in relation to specific issues…

Western Sydney Planning Partnership submission

Infrastructure contributions plans should be reviewed by exception

Developer stakeholders argue that the same level of rigor and scrutiny should apply to all section 7.11 contributions plans. Having IPART review all plans would be highly inefficient, but a review by exception model, where IPART reviews any plan with an unresolved material issue, would facilitate increased rigor and scrutiny. This model would apply to all contributions plans, irrespective of value and location.

Under this model, contributions plans must apply benchmark costs, unless a specific efficient cost estimate has been prepared or actual costs based on efficient design are determined following construction. The Department should develop improved guidance on the requirements of contributions plans, clearly demonstrating the methodology required for determining contribution amounts. To minimise the potential for disputes, this guidance should be clear and definitive. This could occur through a revised practice note which includes (but is not limited to) guidance on:

- the updated essential works list for development-contingent infrastructure
- how nexus should be established for infrastructure in a plan
- how costs should be apportioned
- how efficient costs should be determined including when to use benchmark costs, specific estimates or actual efficient costs
- the required content of contributions plans, including the information that must be made publicly available to demonstrate how costs are determined (for example, the scope, cost and procurement process for each infrastructure item in a plan).

If affected parties are of the view that the council has not met the requirements for contributions plans, they can apply to have the plan reviewed by IPART. Applicants should provide evidence establishing:

- how a contributions plan does not meet the required methodology, criteria or legislative provisions, and
- that this lack of compliance has a material impact on contribution rates in the plan.

This process would ensure that review occurs only where sufficiently justified.

> *The benefits of an exception-based model are that the 'market' could effectively determine which plans should be subject to external review, and also make the trade-off between cost reflectivity and accuracy in contributions plans (which could be enhanced by external review) versus certainty and timeliness (which could be enhanced by avoiding external review).*
>
> IPART submission

To expedite the process, IPART can determine whether there is an unresolved material issue with a contributions plan referred for review. Additionally, IPART would not be required to review an entire plan, but rather its review would be limited to the disputed parts of the plan.

Recommendation 4.7: Independent Pricing and Regulatory Tribunal review of contributions plans be 'by exception' and based on efficient costs

i. Remove the monetary trigger for review of contributions plans by the Independent Pricing and Regulatory Tribunal.

ii. Develop Terms of Reference for the Independent Pricing and Regulatory Tribunal to review any costs in a section 7.11 contributions plan on a 'by exception' basis with the option of a 'targeted' review of specific sections of a plan.

iii. Prepare a practice note to reflect the 'by exception' review process and requirements for local contributions plans.

Increase certainty and simplicity in the contributions system

The efficiency and effectiveness of contributions plans depend on the accuracy and currency of contribution amounts at any time. Contributions plans must detail the relationship between the funded infrastructure and the development. This ensures the cost of local infrastructure is distributed fairly; but it also creates complexity and imposes a significant administrative burden. The complexity also tends to reduce transparency. The result is that developers are often unable to calculate a potential contribution charge and the community cannot easily find out what infrastructure it can expect and when. While contributions plans are required to set out an indicative rate, the actual contribution payable on a development must be calculated by the council on a case-by-case basis.

Contributions plan management and implementation requires considerable legislative and regulatory skill. Councils may have limited staff available, and operational requirements may prevent the ongoing management of adopted contributions plans from being prioritised. Some councils have accumulated significant contributions balances, indicating possible barriers to their timely expenditure.

Stakeholder views

Stakeholders generally agree there is scope to reduce complexity in the contributions system, though with diverse opinions on the desired scale of change and the parts of the system are suitable for simplification. Several councils propose 'hybrid' models, with relaxed requirements for nexus or apportionment within section 7.11, or retaining section 7.11 as is, but encouraging more widespread usage of the section 7.12 mechanism.

> *A "hybrid" contributions plan could be considered … Perhaps an LGA could be divided into a few simple rings with different percentages, which are reflective of different levels of demand for infrastructure … There may also be different percentages for different development types.*
>
> City of Newcastle Council submission

Other council and industry stakeholders reiterate the importance of nexus and apportionment for local contributions. Many councils note that contributions plans are necessarily detailed, as this complexity supports greater certainty and transparency. Much of the detail in contributions plans is required so they can withstand developer scrutiny and potential appeal in the Land and Environment Court. Such rigor is required to accurately apply nexus and apportionment, to equitably spread the cost of infrastructure.

> *Whilst administratively more complex, Section 7.11 plans provide greater certainty for the delivery of infrastructure within a precinct and the broader LGA. In this regard, these types of plans are considered … to be more transparent.*
>
> Paramatta Council submission

Finally, some stakeholders note that many of the issues brought about by complexity are council resourcing issues, rather than issues with the contributions system. Complexity would be a lesser issue with better resourced contributions planning teams within councils and better developed common assumptions, benchmarks and templates.

> *A standard structure and format [for contributions plans] should be developed collaboratively between the Department, councils, developers and other relevant stakeholders. The process should start with identifying the information each stakeholder requires and how they would prefer to access the information (e.g., online, text based, maps etc). This will help to ensure that superfluous information is not included in a plan and that the required information is easily accessible.*
>
> Western Sydney Planning Partnership submission

Reduce unnecessary complexity while aligning to the principles of local contributions

The principles identified highlight the importance of local infrastructure contributions reflecting the efficient cost of development. If the infrastructure costs of development are accurate and appropriately reflected in investment decisions, this will ensure a more efficient sequencing of development, as lower cost areas will be more feasible. Stakeholder feedback and the proposed principles also acknowledge the importance of a certain and simple contributions system. There was also broad stakeholder support for maintaining nexus and apportionment.

In light of this, a distinction should be made between necessary detail, such as the work required to develop a rigorous contributions plan that accurately apportions the cost of infrastructure to the correct beneficiaries, and complexity that is unnecessary, such as opaque plan layouts and calculation methods. The focus should be on standardising and simplifying aspects of the plan making process where appropriate, while maintaining enough rigor to support the principles of nexus and apportionment. A digital tool would assist, including a simple transparent interface to input the critical detail for a contributions plan, with the more complex calculations occurring in the background. Recommendations on a contributions digital tool are provided in Chapter 6.

Developing standard templates for contributions plans will enable standardisation, increase transparency, encourage simplicity and reduce the burden on councils. Currently, councils develop their own templates, which vary significantly, even for different plans within the same council. A standard plan template would make navigation easier for other stakeholders, as well as simplifying the plan development process. Additionally, contributions plans are generally static PDF documents. An online standard template will make documents easier to update in line with the recommendation to update every four years (see Recommendation 6.5).

Recommendation 4.8: Contributions plans are prepared using standard online templates and digital tools

i. Develop standard online contributions plan templates for section 7.11 local contributions and section 7.12 fixed levies.

ii. Amend legislation to require new contributions plans be made using standard templates and housed within the contributions digital tool to be developed on the NSW Planning Portal.

iii. Require contributions plans transition to the digital tool upon review.

Further standardisation and simplification should be pursued, where it is consistent with the principles. Areas for consideration include:

- standardising reporting formats and requirements built into a digital reporting system
- standardising indexation methods, units of charge, and works in kind credit systems, for greater uniformity across plans
- simplifying processes and publishing clear guidelines for instances where councils are required to apply to the Department for changes, such as applying for a higher section 7.12 maximum rate.

Better align the timing of payment of contributions and delivery of infrastructure

Section 7.11 contributions are imposed as a condition of consent and payments are typically required prior to obtaining a construction or subdivision certificate. Councils have the discretion to allow payments to be deferred to a later stage but typically require a financial security for the full contribution amount. This security requirement effectively neutralises the potential financing benefits for a developer of deferring the payment.

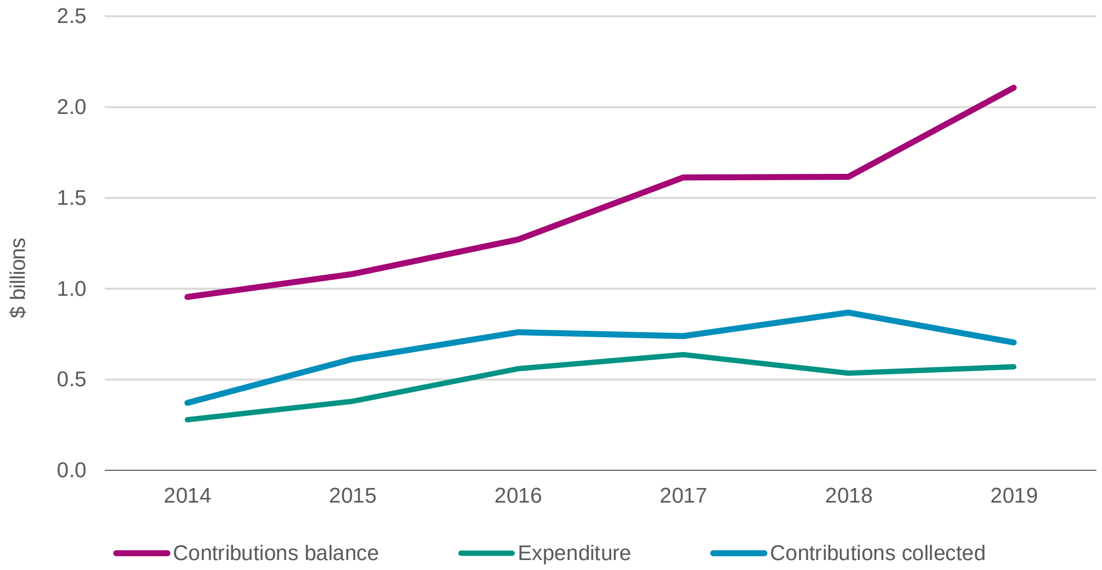
Timing is a financing issue for developers as the risk profile for the project changes pre and post construction. Developers want to delay the payment of contributions to the occupation certificate stage to support project financing arrangements. This would delay receipt of funds to councils and, in the absence of borrowing funds, may delay infrastructure delivery.

Timing of contributions payments is a cash flow issue for councils, who claim early payments are needed to deliver 'enabling infrastructure'. Generally, councils wait to receive funds prior to building infrastructure. Waiting for contributions to be collected often means roads and drainage are prioritised over open space and community facilities, as the former are considered 'essential' to unlock development. An alternative is for councils to finance infrastructure, which could be repaid as contributions are collected. This would increase capacity to deliver infrastructure, facilitate improved sequencing and support growing communities.

Despite programs such as the Department's Low Cost Loan Initiative[2], for cultural and political reasons many councils remain reluctant to fund infrastructure by borrowing.

Contribution balances held by local councils have increased significantly in recent years. In 2018-19, the balance for metropolitan councils climbed to over $2 billion (see Figure 4.7) and $1.2 billion for regional councils. This is a significant funding source, which could be pooled and deployed for early land acquisition and works.

Figure 4.7: Local contributions and expenditure over time – metropolitan councils



Source: The Centre for International Economics (2020) using Department of Planning Industry and Environment data

Stakeholder views

Councils acknowledge the significant benefits of forward funding infrastructure but highlight that it is difficult to achieve in practice.

> *The ability to access low cost loans to forward fund infrastructure would mean that these facilities can be provided early, at the cheapest price and in the most efficient way. This would then give absolute certainty for future developers with respect to future contribution rates, as contributions income would essentially just be reimbursing actual costs (with known/agreed interest rates).*
>
> The Hills Shire Council submission

Risk is the key issue councils raise regarding borrowing to forward fund infrastructure and to manage the timing of contribution payments. Councils note that, should a contributions plan not recover enough funds to repay a loan, or a developer defaults on a contributions payment, this shortfall must be met by the rate payer. Additionally, if councils borrow, they bear the financial risk if development slows down and the contributions payments are delayed. Some community stakeholders note that council borrowing and deferring of payments amounts to the public sector taking on risk on behalf of the private sector.

Borrowing would have a negative effect on councils' debt service ratios because revenue from infrastructure contributions is not counted as income when lenders determine a council's borrowing capacity. Borrowing for infrastructure in contributions plans can therefore disproportionally reduce capacity to borrow for other projects. Most council and industry stakeholders agree more support should be given to councils to access debt and increase their security, as they bear the financial risk.

---

[2] The *Low Cost Loans Initiative* assists councils with the cost of new infrastructure by funding 50 per cent of the interest paid on borrowings related to infrastructure.

Developers state that being able to defer payment of contributions improves their access to project finance and allows more projects to progress with less reliance on the financial market. Additionally, earlier payment of contributions locks smaller developers out of the market as earlier payment has a larger adverse effect on their ability to access finance.

> *The benefits [of delaying payment to occupation certificate] are reduced equity requirements, reduced finance costs and marginal increase in profitability. The reduction of circa $8 million in equity to fund the project critically allows for the project to progress with less reliance on the financial markets. Reducing the reliance on the financial markets enables more projects to commence based on the merits and demand fundamentals of the project.*
>
> J Group submission

Councils are against deferring payment, which carries a higher risk, as they do not always have control over occupation certification. Private certifiers may issue an occupation certificate without confirming payment has been made. Having to record a contributions liability on a land title was generally not seen as a viable alternative to a condition of consent and would add complexity to the system.

> *Councils have deliberately chosen the timing for payments to align with significant gateway stages in the development process to minimise financial risk. There are significant risks of non-payment associated with the delay of payment until occupation certificated stage as councils often do not find out an occupation certificate has been released until after the fact.*
>
> Western Sydney Planning Partnership submission

Forward funding infrastructure should be encouraged

Forward funding infrastructure brings significant benefits including reducing the cost of infrastructure and land, and increasing certainty for industry, though with additional risk for councils. While both councils and developers are exposed to risk during the development process, their profile and impact differs. Risk for councils can result in a shortfall, which is ultimately met by rate payers or taxpayers in extremis.

Rate peg reform will increase councils' ability to borrow, as their debt servicing capacity will increase in line with their increased rates base. This should make it easier for many councils to obtain finance for infrastructure.

Council stakeholders identify that providing alternative options for loan repayment schedules could make borrowing more attractive. For example, a loan that links repayments to lot or dwelling delivery, rather than time-based milestones, would better align to contributions income.

The Treasury Corporation loans service is one infrastructure financing option available to councils; its uptake is, however, limited. Income from infrastructure contributions is currently not included in borrowing capacity calculations, as these "restricted assets" are required to be spent for the purpose they were collected. When councils are seeking finance for infrastructure from a contributions plan it is, however, appropriate to include the funds to be collected through the plan in determining the council's capacity to borrow.

An incentive program could further encourage councils to borrow

Given the size of the potential benefits from forward funding of infrastructure, there is a case for additional incentives to encourage borrowing. Another benefit would be helping with a transitional period following reform of the rate peg, noting that revenue increases from the rate peg reform take time to ramp up (see Figure 3.4). That is, borrowing could be used to fund general cost items that cannot be funded from infrastructure contributions, such as community facilities and higher order open space embellishment, in an interim period as rates revenue increases, with repayments made from future rates revenue.

Some submissions suggested that the State could underwrite council loans to forward fund infrastructure, thereby taking on the risk that contributions are insufficient to cover borrowing costs. This would, however, introduce a moral hazard as councils would not be incentivised to ensure contributions payments are sufficient to cover infrastructure costs. Since these plans belong to councils, they are best placed to manage this risk.

Another option would be expansion of the Low Cost Loan Initiative, for example to cover interest at rate higher than 50 per cent. But given current low uptake, and the proposed ability to enable borrowing costs to be recouped from contributions plans in any event, it is unclear if this would incentivise many councils.

A further option would be a targeted grant program to encourage forward funding of infrastructure. Councils could access low cost financing through Treasury Corporation, or other providers. The State could offer an incentive payment, for example 5 per cent of the total capital cost, as a way to increase take up. The incentive payment would be un-tied (i.e. councils choose how to spend), but if the relevant infrastructure covered by the borrowing were not delivered, it would need to be repaid. Councils would be able to recoup interest costs through contributions, and the timeline for repayments could be linked to development timeframes, removing any issues related to timing of payments.

State funding would be required to establish such an incentive program. To make the funds stretch further, councils could be required to repay the incentive amount, but also be given ability to recover the additional payment through infrastructure contributions. This would be an additional cost for developers but would be justifiable if forward funding of infrastructure were to significantly reduce overall costs, and thereby lower infrastructure contributions.

Barriers to pooled contributions should be removed

Fiscal flexibility of councils would be further improved by allowing and encouraging pooling of contributions funds. Currently the EP&A Regulation allows contributions to be pooled only if it is specifically authorised in the contributions plan. The EP&A Act section 7.3 requires planning authorities to hold contributions for the purpose acquired. Pooling of contributions is subject to the requirements of any relevant contributions plan or Ministerial Direction. This creates unnecessary administrative complexity. Pooling should be permitted by default. It has been recently supported by the May 2020 *Environmental Planning and Assessment (Local Infrastructure Contributions – Pooling of Contributions) Ministerial Direction,* enabling councils to pool contributions to facilitate provision of public infrastructure and public services. This temporary measure should be made permanent.

Another significant barrier to pooling lies in a lack of integration between contributions plans, delivery programs and operational plans. This should be addressed by Recommendation 5.5 to use the contributions system to support delivery.

Recommendation 4.9: Encourage councils to forward fund infrastructure, through borrowing and pooling of funds

i. Amend legislation to allow:
   - pooling of contributions funds as the default option
   - interest costs associated with borrowing for infrastructure be collected through contributions plans.

ii. Incentivise councils to borrow to forward fund infrastructure, including by:
   - Treasury Corporation reviewing their lending criteria to consider allowing capital grants and contributions (including infrastructure contributions) to be included in debt serviceability calculations where contributions relate specifically to the project for which council is seeking funding
   - establishing a program to provide an additional financial incentive when councils borrow to build infrastructure.

The risks in deferring payment of contributions are real, particularly those around issuing of an occupation certificate prior to payment. If these can be mitigated, deferral of payment can provide significant benefit and allow more development projects to commence. This must include increased oversight of the payment of contributions liabilities and the issuing of occupancy certificates.

Private certifiers should be required to condition occupation certificates on the payment of infrastructure contributions and confirm payment. The risk of non-compliance should rest with private certifiers, rather than councils. In such an arrangement council should have recourse to the certifier (or their insurer) if certificates are issued without payment. Amending *the Building and Development Certifiers Act 2018* to create and offence where certificates are issues without payment of an infrastructure contribution would assist with enforcement. The NSW Planning Portal should integrate development applications with a digital check that prevents an occupation certificate being issued until a contributions liability is paid.

Recommendation 4.10: Defer payment of contributions to the occupation certificate stage

i. Extend permanently the Environmental Planning and Assessment (Local Infrastructure Contributions – Timing of Payments) Direction 2020 that was introduced as a temporary measure in response to the COVID-19 pandemic.
ii. Design the NSW Planning Portal so that the release of occupation certificates is contingent upon payment of infrastructure contributions.
iii. Increase oversight of private certifiers by requiring that the certifying authority must confirm payment of contributions before issuing an occupation certificate.
iv. Amend legislation to create an offence should certifiers issue a certificate without an infrastructure contribution payment.

4.4 Section 7.12 fixed development consent levies

Section 7.12 fixed development consent levies were introduced in 2005 as a simpler and less administratively costly alternative to section 7.11 contributions plans. They are charged as a fixed percentage of development costs and are generally used:

- where it is difficult to establish a clear 'nexus' or 'apportionment' of costs
- in regional areas, infill areas, or mixed-use sites where growth is difficult to predict.

Unlike section 7.11 contributions plans, section 7.12 plans do not require councils to demonstrate a link between revenue collected and the funded infrastructure. In the case where both types of local infrastructure contributions are applicable to a given area, the development is only liable for contributions under one.

The EP&A Regulation sets 1 per cent of construction costs as the maximum councils can levy under section 7.12, with some exceptions (generally in strategic centres). If councils seek to put in place a section 7.12 plan with a higher levy, this must be approved by the Minister. The low ceiling largely explains the limited take up, as 1 per cent is generally significantly less than would be collected under a section 7.11 contributions plan, which are generally in the range of 7 or 8 per cent for greenfield areas. A rate of 1 per cent does not reflect the high cost of infrastructure for infill areas, where land acquisition costs are significant.

In April 2020, the Department exhibited a discussion paper proposing potential criteria for assessing requests for higher section 7.12 levies. The paper proposes allowing councils to request a levy rate of up to 3 per cent for specified areas, if they meet criteria for a significant strategic centre with demonstrated high employment growth.

Councils are required to develop infrastructure delivery plans for section 7.12 levies. There is, however, no requirement for a direct connection between the development generating the revenue and the infrastructure levies therefore cannot be appealed on the grounds of a lack of nexus, which balances the low maximum percentage.

Other issues identified with section 7.12 levies include:

- inconsistent application when the consent authority is not the council (i.e. a Planning Panel or the Minister for Planning and Public Spaces)
- windfall gains to councils from development with high delivery costs but low infrastructure demand, such as a solar farm or certain other commercial developments.

Stakeholder views

Councils indicate that section 7.12 levies are a useful tool that allow contributions to be collected with less of an administrative burden. The 1 per cent maximum rate has limited its usefulness as this rate would generally collect significantly less than the amount needed for infrastructure. There is general agreement from councils, community and some industry stakeholders that the rate could be increased, however there is less agreement on an appropriate higher rate.

> *Section 7.12 fixed development consent levies are a useful and efficient mechanism for contributions funding in well established, mixed use urban areas. They are also transparent and easy for councils to administer and provide developers with certainty as to expected contribution costs.*
>
> City of Sydney submission

Developers note that the increased certainty of a flat rate levy is a compelling benefit, but in their view the trade-off between the amount collected and the low need for nexus begins to erode at rates above 1 per cent. They submit that rates above this require additional scrutiny, to demonstrate rigour, improve transparency, and there should be additional requirements to satisfy the conditions for a higher rate.

> *UDIA supports maintaining the standard 1 per cent flat levy on development costs and applying greater rigour/additional requirements to strengthen the conditions for requests for a higher levy rate.*
>
> Urban Development Institute of Australia submission

Finally, some stakeholders indicate that section 7.12 development consent levies act as de facto value capture arrangement and should be abolished in favour of a formalised value capture system related to the change in land value, such as a development licence fee system.

> *Section 7.12 levies are anomalous … and should be abolished in favour of a more formalised system of value capture (related to the change in land value, rather than to development costs), such as a Development Licence Fee system.*
>
> SGS Economics submission

The current process of applying to the Department is described as unclear and carrying a high administrative burden. Stakeholders note that the Department's proposed criteria are a good first step in formalising this process.

> *Councils can seek to increase the rate, however this is a complex and poorly defined process that is unpalatable to councils as it requires considerable resources, lacks clarity and is time consuming.*
>
> Western Sydney Planning Partnership submission

Some suggest that criteria should be based on the need for infrastructure, alignment with local plans, or the strength of connection between the development and associated infrastructure. Others suggest that council's Local Strategic Planning Statements should play a key role in determining whether a higher percentage is appropriate; councils could have access to a high levy if they can demonstrate it is necessary to achieve identified strategic outcomes.

Councils propose an indicative range of 5–10 per cent of construction costs for section 7.12 levies to be a viable alternative to contributions plans under section 7.11. Some councils indicate that even with a significant increase, section 7.12 levies would not provide enough funds to support land acquisition, so they would continue to use section 7.11.

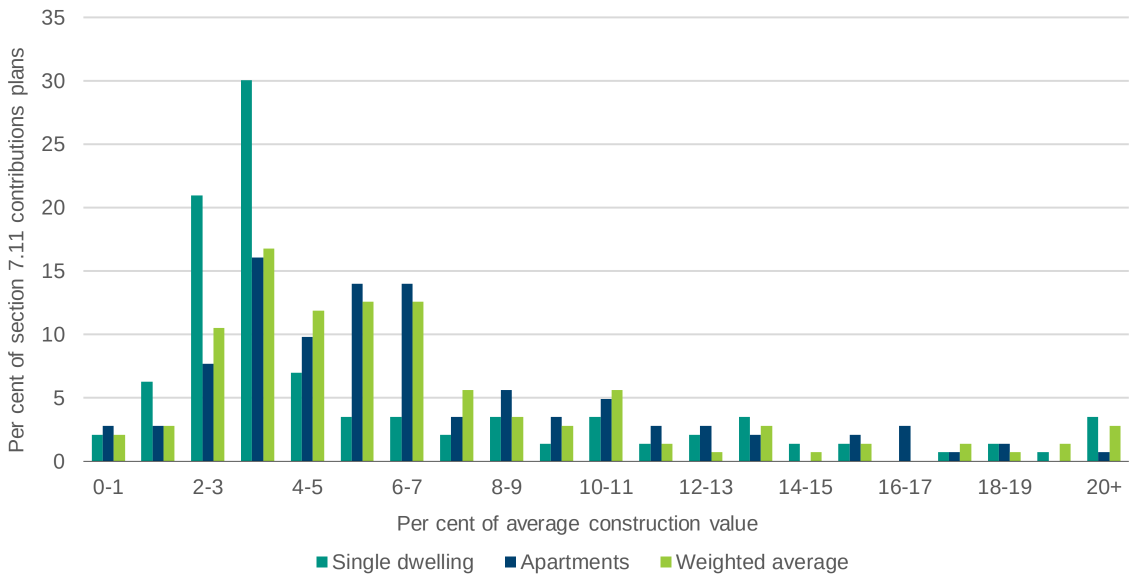
Increase the maximum rate of section 7.12 development consent levies

Local infrastructure contributions are an appropriate mechanism for funding development-contingent infrastructure costs. This still applies in principle for section 7.12 development consent levies. This mechanism simply allows councils to trade-off some of the rigor required by section 7.11 planning for a more administratively efficient system. While this supports the rate of section 7.12 being lower than section 7.11, the current rate is too low to be a viable in many situations where it would be an appropriate tool.

A higher rate, but lower than most current section 7.11 plans, strike the right balance. This will allow councils to more easily fund the infrastructure required to support development, without having to establish full nexus and apportionment as required under a section 7.11 plan.

The maximum rate of section 7.12 levies should be increased to 3 per cent for residential development. Based on a sample of section 7.11 plans for metropolitan councils, this maximum rate would remain lower than most section 7.11 contribution charges (see Figure 4.8).

Figure 4.8: Distribution of contributions as a percentage of average construction value from a sample of metro section 7.11 contributions plans



Source: Centre for International Economics (2020)

Residential development has a higher local infrastructure need than commercial and industrial development, meaning a larger share of local infrastructure costs should be apportioned to residential. For consistency, the maximum section 7.12 levy rate should be maintained at 1 per cent for non-residential development.

The percentage rates should be converted into a per dwelling rate for residential development, and a per square metre of gross floor area rate for non-residential development. This will simplify the administration of this mechanism and better align infrastructure charges with the drivers of infrastructure demand; households and people, rather than construction costs. It will also address concerns raised by councils that section 7.12 can be 'gamed' by underquoting construction costs, and industry concerns that section 7.12 can place an unfairly high burden on certain capital intensive developments such as shopping centres.

The proposed rate of 3 per cent of residential construction value was converted into a per dwelling rate using construction value data provided as part of development applications and complying development certificates (see Table 4.1).

Table 4.1 Distribution of construction costs for residential developments in 2018-19

Percentile	Residential – Single new dwelling	Residential - multi
	$000/dwelling	$000/dwelling
10	220	167
25	274	217
50 (median)	334	279
75	434	382
90	590	621

Source: Centre for International Economics (2020) using data from the Department of Planning, Industry and Environment and Local Development Performance Monitoring data for 2018-19

The median construction cost was used to determine an appropriate per dwelling rate (i.e. 3 per cent of the median cost of a single dwelling implies a maximum contribution of $10,000). This will result in greater consistency, noting the significant variation in construction costs between the lowest and highest deciles. For non-residential development systematic data on construction costs per metre of floor space was not available, so estimates from quantity surveyors were used to convert the 1 per cent rate to a rate per metre of gross floor area.

These rates should be indexed quarterly using the appropriate construction Producer Price Index, and reviewed periodically (approximately every 3–5 years) to ensure the rate remains equivalent to 3 per cent of costs for residential and one percent for non-residential development.

A section 7.12 levy can be applied to all development regardless of whether it increases demand. This has been a source of concern for development that does not generate an increase in demand for infrastructure, such as a change of use, replacement housing, and ancillary agricultural structures. While development with a construction value below $100,000 is exempt, this still captures some development that arguably does not generate additional demand. The Department should review the applicability of section 7.12 to these types of development, particularly given the recommendation for higher percentage rates.

Recommendation 4.11: Increase the maximum rate for section 7.12 fixed development consent levies

i. Amend the maximum rate for section 7.12 contributions as follows:
   - $10 000 per additional dwelling for houses (detached, semi-detached, townhouses)
   - $8 000 per additional dwelling for all other residential accommodation
   - $35 per square metre of additional gross floor area for commercial uses
   - $25 per square metre of additional gross floor area for retail uses
   - $13 per square metre of additional gross floor area for industrial uses.

ii. Index contribution rates quarterly using the Producer Price Index (Road and Bridge Construction – NSW) and review periodically (approximately every three to five years) to ensure they remain in line with the intended proportion of development costs.

With the increasing prevalence of mixed-use development, the rules requiring that only one type of local contributions plan apply to each development can have unintended consequences. Many councils use section 7.12 for development where it is difficult to apply the principles of nexus and apportionment, for non-residential development. Section 7.11 is the more appropriate tool to ensure contributions are collected on development that significantly increases density and infrastructure demand. This means that in mixed use developments, councils often chose to apply a section 7.11 plan, and only collect contributions from the residential component of development.

It is possible that the recommended changes to the section 7.12 contribution rates will be sufficient to manage areas developing with a higher component of mixed-use development. This issue should be monitored, and further work may be required on options for contributions on mixed use development. These may include whether components of a development can be levied under different mechanisms (currently prevented by legislation) or whether a contributions plan can adopt a section 7.12 levy for non-residential components of a development (currently prevented by the requirements to demonstrate nexus and apportionment).

4.5 Local planning agreements

Planning agreements are negotiated between developers and planning authorities (either State or local government) and can deliver a wide array of public benefits. Planning agreements encourage innovative solutions to infrastructure delivery, as they:

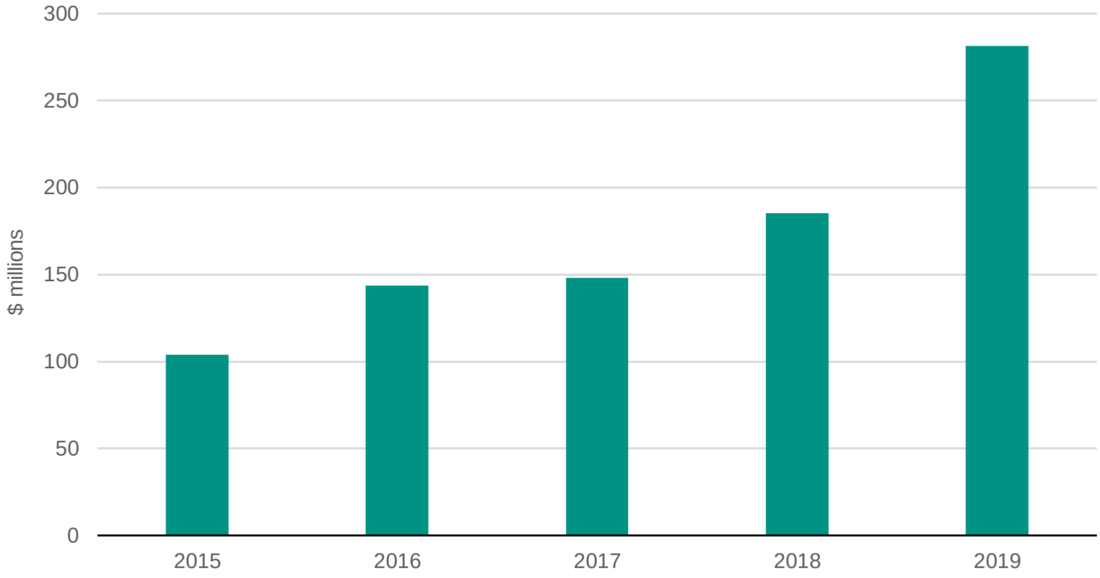
- are not limited to the provision of infrastructure based on a schedule of works contained in contributions plans
- are commonly used to provide infrastructure in areas not covered by a contributions plan
- can address site-specific infrastructure needs
- can be used to fund recurrent expenditure, unlike other contributions mechanisms
- can be tied to the land subject to the agreement, rather than the development consent.

The State uses planning agreements as a mechanism for developers to make 'satisfactory arrangements' for the provision of regional infrastructure. This approach is often applied in areas where no special infrastructure contribution is in place. Use of planning agreements for state and regional infrastructure is discussed in Chapter 6.

The use of planning agreements by councils has increased significantly in recent years. Some stakeholders suggest this is in part because of constraints on other revenue sources. Figure 4.9 illustrates the increasing role of planning agreements, showing the associated cash balances held by councils over the past five years.

While indicative, these quantities tend to understate the value of planning agreements, as they exclude the value of works-in-kind, which are commonly used to facilitate direct delivery of infrastructure.

Figure 4.9: Planning agreements – cash balance held by councils over time



Source: Office of Local Government NSW, Summary of Annual Financial Statements for NSW Local Government

Planning agreements allow developers to provide innovative solutions to infrastructure needs and enable an out-of-sequence project to proceed. They also allow councils to share in land value uplift. An example of a project delivered under planning agreement is provided in Box 4.5. Planning agreements are also a fall-back mechanism when unanticipated development occurs, and detailed infrastructure contributions planning has not yet been undertaken.

Box 4.5: Case study – Bennelong Bridge Planning Agreement

Bennelong Bridge in Homebush Bay is an example of an innovative infrastructure funded entirely through a value sharing planning agreement. Under the planning agreement, a developer consortium constructed a $63 million bridge between Rhodes and Wentworth Point and provided an upfront cash contribution to maintain the bridge for 40 years. In exchange, the State approved rezoning increasing the density of 25 hectares of developable land around the bridge by 20 per cent, or an additional 1,300 dwellings.

The bridge addresses the access constraints that limited the development potential at Wentworth Point. The additional access supports greater development and improves the amenity for residents. The bridge connects the two communities via bus services, while pedestrians and cyclists use the bridge for local trips. The bridge is the first in Sydney to exclude private car travel.

Source: Planning Institute of Australia (2017)

A lack of consistently applied principles for planning agreements can, however, foster uncertainty and undermine confidence in the planning system. There has been increasing use of planning agreements by councils as a de facto ‘value capture’ mechanism, where the council may agree to provide additional height or floorspace where a developer agrees to pay the council a share of the additional value created. Critics argue that such agreements could create the perception that ‘development is for sale’ especially where they lead to spot rezoning, or allow additional height and floor space without a rationale, other than the generation of council revenue.

Planning agreements are often less transparent than other mechanisms because negotiations are confidential. Even after agreements have been struck, they are not always open to public scrutiny. The EP&A Act requires planning agreements be publicly notified for at least 28 days but has no formal requirement to receive and consider public submissions.

The EP&A Regulation requires planning authorities keep, and make public, a register of all planning agreements. Councils comply with this in different ways. Some provide an up-to-date online register, some hold the information at the council customer service centre, while others only provide it on request. The Department keeps a separate register of all draft and finalised state planning agreements on their online State Voluntary Planning Agreements Register. The EP&A Regulation contains only limited reporting and auditing requirements for planning agreements. This was identified by the 2018 Kaldas Review as a barrier to transparency and accountability.

Negotiation, delivery, and monitoring of planning agreements can also be resource intensive and time consuming. Even relatively simple planning agreements may impose a significant impost in terms of time and administrative requirements.

There is also a risk that planning agreements can lead to outcomes that are not consistent with overall planning and funding policies or the with broader strategic land use plan for an area. This can undermine community confidence in the integrity of the planning system and leave developers facing uncertain—and open ended—negotiations with councils, increasing investment risk, and adding to the delays in the system.

Stakeholder views

There is strong sentiment from stakeholders that planning agreements play an important role in the planning system. Greater flexibility, opportunities for innovation, the ability to delivery infrastructure not specified in a plan and the ability to fast track development and infrastructure are noted as important outcomes.

> *Planning agreements provide benefits such as flexibility, enabling developers to provide innovative infrastructure solutions or enabling an out of sequence project to proceed where a contributions plan may not yet exist.*
>
> Shoalhaven City Council submission

> *Planning agreements are appropriate particularly when works-in-kind are proposed to bring forward delivery of infrastructure to unlock the development of land. They are effective in delivering infrastructure efficiently and cost effectively and enable a lead-developer to catalyse development.*
>
> Rawson Communities submission

However, there is agreement that planning agreements can be seen by the public as a form of purchasing planning rights.

> *This practice makes the general public feel that there is something 'dodgy' going on because the LEP as published is supposed to set the controls on a merit basis, and yet that changes when a [planning agreement] has been paid.*
>
> Urban Taskforce of Australia submission

There is disagreement as to whether value capture is an appropriate purpose of planning agreements. Many stakeholders, including several councils, note that planning decisions create both additional value for the landowners and additional infrastructure demand and amenity impacts for the community. As such, they argue that some of the additional value should be invested in the community.

> *The concept of value capture acknowledges that value is created by planning decisions made by public authorities and that a portion of that value should be invested into direct community benefit.*
>
> City of Newcastle Council submission

Community stakeholders and councils argue that using a formalised value capture system is a more transparent way of approaching planning agreements, which reduces the risk of corruption compared to general negotiations.

> *Unpriced betterment is the honeypot around which corruption emerges at both state and local levels … It is the fact that these decisions grant valuable new property rights for free to the recipients that fuels the corruption cycle.*
>
> Henry Halloran Trust, The University of Sydney submission

Others highlight that planning decisions should be based on merit and that instead basing them on a value capture scheme undermines this principle.

> *Ultimately a council shouldn't rezone land or approve a development that does not have strategic merit – it shouldn't do so in exchange for capturing some of the added value.*
>
> Mid Coast Council submission

Improve the use of planning agreements while maintaining flexibility

Current practice is inconsistent, lacks a basis in principles, adds to uncertainty and erodes the community's confidence in the planning system. Planning agreements are, however, a useful tool to create flexibility in the planning system to deal with 'out-of-sequence' development or proposals that have merit, but are not identified in strategic plans. This flexibility comes at the expense of certainty and as highlighted in Section 6.5, planning authorities should make every effort to maintain a strategic approach to planning and infrastructure.

The use of planning agreements for value capture, particularly as a cash payment for height and floor space increases, should be curtailed as they have little relationship to development-contingent infrastructure and are more likely to be addressing recurrent costs. The focus for planning agreements will then be on achieving innovative infrastructure outcomes and direct provision of works and land for infrastructure. Councils and developers can continue to use planning agreements flexibly to deliver innovative infrastructure, collaborate to deliver better outcomes and accommodate unanticipated or out-of-sequence developments.

The EP&A Act and Regulation set the framework for councils to negotiate planning agreements. This is supplemented by a practice note that details the principles that should underpin their use.

In April 2020, the Department released a draft revised planning agreements practice note. The proposed amendments aim to address concerns related to the transparency of the planning agreement process, in response to the 2018 Kaldas Review. Included in the draft practice note is advice that agreements should not be used for the primary purpose of receiving payment for additional height and floor space.

Under a principles-based approach to contributions, planning agreements should be primarily focused on delivering development-contingent infrastructure, although flexibility of planning agreements to deliver other infrastructure should be maintained. The practice note should be further amended to reflect a principles-based approach to contributions.

The practice note should contain clearer guidance on the negotiation processes. Improved guidance on negotiating practices will help councils and developers approach negotiations fairly, as well as improve consistency by ensuring the same negotiation process is followed across different councils.

The discussion paper 'Environmental Planning and Assessment Regulation: proposed amendments', released by the Department in April 2020, includes new requirements for reporting and accounting of contributions received via planning agreements and related expenditure. This will significantly improve the governance of planning agreements and should be implemented as soon as possible.

The ability for the public to scrutinise planning agreements needs improvement. While some councils state that their planning agreement registers were sufficient, a consistent and accessible centralised system would be a significant step forward. Moreover, planning authorities are only required to 'publicly notify' planning agreements, with no requirement to receive and consider submissions. A requirement to 'publicly exhibit' planning agreements would increase public scrutiny and transparency.

Including planning agreements in a contributions digital tool within the NSW Planning Portal will provide a platform that enables industry and the community to see where planning agreements are in place and access their details in a transparent way. The reporting of, and accounting for, planning agreements should, as with other contributions, ultimately be visible in the contributions digital interface. Recommendations relating to the contributions digital tool are contained in Chapter 6.

Recommendation 4.12: Planning agreements consistent with the principles-based approach

i. Adopt the Draft Planning Agreements Practice Note 2020 and EP&A Regulation amendments exhibited by the Department in April 2020to provide immediate improvements to the operation of planning agreements.
ii. Amend the practice note to embed the principles of the contributions system, so that planning agreements are:
    - for the delivery of infrastructure to support development that is out-of-sequence or unexpected
    - to facilitate the direct delivery of development-contingent infrastructure or impact mitigation works.
iii. Amend the legislation to require planning authorities to:
    - register planning agreements and draft planning agreements in a centralised system, contained within the NSW Planning Portal
    - 'publicly exhibit' rather than 'publicly notify' planning agreements, including requirements to receive and consider public submissions.

Limit the use of planning agreements for mining and energy developments

Mining and energy projects are typically deemed to have State significance due to their size, economic value or potential impact. These include mining and extraction operations and energy generating facilities. While these developments occur within a local government area, the council is often not the 'consent authority'. There are a mix of approaches to the associated infrastructure contributions, each generating significant uncertainty and frustration for stakeholders:

- some councils have adopted section 7.12 contributions plans for their local government area and have expressed concern that the consent authority does not then impose a requirement to make payment in accordance with these plans – particularly noted for energy projects such as solar and wind farms
- some councils have adopted section 7.11 contributions plans to require a contribution toward road maintenance, particularly associated with extractive industries (such as quarries) where heavy vehicles cause impact on the road network. Approaches can vary between councils, with the recent Brandy Hill quarry demonstrating significant differences, with one council seeking a contribution of approximately $150,000 only, and another seeking approximately $48 million
- planning agreements are frequently used for mining projects, rather than a contributions plan.

Using a principles-based approach, the following outlines a framework for considering contributions for these projects.

- **local impacts**: these are impacts directly arising from a development and could include noise, dust, visual amenity. These are matters to be considered during the development assessment process. Impacts should be mitigated through conditions of development consent
- **road network impacts**: these are impacts on the road network directly associated with the development activity – such as heavy vehicle haulage of materials. The council should have a section 7.11 contributions plan in place to specify the methodology for determining contributions toward road maintenance. Alternatively, a planning agreement could be used to require the contribution, based on an appropriate methodology
- **infrastructure impacts**: these are requirements for new or expanded or augmented public infrastructure as a direct result of the development activity. Where possible, the council should have a section 7.11 contributions plan in place to specify the method for determining contributions toward development-contingent infrastructure costs. It is most likely, however, that these types of resource projects cannot be anticipated in strategic planning. As a result, a planning agreement may remain the most appropriate tool for addressing infrastructure impacts. Consistent with the principles outlined for planning agreements, the agreement should relate to development-contingent infrastructure costs and should have a focus on direct delivery of works.

As noted in Section 4.4, section 7.12 contributions should only be imposed where the development generates a demand for additional infrastructure. While there is no requirement to demonstrate direct nexus between the development and the infrastructure to be funded, there must nevertheless still be some infrastructure demand to warrant imposing a requirement to make a contribution. On the basis that they do not create an infrastructure demand, energy projects such as solar and wind farms should not be required to make a section 7.12 contribution. Local impacts as a result of the development should be addressed through conditions of development consent.

Stakeholders note that planning agreements are generally used for mining and energy projects to establish a 'social licence' for the project, allowing the local community to benefit from the project, as well as to mitigate localised environmental impacts. This use of planning agreements in this way does not fit within the principles-based contributions system. They are being used to simultaneously charge for development-contingent costs such as road upgrades, compensate for environmental impact, and as a benefit sharing mechanism. As such, this mechanism does not fit within the infrastructure contributions framework, nor within the EP&A Act overall. Environmental impacts should be dealt with as part of the approval process, not through infrastructure contributions. Benefit sharing schemes would be more correctly established outside of the planning system. An example is the *Resources for Regions* program which provides funding for mining-related communities across New South Wales.

The 2019 publication of the 'Framework for securing a voluntary planning agreement between a mining proponent of a major development and a local council' is noted particularly for the collaborative approach between the NSW Minerals Council and the Association of Mining and Energy Related Councils, to reach a shared position on the use of planning agreements. This guideline establishes an agreed method for addressing road contributions, which is supported. A range of approaches for addressing 'community enhancement' are outlined, but generally not supported by this review, as such enhancement does not fit with the principles-based approach to infrastructure contributions.

Recommendation 4.13: Publish guidelines for planning agreements for mining and energy related projects consistent with the principles-based approach

Publish a guideline for mining and energy related projects consistent with the principles-based approach, so that planning agreements primarily relate to direct delivery of development-contingent infrastructure.

4.6 Affordable housing contributions

Section 7.32 of the EP&A Act allows consent authorities to levy contributions for affordable housing. *State Environmental Planning Policy No. 70 – Affordable Housing (Revised Schemes)* ('SEPP 70') provides the framework for councils to develop these schemes. From February 2019, SEPP 70 has been expanded to encompass all local government areas. Contributions can be fulfilled either by monetary payment, dedication of dwellings, or a combination of both. In this approach, planning agreements are used to secure affordable housing as a community benefit in exchange for additional height and floor space. Special infrastructure contributions can collect for affordable housing, separately to the SEPP 70 scheme.

The Greater Sydney Commission's Greater Sydney Region Plan recommends an affordable rental housing target generally in the range of 5–10 per cent of new residential floor space in areas identified for rezoning. Each scheme must demonstrate that the inclusion of affordable housing contributions will not impact on the viability of development in that area. There is, therefore, no set percentage for affordable housing contributions.

The NSW Government also delivers programs that support the provision of affordable housing (see Box 4.6).

Box 4.6: Government programs supporting affordable housing

Future Directions for Social Housing in NSW is the Government's 10-year vision for social housing. The strategy aims to increase the supply of social housing and supports the transition to other housing types. Future Directions initiatives include:

- Communities Plus is a $22 billion building program to renew the NSW Government's social housing portfolio
- Social and Affordable Housing Fund delivers additional social and affordable housing in partnership with community housing providers, non-Government organisations and the private sector.

Ivanhoe Estate, Macquarie Park is being redeveloped under the Future Directions policy and Communities Plus program. A consortium of developers and community housing providers, working with Land and Housing Corporation will deliver 3,300 new units including:

- 950 social housing units
- 128 affordable rental homes
- 273 senior living homes.

Stakeholder views

Community and council stakeholders state that affordable housing contributions are an effective part of resolving the housing affordability issue. Many, however, note that on their own they are insufficient to resolve the issue of housing affordability.

> *The current approach outlined in the Greater Sydney Region Plan of assessing the feasibility of a contribution in a specific location at the time of rezoning is appropriate and sensible as an introductory measure. A strategic, long-term approach should be adopted to complement the current policy.*
>
> Community Housing Industry Association submission

Councils and community housing stakeholders indicate that the affordable housing targets are too low, but that any increase should be gradual so developers can factor these into their development feasibilities.

Affordable housing targets should be determined in consultation with councils at the same time the overall housing targets for a district, region or subregion are being determined.

Local Government NSW submission

Several stakeholders note that affordable housing contributions are restricted to a charge on rezoned locations, capturing a share in the value created by this rezoning. If they are signalled to the market early the cost can be factored into the price of land.

> *If known affordable housing contributions are known in advance, the development sector would pass this cost on to the landowner and reduce raw land values. A marginally lower price for land as a result of affordable housing contributions would be an 'equitable' impost on existing landowners.*
>
> Southern Sydney Regional Origination of Councils submission

Developers argue that affordable housing, and all contributions, are an additional cost on development and thus impact the ability of the planning system to increase housing supply in general.

> *UDIA does not support the provision of affordable housing through the contributions system. UDIA disagrees with the notion that affordable housing is infrastructure. Just because the development sector is in the business of providing houses, it does not follow it has an obligation to provide subsidised housing.*
>
> Urban Development Institute of Australia submission

> *Some members suggested that affordable housing has a role, however increased general supply is most important. In most cases, no more than 5% if feasible – subject to bonuses. 10% has a significant impost on feasibility.*
>
> Urban Taskforce of Australia submission

Finally, many stakeholders argue that it is not the role of infrastructure contributions to incentivise a general public good such as affordable housing.

> *It is not appropriate for the development industry to fund social initiatives that are not directly resultant from the demand generated by development. If a developer provides affordable or public housing, then this should be incentivised outside the contributions system.*
>
> Rawson Communities submission

Affordable housing contributions do not fit within a principles-based infrastructure contributions system

While this Review acknowledges the important role affordable housing plays, contributions for affordable housing do not fit within the principles-based model for infrastructure contributions.

The infrastructure contributions system is a tool to allow planning authorities to collect contributions towards the infrastructure needed to support development of new and growing communities. Local contributions should be used to fund development-contingent costs; that is costs that would be avoided if a development did not go ahead. Affordable housing does not fall within this definition.

Affordable housing should be considered separately to the infrastructure contributions system. It is questionable whether the mechanism should sit within section 7 of the EP&A Act. The limited uptake of affordable housing schemes by councils suggests the contributions system plays a minor role in affordable housing supply. Moreover, it is not clear that housing is being made more affordable as a result of these schemes, as some stakeholders noted: the creation of a small quantity of “affordable housing”, may be at the cost of making other housing more expensive.

Section 7.32 of the EP&A Act on affordable housing contributions is, however, relatively new and the data available to support any evaluation is limited. Contributions collected, both monetary and in-kind, and expenditure should be accounted for. This information can then be used to inform a future review to consider their effectiveness. Communities with a preference for the provision of affordable housing should, for now, continue to be able to pursue affordable housing schemes.

Recommendation 4.14: Improve accountability for affordable housing contributions

i. Require affordable housing contributions received through section 7.32 contribution mechanisms and planning agreements be reported by councils, including:
   - the amount of monetary contributions received
   - the value and location of any in-kind provision, both works and land
   - expenditure of monetary contributions
   - transfer and management of assets.

ii. Undertake a future evaluation of section 7.32 affordable housing contribution programs to determine their effectiveness and efficiency.

Chapter 5: State and regional infrastructure funding

Findings

- The current approach to State and regional infrastructure is not working effectively. Stakeholders have criticised the ad hoc and ‘stop-start’ approach to special infrastructure contributions and the uncertainty this creates for industry and communities.
- The lack of an efficient approach to infrastructure cost recovery has caused significant land value uplift around major projects. This tends to reduce the benefits to the State of public investment and is an inequitable transfer of wealth from taxpayers to certain property owners.
- The recommended reform direction emphasises an efficient and comprehensive approach to cost recovery through improved state contributions rather than a shift to benefits capture.
- Biodiversity impacts are development-contingent costs. Strategic conservation planning that streamlines environmental approvals benefits industry, but biodiversity offsets are presently being part-funded by taxpayers.
- Customers of Sydney Water and Hunter Water are bearing infrastructure costs that are more appropriately funded through developer contributions. This has inefficient consequences for the metropolitan water and construction sectors.

Key recommendations

- Introduce state contributions plans for four New South Wales regions: Greater Sydney, Hunter, Central Coast, and Illawarra and Shoalhaven:
  - contributions should be deposited into regional funds for infrastructure that supports regional growth
  - governance arrangements should be similar to Restart NSW, with Infrastructure NSW prioritising projects in consultation with the Department and Treasury.
- Introduce an additional transport infrastructure contributions plan for projects that unlock growth capacity in metropolitan New South Wales.
- Transport contributions should apply to properties within a service catchment and be subject to additional development capacity created as a result of the investment.
- Biodiversity costs are recoverable through a standalone localised state contributions plan.
- Water connection charges should be phased in over time.

5.1 The current approach to state contributions

Special infrastructure contributions

Special infrastructure contributions (also known as SICs) were legislated in 2005, for application to ‘special contributions areas’, as determined by the Minister for Planning and Public Spaces. This mechanism now exists under section 7.24 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The state contributions framework is administered by the Department of Planning, Industry and Environment (the Department) and is set by a Determination, Ministerial Direction, and Ministerial Order. A Special Contributions Areas Infrastructure Fund (a special deposits account) has been established to facilitate the collection and payment of financial contributions. It is managed by the Department in consultation with Treasury.

Despite this mechanism being available, to date its application has been limited. Presently, special infrastructure contributions are levied in some growth areas of Greater Sydney and regional New South Wales (see Figures 5.1 and 5.2).

Figure 5.1: Special infrastructure contributions levied in Greater Sydney

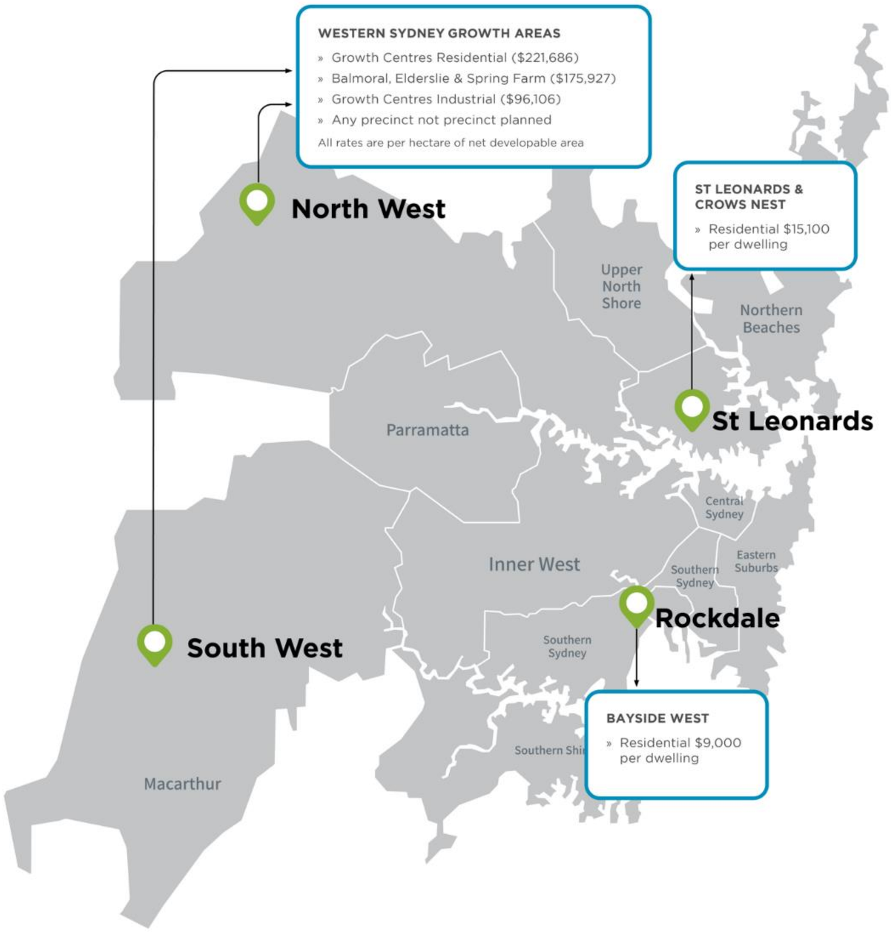


Figure 5.2: Special infrastructure contributions levied in regional New South Wales

Note: all charges are indexed to 2020, based on a stylised map not drawn to scale.
* a discount applies to Bayside West and St Leonards & Crows Nest payments made before 1 July 2022.
Source: NSW Productivity Commission using the Department of Planning, Industry and Environment's data

The limited rollout of special infrastructure contributions has contributed to the lack of resourcing and timely delivery of infrastructure in some areas. Box 5.1 highlights the importance of the timely funding and delivery of infrastructure to support development and growth.

Box 5.1: Growth and infrastructure delivery in Epping

Epping town centre was rezoned in 2014, with expectation of an additional 3,750 homes. By the end of 2018, more than 5,500 dwellings had been approved (or were under assessment), with associated population increase of more than 12,000 residents.

The rapid growth of the town centre exceeded growth projections, leading to a congested road network and pressure on public transport systems.

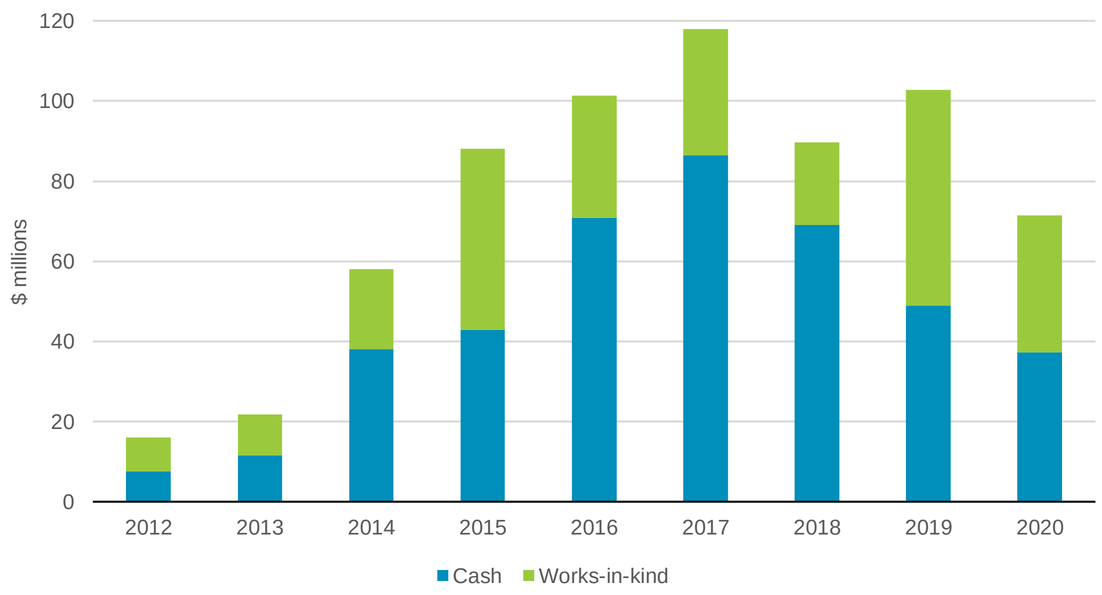
Infrastructure planning was made difficult by the town centre being shared between two councils (Parramatta and Hornsby)—although this was subsequently resolved when councils amalgamated in 2016. It was also not supported by a special infrastructure contribution, which could have provided resourcing and project coordination to address regional level impacts, particularly given the need for extensive rail closures to facilitate the Metro West construction.

Proposed special infrastructure contributions have been exhibited for Hunter, Greater Macarthur, Wilton, Rhodes, and the Western Sydney Aerotropolis (including part of the Sydney Metro Greater West corridor). These, however, have not yet been implemented and the timetable for doing so is unclear. This stop-start approach presents a risk for industry and undermines community confidence that infrastructure will be funded and delivered.

Little revenue is being raised and spent through special infrastructure contributions

Revenue from special infrastructure contributions peaked at $118 million in 2017, declining to $103 million in 2019 (see Figure 5.3). This compares to $25 billion in the value of residential completions for that year.

Figure 5.3: Special infrastructure contributions over the period 2012 to 2020



Source: NSW Productivity Commission using the Department of Planning, Industry and Environment's data

Special infrastructure contributions have changed in *ad hoc* and unpredictable ways

The section 7.24 mechanism was introduced to improve coordination between infrastructure and growth. Unlike for other mechanisms, however, the EP&A Act is not prescriptive in how they can be used. Over time, contributions have been applied and changed in ad hoc and unpredictable ways. Some of these changes include:

- The share of attributable costs of state infrastructure that can be recovered has been reduced from 75 per cent, to 50 per cent (see Appendix C).
- The way charges have been calculated has differed, with percentage of construction costs, rate per net developable hectare, and rate per dwelling all having been applied in various schemes.
- While section 7.24 can be applied relatively flexibly, the scope of infrastructure that can be funded has been prescribed in ways that lack sound principles. For example, transport interchanges are included, but not railway stations servicing the same area.

The Minister must set out reasons for the level and nature of the contribution when making determinations. In practice, this has sometimes included a 'capacity to pay' assessment, opening the system to interpretation and variability. It also means different charges can be set across different parts of a contributions area, decreasing transparency and certainty.

There is a lack of transparency in how state contributions are applied

Payments are collected and allocated to projects by the Department. The allocation of funds to specific infrastructure projects is separate to the Treasury managed budget process. This has, at times, led to competing priorities, uncoordinated investment, and inefficiency when dealing with the relevant NSW Government agencies. There is limited public reporting on how projects are prioritised and or funds are allocated.

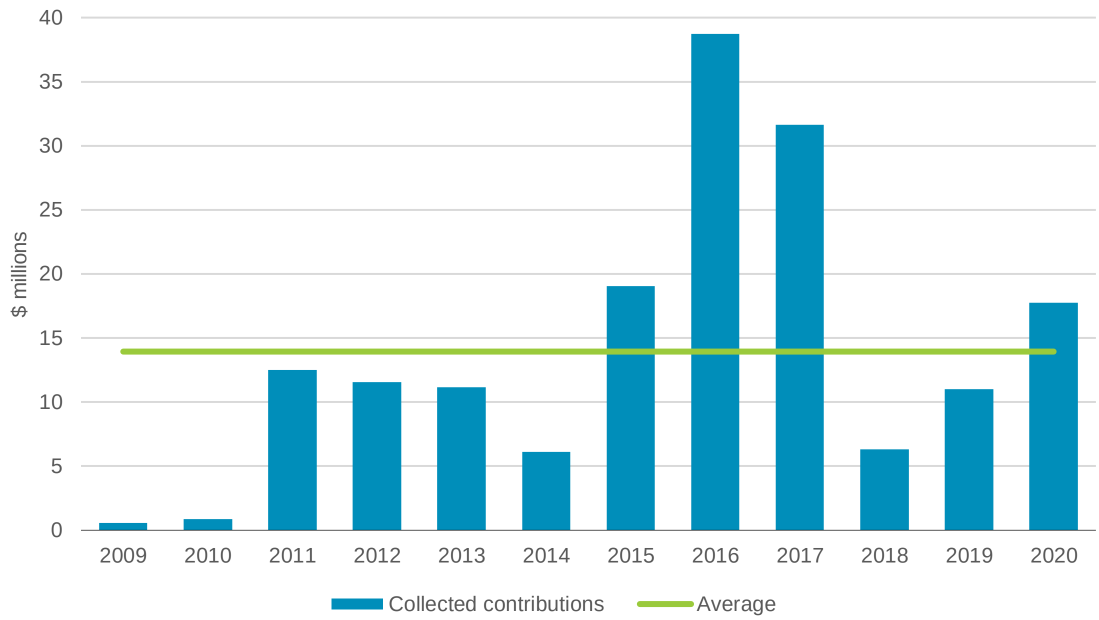
State planning agreements

Section 7.4 of the EP&A Act allows the State to seek planning agreements as a condition of development consent. The Department keeps a separate register of all draft and finalised state planning agreements on their online State Voluntary Planning Agreements Register. The EP&A Act and Environmental Planning and Assessment Regulation 2000 set the framework for the State to negotiate planning agreements with developers. There is no practice note to provide guidance for State negotiations as there is for councils.

The State can disallow development applications in an 'urban release area' unless 'satisfactory arrangements' for state infrastructure have been made. Planning agreements are commonly used in these cases. These would be more effective, however, if infrastructure needs were identified at the same time as the planning proposal. Alternatively, they may not be needed if a regional contributions plan was in place.

Since the mechanism was adopted, revenue from state planning agreements has grown but also varied significantly year to year. From less than $1 million in 2009 and 2010, annual collections peaked in $38 million in 2016 and have varied since. Disaggregation by region suggests about 81 per cent has been collected from the Sydney metropolitan area (Centre for International Economics, 2020).

Figure 5.4: State planning agreement collections



Source: Centre for International Economics using the Department of Planning, Industry and Environment's data

There is a lack of transparency in how state planning agreements are negotiated

Many of the issues with local planning agreements apply to state planning agreements. They are unlikely to efficiently guide development by providing market signals for development-contingent costs. The lack of principles for how they are applied means recovery of development-associated costs is also unlikely. It is possible they are an effective form of 'benefits capture' without adversely affecting development feasibility. This is heavily dependent, however, on the costs of negotiations to both the State and to developers, and on negotiated outcomes.

The lack of transparency in state planning agreements means cost recovery, benefits capture, and additional development are difficult to quantify. Moreover, negotiation costs tend to be significant. Low transparency also undermines confidence in the planning system. In any event, reforming state contributions to improve transparency and certainty will reduce the need for state planning agreements.

As for local government, the State may wish to retain the flexibility to agree out-of-sequence developments. State planning agreements would be appropriate in these cases. Mandatory guidelines would, however, be desirable to ensure charges and works-in-kind reflect development-contingent and development-associated costs only.

5.2 Reform options for State and regional infrastructure

Acknowledging fiscal issues facing Australian governments, the Commonwealth Productivity Commission (2014) and Infrastructure Australia (2019) have each recommended innovative funding mechanisms be explored. This encompasses both cost recovery and benefits capture options.

Cost recovery versus benefits capture

Mechanisms for state contributions can either be based on a cost recovery or benefits capture principles—to do both risks double-charging. The form of economic efficiency of each differs, however, and this should be taken into consideration when choosing an approach:

- **Cost recovery mechanisms** are market signals about where and by how much to develop. Provided they are both certain and cost reflective, they are efficient.
- **Benefits (or *value*) capture mechanisms**, by contrast, are not designed to impact development feasibility. Instead, they are efficient because—by extracting economic rent—they raise revenue to fund infrastructure without changing incentives to develop.

Potential mechanisms for state infrastructure funding under each of these approaches are identified in Table 5.1.

Table 5.1: Funding mechanisms available to government

Cost recovery	Benefits capture
User charges	Sale of development rights on publicly owned land
State contributions	Betterment levies
Planning agreements	

Cost recovery mechanisms

The role of user charges versus infrastructure contributions

The Commonwealth Productivity Commission (2014) argued the most obvious means of funding public infrastructure is through user charges. In the right instances, user charges are an efficient means of funding public service delivery. But public infrastructure—where services are natural monopolies or exhibit public good characteristics—cannot be fully funded from user charges.

When some cost recovery is desirable, it's necessary to determine the relative role of user charges versus infrastructure contributions. The recommended approach is:

- *capital* cost recovery through infrastructure contributions based on efficient costs (i.e. the most cost-effective means of delivering a standard service—without 'gold plating')
- *recurrent* cost recovery (operations and maintenance) through user charges.

Design of infrastructure contributions

Chapter 2 noted the trade-off that exists between cost-reflectivity (which—theoretically—drives efficient development outcomes) and the certainty industry needs in feasibility assessment and forward planning. Because state infrastructure tends to be both development-contingent and development-associated, a high level of cost reflectivity is unlikely to be viable if contributions are to be comprehensively applied. The time and resources currently absorbed in preparing, exhibiting, and adopting special infrastructure contributions plans demonstrates this.

This suggests state contributions that emphasise certainty over cost reflectivity is an efficient and sustainable solution to the trade-off between each. This would require flat charges for development types. The relative demand for infrastructure different land uses carry could be reflected by variation in charges for residential, retail, commercial and industrial zones. Variation in service demand by density of residential development could be reflected by lower per dwelling charges for higher density dwellings.

Benefits capture

One option in funding that is frequently discussed is the capturing of land value uplift upon rezoning. Most submissions on the Issues Paper—29 out of 31 that offered comment—agreed value capture is an appropriate objective of infrastructure contributions. The concept of land value uplift is explained in Box 5.2.

To date, where the potential of benefits capture has been estimated (McIntosh, Newman & Trubka, 2014 and Transport for NSW, 2016) they have tended to focus on passive value capture. This reflects recovering some of the original taxpayer subsidy. For land value uplift to be genuinely contained and taxpayers to gain substantive benefits from their investment, an *active value capture* approach is required.

Sales of development rights

Major infrastructure delivery invariably requires significant property acquisition. For public transport investments, the substantial additional transport capacity created in and around station precincts provides opportunities for urban regeneration. This approach is currently in progress to help part-fund the Sydney Metro project and has been applied in other NSW Government programs, such as the Communities Plus initiative.

Sales of development rights is an innovative way of opening development opportunities on government land while helping to defray costs of State investment. It also aligns to impactor or beneficiary pays principles. It is not, however, a comprehensive solution to the problem of funding and delivering state infrastructure in a timely and coordinated way.

Box 5.2: Land value uplift from public investment

Land value uplift arising from infrastructure investment is a phenomenon observed worldwide. It reflects the capitalisation of some of the benefits associated with infrastructure in the value of land within proximity. It especially arises within service catchments of transport infrastructure; new road and rail projects and bus and ferry services. Potential tenants are willing to pay more to live near infrastructure, so market rents tend to rise and, with them, land values. Another factor potentially driving uplift is property acquisitions based on speculation that new infrastructure will lead to relaxation of planning controls. It is necessary to distinguish between:

- value uplift where there is **no change in land use**
- value uplift where infrastructure **unlocks more intensive land use**, generating further—and often substantially greater—uplift.

For transport infrastructure, the extent of uplift will depend on several factors:

- **willingness to pay** for nearby land uses—uplift occurs on land for housing and commercial space within CBDs and other agglomerations of business activity
- **travel time** to commuter and metro rail stations or motorway access
- existing **user charges** of infrastructure, such as fares and tolls
- any **dis-amenity**, such as additional pedestrian and road traffic, the infrastructure creates
- **speculation** about the extent to which planning controls might be eased.

The aggregate impact of these factors reflects the benefit that tends to be capitalised. This uplift is effectively a transfer of wealth from the taxpayer—who has subsidised infrastructure delivery—to property owners.

Betterment levies

'Betterment' is the term given for land value uplift arising from government regulatory or investment decision. Proponents of betterment-based charges hold the taxpayer should receive a share of the value creased. Betterment can arise from:

- *either* an improvement in service levels or amenity from nearby infrastructure
- *or* a change in the permitted use of land.

Betterment is distinct from other, more general, factors driving land value uplift, such as population growth and rising incomes.

Betterment levies for infrastructure funding are an alternative to cost recovery mechanisms such as section 7.24 plans. They are used in some jurisdictions around the world and have had some limited application in Australia, including in New South Wales (see Box 5.3).

There are practical design and implementation issues associated with a betterment levy beyond those that arose with the Sydney betterment levy in the early 1970s:

- unlike cost recovery mechanisms, a betterment levy cannot provide market signals about where development should be encouraged and discouraged because of variation in servicing costs
- while a flat percentage charge could be adopted, the question arises about what change in value is it applied to? Were, for example, a simple year-on-year measurement of uplift used, property owners would have an incentive to apply for rezoning in a falling market to reduce, or eliminate, their liability. This speculative behaviour could delay development the State needs
- they provide governments with incentive to create economic rent through additional zoning restrictions or delays in land release in order to raise more revenue. This runs contrary to the economic growth objectives of an improved planning and infrastructure delivery system.

Box 5.3: Betterment levies in Australia

In New South Wales

Following the Second World War from 1945, Australia experienced rapid population growth driven by a significant post-war immigration program and the ‘baby boom’. Sydney’s population nearly doubled between 1945 and 1971, rising from 1.5 million to 2.8 million.

To help fund infrastructure associated with this growth, in 1970, the NSW Government imposed a Land Development Contribution. The levy was set at 30 per cent value uplift of unimproved land rezoned from rural to urban, based on Valuer-General estimates and adjusted for inflation. It was payable either at planning approval or disposal of the affected property (whichever first). Although simple and cost effective to administer, there were a range of issues that led to its abolition (Archer, 1976):

- it was introduced into a rising market and failure to significantly increase the supply of developable urban land allowed the levy to be passed on to property purchasers
- the financing model—and failure to use the option of Treasury advances—limited outgoings from the Fund for infrastructure delivery and delayed its benefits
- there was not sufficient incentive for timely development of land once it had been rezoned.

Fundamentally this experiment failed because landowners held back on selling developable land in anticipation of the scheme being abandoned. Their actions were justified when the Government abolished the Contribution in 1973 to match a promise of the opposition. This was followed several years later, however, by passage of the EP&A Act, which introduced section 94 local contributions. Evolution of the contributions system since 1979 indicates some of the lessons of the ill-fated Sydney betterment levy were learned. These include preparation of contributions plans, adoption of strategic land use planning, and better coordination of development with infrastructure.

In Australian Capital Territory

In the national capital, all land is owned by the Commonwealth and subject of Crown lease. Since 1971, the ACT has levied a 75 per cent Lease Variation Charge (LVC) on land value uplift arising from improvement in development rights in a Crown lease purpose clause. The basis for the LVC is to ‘compensate’ the community for the loss of revenue that would have been raised if the government had originally sold the lease with higher value conditions in place.

Stakeholder views

Stakeholders were universally critical of the complexity of special infrastructure contributions. Criticisms included their inconsistent application and the uncertainty posed by the 'stop-start' approach to their preparation, exhibition, and adoption. To varying degrees, these views were expressed by councils and industry groups.

> *Certainty is critical – we cannot keep waiting on decisions of Government which are taking a long time to be made (e.g. special infrastructure contributions being unmade and no ability to conduct feasibility analysis or determine final costs).*
>
> Urban Taskforce of Australia submission

Councils criticised the onerous reporting requirements imposed on councils for local contributions that are not presently applied to special infrastructure contributions.

Support for value capture—potentially through a betterment levy—was shared by other stakeholders, who criticised the current operation of special infrastructure contributions.

> *Current methods of value capture…should be broadened and consolidated into a single, comprehensively applied system of value capture through the implementations of development license fees or a betterment levy.*
>
> Southern Sydney Region Organisation of Councils submission

Prosper Australia supported a betterment levy, while Better Planning Network supported infrastructure contributions aligned to land value uplift. Inner West Council supported replicating the Australian Capital Territory model.

Practical implementation issues associated with betterment levies were highlighted in a number of submissions (NSW Revenue Professionals and SGS Economics & Planning).

> *From time to time, other jurisdictions have sought to capture part of the value uplift from planning regulations … unsuccessful in no small part because of the difficulty of measuring betterment in relation to a particular transaction event. Taxing the value margin as measured 'before and after' (a planning approval or rezoning) has been problematic because of speculated pre-approval increases in value. In the absence of taxation mechanisms, approval authorities have devised less transparent ways of capturing a share of the betterment created through their planning schemes. This can include protracted negotiations to extract commitments to invest in the public domain … or otherwise deliver a benefit to the local community.*
>
> SGS Economics & Planning submission

There was wide support for broader use of state contributions—subject to them not diminishing the amount of cost recovery through local mechanisms—and the principle of nexus. Among these supporters were councils that cover a broad range of development contexts (greenfield, infill, regional centres)—although some councils wanted to limit special infrastructure contributions to renewal precincts and growth corridors.

> *It is not clear how special infrastructure contribution can be justified or considered fit-for-purpose without such links. If a contribution is payable, it is reasonable to expect that the infrastructure that will be funded is documented and the links to local infrastructure considered.*
>
> Shellharbour City Council submission

Among industry groups, Urban Development Institute of Australia indicated support for special infrastructure contributions subject to nexus being maintained. The Better Planning Network was also supportive of the use of special infrastructure contributions. Only the Housing Industry Association opposed special infrastructure contributions outright, arguing they adversely impacted development feasibility.

Submissions tended not to distinguish between local and State planning agreements. There was significant support for negotiating and reporting requirements being applied equally between local and State governments. Where the practices of State negotiations legitimately differ from those of councils, guidelines could reflect this.

5.3 A certain and efficient way of funding State and regional infrastructure

Section 5.2 indicates that there are two options for funding State and regional infrastructure:

- either to emphasise reform of existing cost recovery mechanisms under Part 7 of the EP&A Act while pursuing benefits capture opportunities as they arise
- or instead to introduce an active value capture approach.

A broad, flat rate State contribution would provide a transparent, consistent and certain approach to funding State and regional infrastructure. Moreover, it will not involve the practical implementation difficulties of a systematic approach to benefits capture identified (Henry et al, 2009). Further advantages include:

- the section 7.24 mechanism is already understood by industry and the community
- contributions would be certain and modest, having a minimal impact on feasibility
- the funds raised would be dedicated to development enabling infrastructure, within the region, addressing barriers to growth and
- the funds would be able to leverage the broader state capital program towards infrastructure projects that supported development and growth.

Adopting this approach will also be more sustainable than the current inconsistent and limited special infrastructure contributions.

As metropolitan New South Wales has experienced high rates of growth, there is a case for the immediate and consistent application of section 7.24 contributions in these regions. The Department—in partnership with Treasury and Infrastructure NSW—should adopt state contributions for each of the following New South Wales planning regions:

- Greater Sydney
- Central Coast
- Hunter
- Illawarra and Shoalhaven.

Over time, the Government could consider wider adoptions in other high growth regions.

Principles for regional contributions

Design of regional contributions should reflect the following principles:

- the objective is to fund development-contingent and development-associated costs accruing to the State
- funds should be spent within the region they are raised
- charges should be applied on a per dwelling basis for residential development—differentiated by density—and a per square metre of floorspace for commercial and industrial development.

Charges for regional contributions

Greater cost recovery, through comprehensively applied state contributions, would support the State's capital program in the face of fiscal pressures and a reduced role for asset-recycling. It will also alleviate current issues in preparing special infrastructure contributions plans.

Charges for state contributions should be set to not impact feasibility:

- Greater Sydney region residential charges of
  - $12,000 per dwelling for houses (detached, semi-detached, town houses)
  - $10,000 per dwelling for apartments

- Central Coast, Hunter and Illawarra and Shoalhaven residential charges of:
  - $10,000 per dwelling for houses (detached, semi-detached, town houses)
  - $8,000 per dwelling for apartments.

These amounts are significantly lower than some currently proposed contributions of up to $55,000 per dwelling (excluding biodiversity offsets). Modelling by the Centre for International Economics (2020) suggests these charges would have limited feasibility impacts on Greater Sydney residential development. The modelling is conservative because it does not account for:

- improved feasibility because of reduced uncertainty about State and regional infrastructure contributions
- economic benefits from state contributions funds being allocated to growth infrastructure that will unlock more development than otherwise
- timing and coordination benefits of cost-reflective water charges allowing more development to be delivered, and sooner.

Industrial, retail and commercial development creates less infrastructure demand than residential. As with the proposed approach to section 7.12 levies, contributions should be applied on a per square metre of gross floor area. Initial analysis indicates that charges could be set between $10 to $15 per square metre for industrial, $20 to $30 per square metre for commercial, and $30 to $40 per square metre for retail uses without impacting feasibility. Further analysis should be undertaken to settle precise charges.

Governance for regional contributions

Currently, the Department administers the collection and disbursement of special infrastructure contributions in consultation with Treasury via a State Contributions Areas Infrastructure Fund. This is managed separately from the annual budget process and the Department has faced challenges in influencing agencies to focus their capital budgets towards growth enabling infrastructure. Moreover, project selection and the timing and coordination of delivery would benefit from a new governance structure.

Treasury and Infrastructure NSW's role in advising Government on project merit and funding makes them well placed to assume greater responsibility for projects funded fully or in part by state contributions. Under the proposed governance model Treasury would manage the fund, in consultation with the Department and Infrastructure NSW, similar to the model proposed in the 2013 Planning White Paper. Key features would include:

- section 7.28(2) of the EP&A Act would be amended to implement new regional state contributions plans
- funds collected within a region would be hypothecated to growth enabling infrastructure within that region
- Treasury would assume funds management responsibilities to ensure integration into the annual budget process
- the Department should identify projects (in consultation with industry) and prepare business cases
- Infrastructure NSW—in consultation with both the Department and Treasury—should provide advice on the merits and prioritisation of projects
- criteria for funding should be published:
  - projects reflect either 'development-contingent' or 'development-associated' costs—not 'general costs'—and supports priorities identified in strategic documents such as regional plans, district plans, or the State Infrastructure Strategy
  - completed business case and Infrastructure Investor Assurance (where applicable)
  - a cost-benefit analysis, where required.

This process should be used to better leverage the State's capital program by recommending part-funding (say, 50 per cent) for projects to encourage state government agencies to reprioritise their capital programs.

These funding and governance reforms would improve the timing, funding and coordination of growth supporting infrastructure. Estimates of the economic impact of growth supporting reforms indicate the generation of up to $9.4 billion in benefits to the economy (Centre for International Economics, 2020). The proposed approach also improves transparency through budget reporting of program delivery.

Transitional arrangements for regional contributions

Existing special infrastructure contribution determinations (such as for the Western Sydney Growth Areas) and the Western Sydney Aerotropolis should be preserved. All other proposals should be folded into the new arrangements.

Recommendation 5.1: Adopt regional infrastructure contributions

i. Prepare and implement state contributions plans for Greater Sydney, Central Coast, Hunter, and Illawarra-Shoalhaven regions.

ii. Greater Sydney region charges (subject to no substantial impacts on feasibility) as follows:
   - $12,000 per dwelling for houses (detached, semi-detached, townhouses)
   - $10,000 per dwelling for all other residential accommodation
   - $10 to $15 per square metre for industrial
   - $20 to $30 per square metre for commercial
   - $30 to $40 per square metre for retail uses.

iii. Central Coast, Hunter and Illawarra-Shoalhaven region charges (subject to no substantial impacts on feasibility) as follows:
   - $10,000 per dwelling for houses (detached, semi-detached, townhouses)
   - $8,000 per dwelling for all other residential accommodation
   - $10 to $15 per square metre for industrial
   - $20 to $30 per square metre for commercial
   - $30 to $40 per square metre for retail uses.

iv. Governance arrangements and criteria for infrastructure projects to be established.

Reform to state planning agreements

As for local government, the State may wish to retain the flexibility to agree out-of-sequence developments. State planning agreements would be appropriate in these cases. Mandatory guidelines would, however, be desirable to ensure charges and works-in-kind reflect development-contingent and development-associated costs only. An example of this approach is provided in Box 5.4.

Box 5.4: A strategic approach to state planning agreements

Two appropriate instances for the use of state planning agreements have been identified:

- out-of-sequence developments in metropolitan areas
- regional development not subject to a State contribution.

For example, Regional Shire Council proposes a major extension to its existing urban area. Land rezoning will result in additional demand on state and regional infrastructure. A planning proposal is submitted to the Department for Gateway Determination. The *Guide to Preparing Planning Proposals* requires the developer to identify supporting infrastructure, such as public transport, roads, utilities, waste management, health, education, and emergency services. The planning proposal should include commentary on any expected shortfalls and studies to inform infrastructure requirements.

The Gateway determination will confirm state infrastructure required and agencies to be consulted. Agencies must provide a written response to the planning proposal confirming:

- *either* the existing infrastructure has enough capacity
- *or* that infrastructure works are required and how this will be satisfied
- *or* there is an outstanding objection.

If works are required, the developer will need to negotiate the necessary arrangements prior to the land being rezoned. These may be by a deed of agreement, planning agreement, or a contract. Resolving infrastructure requirements prior to rezoning helps manage developers and property owners' expectations, while streamlining the development application process.

Recommendation 5.2: Improve guidance for state planning agreements

Publish a guideline with principles for the use of state planning agreements to ensure they:

- support out-of-sequence development in areas not supported by special infrastructure contributions, or
- facilitate the direct delivery of development-contingent infrastructure.

A transport contributions plan to provide more sustainable funding

The need for major transport projects is greater than can be funded using existing taxpayer and user-based sources. Some of the benefits of transport projects are spread widely across the State as individuals and businesses enjoy lower travel times and, therefore, reduced costs of economic activity. Market competition can spread these benefits across consumers. Benefits, however, can be reduced when residential, commercial, and industrial rents for property close to transport nodes rise in response to a new project or upgraded service. Land value uplift—described in Section 5.2—is a challenge for spreading the full benefits of transport investment. It is also inequitable.

Bureau of Infrastructure, Transport and Regional Economics (BITRE, 2015) surveyed land value changes for more than 100 projects, finding that heavy rail, light rail and bus rapid transit investments result in an average uplift in property prices of 6.9 per cent, 9.5 per cent and 9.7 per cent respectively. To more efficiently and equitably deliver transport services, a transport contributions plan should be adopted by Transport for NSW.

When announced with the transport project itself, contributions will reduce the burden on the State budget by allocating a reasonable share of costs to properties benefiting from up-zoning. Because charges will be signalled to the market well before changes to planning controls occur, they should not adversely impact development feasibility.

Principles for the transport contributions plan

The transport contribution should be prepared by Transport for NSW in consultation with the Department and Treasury. In so doing, agencies should observe the following design principles:

- charges are justified on the basis beneficiaries of major infrastructure through expanded development capacity and should pay as it generates uplift in land value
- the objective is to recover development-associated costs accruing to the State
- charges should:
  - apply to properties within a service catchment—such as metro stations—and benefit from additional development capacity created as a result of the investment
  - apply on a per dwelling basis for residential development and a per square metre of floorspace for net additional commercial, retail and industrial development
  - be additional to the regional infrastructure contribution

Governance for the transport contributions plan

Governance will be more straightforward for transport contributions because, unlike for regional contributions, revenue will be contingent on investment decisions. Funds collected through these contributions should be applied to the underlying project; repayments can be made for any forward funding provided by the State. Charges should be announced at the same time as the project.

A minimum charge per dwelling should be $5,000 to align with the feasibility thresholds for the most marginal projects. Transport for NSW should be required to consult with the Department, Treasury, and Infrastructure NSW to apply higher charges in areas associated with higher delivery costs and user benefits.

Recommendation 5.3: Adopt transport contributions for major projects

i. Prepare and implement a transport contributions plan for major projects that:
   - is additional to regional infrastructure contributions, where these apply
   - applies to properties within a service catchment and benefits from additional development capacity created as a result of the investment.

ii. Contribution charges should be established for residential and non-residential uses. A minimum charge of $5,000 per dwelling should be applied, with Transport for NSW required to apply higher charges where costs and benefits are relatively higher.

5.4 Biodiversity

Rising pressures of development and growth on biodiversity

As discussed in Chapter 2, population growth is a central challenge facing metropolitan New South Wales. Much of this growth is planned for Western Sydney and will inevitably impinge on undeveloped areas of the Cumberland Plain. Conservation of the State's endowment of biodiversity is a key environmental objective of the Government. Biodiversity loss arising from development needs to be offset by biodiversity gains. Doing so, however, requires funding.

The coordinated planning of the North West and South West Growth Centres included a strategic approach to protect and manage conservation value. Biodiversity measures are established in the *Threatened Species Act 1995* (now *Biodiversity Conservation Act 2016*) and *Environment Protection and Biodiversity Conservation Act 1999 (Cwth)*. The biodiversity certification and endorsed strategic assessment has allowed development to proceed on certified land without the need to obtain site-by-site assessment and approvals. Biodiversity offsets were identified to facilitate development and a $530 million Conservation Fund was included in the Western Sydney Growth Areas special infrastructure contribution. In 2009, however, the reduction in recoverable costs through state contributions from 75 per cent to 50 per cent generated a funding shortfall, which is currently borne by taxpayers.

Proposals for special infrastructure contributions in Wilton, Greater Macarthur, and the Aerotropolis have flagged inclusion of biodiversity offset costs. To date, a consistent approach has not, however, been established.

Stakeholder views

Some metropolitan and regional councils considered that biodiversity offsets do not reflect infrastructure provision but environmental outcomes and should be subject to separate funding mechanisms. Industry generally agreed.

> *Furthermore, biodiversity offsets do not relate to infrastructure provision, and should therefore, be dealt with under a separate framework, where ecological considerations are paramount.*
>
> Southern Sydney Regional Organisation of Councils submission

> *UDIA does not support the funding of biodiversity offsets through special infrastructure contributions. Biodiversity conservation is a priority across NSW and the benefits of offsets are enjoyed by the wider community. Biodiversity conservation should be funded by a broad base, not just new growth.*
>
> Urban Development Institute of Australia submission

Others viewed biodiversity as natural infrastructure that should be a part of the contributions system. Some thought managing offset requirements via state contributions for the Sydney Growth Areas had been successful and should be expanded.

> *Biodiversity offsetting should continue to be managed under the same framework. Creation of a separate framework is opposed.*
>
> Blacktown City Council submission

> *The bio-certification of the Growth Areas has been effective in facilitating development and providing certainty of ecological constraint. The special infrastructure contributions have been effective at managing the offsets required.*
>
> Rawson Communities submission

There was agreement that, should state contributions fund biodiversity offsets, transparency and independent oversight are required to ensure funds are used appropriately.

> *The mismatch in calculation and subsequent monetary value of offsets under Commonwealth and NSW legislation makes funding biodiversity problematic. This needs to be reviewed and if possible resolved.*
>
> Queanbeyan-Palerang Regional Council submission

> *That said, some members advised that if biodiversity offsets need to be secured with funding then it ought to be undertaken in a consistent and established framework. They are better in the hands of the SIC where their reasonableness can be challenged in the total impact on affordability. Careful oversight is needed.*
>
> Urban Taskforce of Australia submission

Some stakeholders argued biodiversity costs should not reduce funding available for other infrastructure.

> *It is already extremely difficult to secure sufficient funding for the delivery critical infrastructure such as open space and regional road upgrades. The funding of biodiversity offsets would make this task even more difficult.*
>
> The Hills Shire Council submission

Creating a transparent and consistent approach to biodiversity offsets

The cost of offsetting biodiversity loss is a development-contingent cost. Including biodiversity offsetting costs into regional contributions would, therefore, not be appropriate. Biodiversity charges should instead be site specific, reflecting environmental costs developments create. This provides market signals about high-value biodiversity areas that should be conserved.

To realise this, a biodiversity contribution should be adopted for areas subject to biodiversity certification and is additional to proposed regional contributions. This should be enabled through the creation of a distinct category in the EP&A Act. Those areas where the State is facilitating a strategic assessment and coordinated biodiversity offsets scheme can be subject to an area specific charge. In this way, biodiversity costs will be contained within—but funded equally from—that area. The biodiversity contribution and specific charges should be developed by the Department.

Recommendation 5.4: Create a new category of contributions specific to biodiversity

i. Create a new contribution category under Part 7 of the EP&A Act for biodiversity offsets.

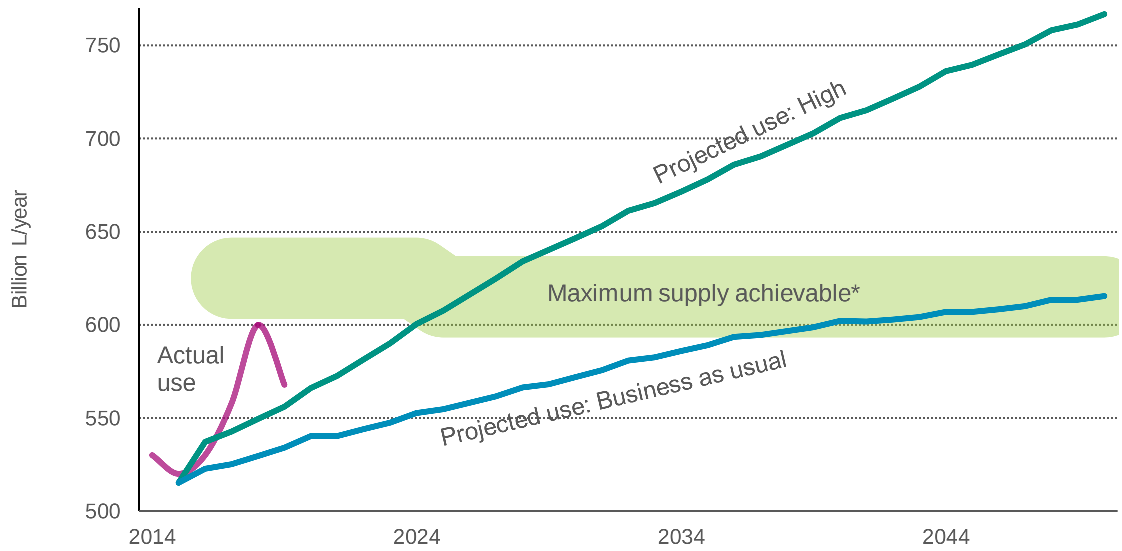
ii. Prepare and implement a biodiversity contribution for areas subject to biodiversity certification.

5.5 Metropolitan water

Rising demand for water services

Growth poses a significant challenge for the water sector in metropolitan New South Wales. Servicing growth areas of Western Sydney and higher-density development in established areas will require investment in the water distribution, sewer, and stormwater networks. Growth will also put strain on bulk water supplies and treatment plants. In recent years, demand has outstripped even the 'high use' scenario in the 2017 Metropolitan Water Plan (see Figure 5.6).

Figure 5.6: Greater Sydney water demand and supply forecasts



* with supply measures per the 2017 Metropolitan Water Plan, supply beyond 2024 includes Warragamba Dam environmental water flows.

Source: Department of Industry, Skills and Regional Development (2017), forecasts provided by Sydney Water, adapted by Treasury

The costs of servicing this population growth will be substantial. The Independent Pricing and Regulatory Tribunal (IPART) approved $1.7 billion of growth capital expenditure over four years in Sydney Water's latest pricing determination (Independent Pricing and Regulatory Tribunal, 2020). This will increase as population continues to grow and as existing infrastructure reaches capacity. The importance of water infrastructure to supporting growth in the coming decades demands an efficient and fair funding system.

Stakeholder views

Many stakeholders—including councils, utilities, and IPART—agreed it is important to examine water and wastewater charges to promote efficiency and equity in the provision of water infrastructure.

> *Where costs of new and upgraded connections vary by location, a price signal should be present. This would require a user pays system, which would reduce the cost burden placed on the broader customer base and isolate it to benefitting development.*
>
> Southern Sydney Regional Organisation of Councils submission

> *Considered against NSW state and local contributions for other infrastructure, the absence of contributions for water and wastewater for Sydney and the Hunter is a clear anomaly. Like local government rates, current water and wastewater charges are insufficient to cover the costs of growth infrastructure.*
>
> Water Services Association of Australia submission

On the other hand, some representatives of industry and property owners were concerned change to current arrangements would add to development costs, while lower bills would encourage greater water consumption.

> *It would not be appropriate to reverse this approach, as it would both stymy new development and send a price signal to consumers to increase consumption at a time when water conservation is critical.*
>
> Urban Development Institute of Australia submission

> *Reinstating the Sydney Water and Hunter Water developer charges would only add to the cumulative impact of fees and charges and not provide any public benefit.*
>
> Property Council of Australia submission

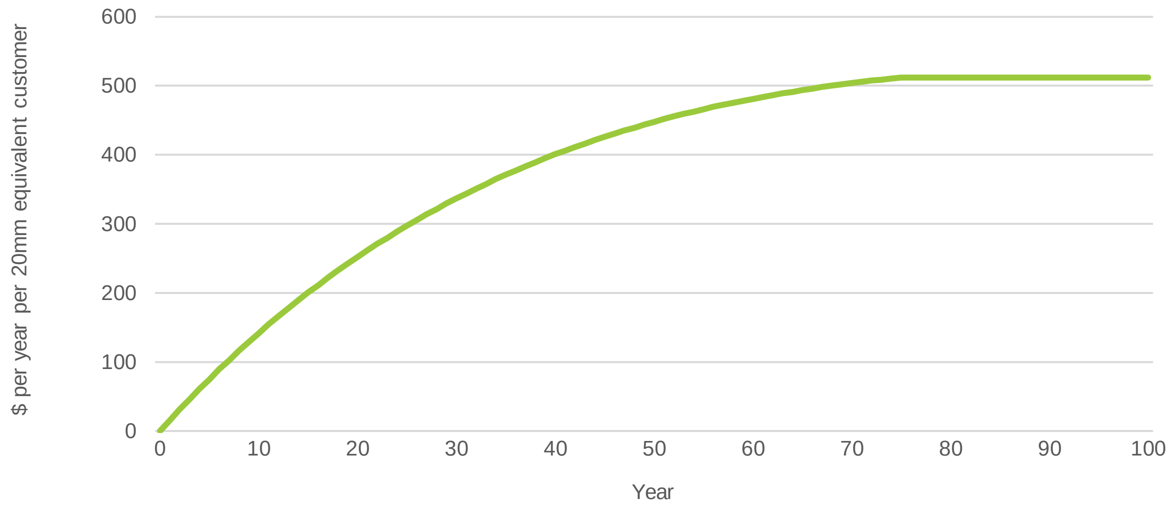
Evaluation of existing arrangements

Zero charges have increased costs for households and businesses

For the past twelve years, all existing customers of Sydney Water and Hunter Water have borne the cost of water infrastructure to service new developments. This arises from a 2008 decision to set the amount that developers were required to contribute to water and wastewater infrastructure to zero (for developments within utilities' growth plans). Growth expenditure was, instead, incorporated into the regulatory asset base for these utilities, with costs recouped through customer bills.

The longer the 2008 decision remains in place, the greater the impact on household water bills will become. IPART's submission on the Issues Paper projected that capital expenditure required to service growth in the next ten years alone translates to $140 on average per connection, every year (see Figure 5.7).

Figure 5.7: The growing cost of servicing growth



Note: This does not calculate the forgone revenue from setting developer charges to zero. It calculates the cost of funding growth capital expenditure to service new development, which is a major component of the developer charge formula. The developer charge formula also takes into account the net revenue generated from future customer tariffs above operating costs for the development area.

Source: Independent Pricing and Regulatory Tribunal analysis

An ineffective policy to encourage housing supply

The intent of the 2008 Direction was to support the State's construction sector amid a downturn induced by the Global Financial Crisis (Department of Planning, 2008). Zero water charges, it was hoped, would help sustain construction market activity in the face of these shocks.

As a policy to increase housing supply, however, zero developer charges are costly. While a modest number of projects would have been made viable that would otherwise not have been, overwhelmingly the reduced charge was reflected in higher land values. The current policy has predominantly been a transfer from water customers to owners of developable land, including those that would have developed land regardless.

Zero developer charges can also constrain development. Developer charges provide capital funding to utilities to support development activity. When funded by customers, capital expenditure is allocated to meet forecasts of in-sequence development and out-of-sequence development is de-prioritised. It can also mean when other priorities arise, such as ensuring system reliability, growth capital expenditure may need to be deferred. Hunter Water was forced to ration new network extensions for a 5-year period from 2013, causing frustration for investors in the Lower Hunter.

An inefficient way of funding water infrastructure

Zero developer charges introduce a range of distortions into development decision-making:

- industry does not receive a price signal about where and when to develop to ensure best use of existing water and wastewater assets and drive lower ongoing infrastructure and service costs. This means overall water expenditure is higher than it need be
- it has created a bias towards traditional water services over recycled water facilities, which remain subject to developer charges. This approach risks closing off more innovative ways of servicing development areas while foregoing environmental and urban amenity benefits of recycled water
- by applying different pricing regimes for public utilities versus private competitors (who generally incorporate recycled water), it distorts market competition. Decisions on what provider will not be

based on cost-effectiveness, but rather whether a development is eligible for zero charges and where it sits in utilities' growth servicing plans

- as discussed above, it weakens the link between utilities' growth servicing plans and funding base, which may limit their ability to deliver growth infrastructure in a timely way.

Cost-reflective charges, by contrast, send a market signal to undertake the right amount of development in the right places at the right time while avoiding barriers to recycled water and infrastructure contestability.

A more efficient way of funding water infrastructure

A well-managed return to cost-reflective water charges would encourage more efficient development in New South Wales and help to contain growth in household water bills. The nexus between water infrastructure and development is clearer than most other types of infrastructure. For example:

- new distribution infrastructure would not be built out into Western Sydney if the land were not to be developed—i.e. it is development-contingent
- development in Western Sydney would not be possible without bulk water capacity and distribution capacity in other parts of the network to support it—it is development-associated.

IPART has maintained a methodology for calculating cost-reflective developer charges notwithstanding the 2008 Direction. While Hunter and Sydney Water charges have been zero, it remains in use for calculating development charges by Central Coast Council.

The IPART methodology estimates the cost to the utility of servicing a new development area over and above the revenue that is projected to be received (Independent Pricing and Regulatory Tribunal, 2018). A range of capital costs are incorporated. These include direct costs of connections to the network as well as the share of common 'headworks' required to service the development area. Once revenue from expected water bills is subtracted from these capital costs, the developer charge only reflects the incremental costs contingent on the development (e.g. extending the network) or its location.

Hunter Water has provided early estimates of charges of $2,000-$3,000 for an average residential dwelling—or 'equivalent tenement'—in Newcastle developments and $5,500-$8,500 per equivalent tenement for developments in inland and regional areas (including Maitland, Port Stephens, Cessnock and Lake Macquarie).[3]

Sydney Water's early estimates suggest that development in established areas would attract small connection charges of $1,500-3,500 per equivalent tenement, which would translate to approximately $1,000-$2,500 for apartments. Greenfield development would attract charges of $5,000-12,000 per equivalent tenement, depending on the growth area. The bulk of the variation across Sydney reflects the higher cost of wastewater services further from the coast.

Some development in both utilities' areas will be costlier to service and, accordingly, attract higher charges. These developments tend to be further inland (discharging treated wastewater into more sensitive waterways), remote or inaccessible, or have small populations and therefore lack economies of scale. In most cases, however, costs in these areas are already borne by the developer as they fall outside utilities' growth plans.

The variation in the cost of providing water services to different locations highlights the value of cost-reflective water charges. When charges were set to zero, these costs did not disappear, but were embedded customers' bills. Reintroducing charges therefore would encourage better development decision-making, support growth and ease pressure on household water bills.

---

[3]An equivalent tenement is a measure of the demand a new development will place on the water and wastewater infrastructure compared to an average residential dwelling, so many dwellings will be subject to lower charges. For example, if the average apartment equates to 0.7 ETs, charges per dwelling in an apartment building would be 30 per cent lower than the figures estimated by the utilities. Higher density buildings would attract even lower per-dwelling charges.

A pathway back to cost-reflective water charges that minimises impacts on investment decisions

As with other proposed reforms, it will be important to map out a transition path that avoids unintended market impacts. Sydney Water and Hunter Water will ultimately adopt the system charging methodology—subject to IPART approval—and any transition will need to have regard to:

- the time necessary for each organisation to
  - re-build the necessary internal capacity to implement these charges
  - develop and consult on charging methodologies
- requirements of IPART's 2018 water charges determination (Independent Pricing and Regulatory Tribunal, 2018), including to retain zero charges for up to 18 months while utilities revise development servicing plans
- the need to avoid any rush to lodge development applications by a certain time or encouraging developers to delay development.

An incremental phase in between 1 July 2022 and 1 July 2024 would be appropriate to meet these requirements.[4]

Further, a temporary exemption would be appropriate to ensure that developments underway are not unduly affected by the change. This exemption should be limited to developments that meet both of the following criteria:

- all land required for the development was purchased with the expectation that zero developer charges would apply. A future cut-off date, for example of 1 July 2021, could be applied to avoid disrupting land negotiations that were already underway
- the land is developed within a reasonable timeframe. For example, if the building is complete and subdivision for the development (including strata subdivision) is registered by 1 July 2026.

Finally, as this policy will provide a more efficient and certain funding base for Sydney Water and Hunter Water, it would be appropriate for them to give developers greater certainty about available capacity and the timing of infrastructure delivery. The Government should work with the water utilities to develop a service level agreement that outlines what developers can expect in exchange for the contributions they provide. This could include, for example, the level of access to information they can expect and the timeframes within which infrastructure will be provided.

Recommendation 5.5: Phase in metropolitan water charges for more efficient delivery of water infrastructure

i. Rescind the 2008 Section 18 Direction that approved zero developer charges for water, wastewater and stormwater services for Sydney Water and Hunter Water.

ii. Direct Sydney Water and Hunter Water to reintroduce water charges and include provision for:
  - the approach to phase-in
  - exemptions for development completed prior to 1 July 2026

iii. Establish a service level agreement for Sydney Water and Hunter Water for expenditure of water charges funding.

[4] While growth capital expenditure has been included in the 2020-2024 pricing determinations for the utilities, this does not preclude a transition back to developer charges within this period. IPART would consider any over-recovery of costs at the next pricing determination.

Chapter 6: Further issues in infrastructure contributions

Findings

- Better use of digital technology can address concerns about transparency, accountability and certainty and improve stakeholder access and experience.
- Works-in-kind agreements can be a tool for timely and efficient direct delivery of infrastructure, but currently lack standards or consistency.
- The current exemptions framework is complex, inconsistent and can place an undue cost burden on councils, which further intensifies existing funding pressures.
- System complexity and uncertainty has been exacerbated by ad hoc policy changes and an array of complex and outdated tools and advice. This has compounded the challenges of a shortage of expertise and capacity within the sector.
- Infrastructure contributions are not well integrated with strategic infrastructure planning and delivery. This can result in inefficient delivery or failure to meet infrastructure needs.
- Open space is critical to the quality of life of growing communities; its delivery is, however, made more difficult by high land costs and an under provision of funds.

Key recommendations

- Develop and roll out a digital tool to make the system more transparent, improve certainty for developers and landowners and enhance administrative efficiency.
- Develop guidance to support consistency and transparency for works-in-kind agreements.
- Introduce a simple, clear and standardised approach to ensure that exemptions are equitable and align with the principles guiding the system.
- Create up-to-date and consolidated guidance materials to make the system easier to navigate.
- Embed the local infrastructure contributions system into the council Integrated and Performance Reporting Framework.
- Enhance the efficiency of open space delivery through performance-based standards and the requirement that planning proposals demonstrate land is being used efficiently.

6.1 Better use of digital tools

Improved access to information and opportunities for engagement are key to simplicity and certainty

A single source of truth on contributions is the key to an improved, simpler and more certain system. A digital tool that provides investors with authoritative information on potential contributions obligations for any land will complement and support the move towards a principles-based contribution system. It will address many of the issues around transparency, coordination and timeliness.

Previous reviews have raised the level of transparency and accountability as a concern. These include the 2018 Kaldas Review of governance in the planning system and the NSW Auditor-General’s 2020 report on governance and internal controls over local infrastructure contributions. Stakeholders have also raised concerns regarding transparency and accountability.

This includes the ability for stakeholders to access information about contributions. Councils are required to maintain ‘contributions registers’ and to make these publicly accessible; it is rare, however, for this information to be available online. Similarly, planning authorities are required to keep and make public registers for planning agreements, but compliance differs greatly. The information that is available to the public and other stakeholders is often not in a useful or easily interpreted format. Improving access and useability will significantly improve transparency.

Other transparency and accountability concerns include:

- the internal controls councils have over the data. Data and calculations on contributions are usually stored in spreadsheets, which was identified as a risk by the NSW Auditor-General due to their lack of security
- the ability for developers and the community to see what contributions have been paid
- access to information on infrastructure delivery, including what is expected, when, and what has been built
- lack of opportunity for community engagement and barriers to community involvement in the contributions and infrastructure planning process.

Additionally, it is resource intensive to develop and manage contributions plans. The current system relies extensively on manual operation; contributions plans are written into a template and usually maintained in PDF form with calculations in a separate spreadsheet. Developers are required to either estimate their own contributions or contact council for an estimate. The condition requiring the payment of contributions be added to the development consent by the planner issuing the approval. If the condition is excluded or incorrect, councils cannot collect the contribution or amend the contribution amount. Only the applicant can request a modification of the approval.

A significant opportunity therefore exists to better use technology and digital tools to plan for infrastructure needs.

Stakeholder views

Councils, industry stakeholders and the community indicate they want a centralised digital system. Feedback highlights that any implementation must be user friendly and integrate with existing council systems. Councils noted that the recent transition of development applications to the NSW Planning Portal could provide a platform for transition to a contributions digital tool.

Stakeholders recognise the need for improvements in the reporting of infrastructure contributions and agree that a digital tool will facilitate this. Some councils are cautious of additional administrative burdens, noting that the reporting and accounting requirements are already significant, and changes recently exhibited by the Department of Planning, Industry and Environment (the Department), if implemented, will lead to more transparent and consistent reporting and accounting processes. Integration of reporting into a digital tool should replace, rather than duplicate, existing reporting requirements.

> *Web-based plans provide easy and transparent access to the public, can be easily and readily amended, and can be supported by a development calculator which enables developers to obtain an estimate of their development contributions.*
>
> Shoalhaven City Council submission

Councils want a digital tool with a simple, user friendly interface, where the more complex planning inputs and calculations are performed in the background. This will ensure a rigorous contributions planning processes can be maintained, underpinned by the principles of reasonableness, nexus and apportionment.

Timely reporting tools integrated into existing ePlanning platforms should also be supported by the statewide rollout of electronic contributions calculators. This should allow proponents to identify their site, provide the development details and easily understand what rates apply and what the total payable will be.

Planning Institute of Australia submission

A contributions digital tool will improve certainty and transparency

A well designed and implemented tool will improve the ability of all stakeholders to interact with the contributions system. It will allow councils to undertake contributions planning and developers to accurately calculate their contribution liability, through an accessible interface.
A contributions digital tool should go beyond simply automating current processes. It should integrate the whole infrastructure contributions lifecycle and facilitate the flow of information between stakeholders. The lifecycle is:

1. plan preparation
2. plan administration and maintenance
3. plan delivery, and
4. plan reporting.

All these stages could be moved into a contributions digital tool within the NSW Planning Portal and integrated with the spatial mapping and online development application systems. Councils could use the tool to create and administer their plans more efficiently. It would also reduce investment risk for developers as they could access their contribution obligation upfront. An example transaction in the contributions digital tool is provided in Box 6.1.

Box 6.1: Example transaction in the contributions digital tool

- A stakeholder should be able to use a mapping interface to click on any lot, enter some basic information about their proposed development and get an estimate for the contribution liability.
- They may subsequently submit a development application into the NSW Planning Portal. This information is used to calculate the actual contribution liability, and payment is also made through the system.
- The system automatically disburses the funds to the appropriate planning authority, and records payment against the development application.

System and policy changes would be required for a state-wide digital tool. This includes simplifying and standardising aspects of the contributions system, developing separate standard section 7.11 and section 7.12 contributions plan templates, and developing a standard reporting format.

The standard contributions plan template would allow councils to create a contributions plan directly within the digital system. Contributions plans can retain significant complexity, provided contribution liabilities can be expressed in a formula and linked to the catchment map. A contribution liability can be calculated automatically for the lots to be developed based on the information provided about the proposed development.

Significant upfront work is required to develop contributions plans and the underlying systems to calculate contribution payments. Once achieved, the ongoing administration, tracking and reporting of a plan would be largely automated. This would free up contributions planning practitioners to focus on the planning and delivery of infrastructure. It would also reduce human error, which can occur in the current system from manual calculations, and the need to include contributions as a condition of development consent.

Several councils use their own online contributions systems and calculators. It would be useful to work closely with some of these, to assist with the development of the digital tool and ensure it integrates with councils' systems and processes.

The Department should also apply the lessons learned from the recent transition of development applications into the NSW Planning Portal.

Recommendation 6.1: Develop and implement a centralised contributions digital tool

i. Develop a contributions digital tool in the NSW Planning Portal, integrated with the spatial mapping and development application system, which:
   - requires councils and the State to make contributions plans
   - receive and track payments
   - report on contributions spending, fulfill accounting requirements, and report on the infrastructure delivery pipeline
   - allows landowners and developers to estimate, calculate, and pay their infrastructure contributions for both local and state infrastructure in one place, ideally in one payment.

ii. Amend legislation to support the digital tools and require their use to be phased in.

6.2 Works-in-kind agreements

Works-in-kind agreements can promote timely infrastructure delivery

A developer can offer to satisfy their infrastructure contribution obligations through the provision of ‘works-in-kind’. Acceptance is at the discretion of the council (for local contributions) or the State (for special infrastructure contributions). While similar to a planning agreement, a works-in-kind agreement has some important differences:

- the works-in-kind agreement relates to an obligation to make an infrastructure contribution imposed as a condition of development consent
- the works are identified in the relevant contributions plan or special infrastructure contributions determination
- the agreement does not need to be publicly exhibited.

Works-in-kind agreements are a form of direct delivery that can result in timely provision of infrastructure or early dedication of land. Developers can benefit from these arrangements as they can prioritise the infrastructure required directly for their development and potentially leverage procurement efficiencies to deliver at a lower cost. On the downside, infrastructure types such as roads may be prioritised over other types such as open space. Problems may also arise from inconsistent approaches to valuing works-in-kind, and from works that do not meet a council’s expected scope and design standards.

As works are completed, the equivalent value is offset against the developer’s infrastructure contributions obligations. Where a developer completes work of a higher value than their contributions obligation, a ‘credit’ is recognised. This may be used to offset future contributions.

Some developers have sought a tradeable credits scheme to allow for the sale of credits to a third party. This would build on arrangements currently in place in the Western Sydney Growth Areas, where developers are able to use credits anywhere within the Growth Areas, but not to sell them to a third party.

Stakeholder views

Both councils and industry generally support the option to use works-in-kind agreements. They provide flexibility and allow for infrastructure to be delivered earlier than councils would otherwise achieve. Support is, however, generally subject to ensuring that the infrastructure is in accordance with the contributions plan and mechanisms are in place to verify the infrastructure delivered is to the standard required by council.

Industry stakeholders express concern about differences in council policies for works-in-kind agreement requirements, and potential inefficiencies. For example, the application of procurement process requirements when contractors have already been engaged. Councils suggest that development of a template and practice note to establish a standard approach to valuation, offsetting and liability periods would be beneficial.

Councils' policies on works-in-kind Agreements vary. In particular, councils have different policies on how the value of works provided can be offset against requirements to make monetary contributions (e.g. some councils will only offset the value of works-in-kind against the development contribution required for that particular type of work) and how any surplus value is reimbursed/credited.

Western Sydney Planning Partnership submission

Councils do not support tradeable works-in-kind credits, suggesting it would be difficult to administer and add complexity. Industry, however, supports tradeable credits on the basis they would help encourage works-in-kind agreements by ensuring that any excess credits would have value.

Works-in-kind credits will be too complex to manage. Determining the value of the works to a comparable standard would be difficult, let alone negotiating the best outcomes.

City of Newcastle Council submission

Works-in-kind agreements require greater consistency and transparency

Works-in-kind agreements should be retained for local contributions. They add flexibility to the contributions system and can support the efficient and timely delivery of infrastructure. These outcomes could, however, be undermined by policies that erode efficiency or do not ensure quality infrastructure is delivered. In other states, detailed guidelines support the use of works-in-kind agreements, such as under the Victorian Growth Areas Infrastructure Contributions system.

To support consistency, guidelines should be developed to clearly establish when and how works-in-kind agreements may be used. These could cover:

- criteria for the use of a works-in-kind agreement
- a standard approach to valuation of works
- a consistent approach for offsetting contributions required with the value of works-in-kind (i.e. a defined contribution amount versus the actual cost of the work)
- a standard period during which contractors must remedy defects.

For state contributions, works-in-kind agreements have been used to satisfy obligations for special infrastructure contributions. Under a broad-based regional contribution (see Recommendation 5.2) funds will be combined with agency capital budgets and prioritised to high benefit projects. Works-in-kind agreements would interfere with this process. Direct delivery of infrastructure may be possible through Planning Agreements (see Recommendations 4.12 and 5.2). This should be further considered by the Department during detailed design and implementation of regional contributions.

Recommendation 6.2: Promote consistency and transparency in works-in-kind agreements
Develop a practice note to guide efficient and consistent use of works-in-kind agreements.

6.3 Skills and experience

Shortage of expertise and insufficient scale in contributions planning

The ability of the local government sector to efficiently deliver infrastructure contributions plans is impaired by a shortage of skilled professionals, and lack of scale for smaller councils. According to a Local Government NSW (2018) survey, 68.9 per cent of councils are experiencing skills shortages. Engineers and town planners, both essential for the preparation of infrastructure contributions plans, are identified as the top two skills shortages.

Table 6.1: Top 10 skills shortage occupations listed by councils

Rank	Occupation	Percentage of councils (%)		
		Current shortage	Forced to recruit less skilled	Critical future issue
1	Engineer	52.7	25.5	45.5
2	Urban and town planner	41.8	25.5	40.0
3	Building surveyor	38.2	20.0	38.2
4	Project manager	21.8	18.2	21.8
5	Environmental health officer	21.8	12.7	23.6
6	Building surveying technician	18.2	10.9	16.4
7	Engineering technician	16.4	10.9	12.7
8	Asset and facilities manager	16.4	3.6	10.9
9	Human resource professional	14.5	5.5	16.4
10	Contract manager	12.7	9.1	12.7

Source: Local Government NSW, Local Government Workforce and Future Skills Report – NSW (2018)

Stakeholder views

Councils agree that a simplified contributions system will reduce the level of complexity and resourcing involved in the preparation and review of contributions plans. Many councils note there is scope to explore the sharing of resources both within and across local government and the Department, to address the limited scale of contributions planning faced by smaller councils.

> *Any shortage of expertise could potentially be addressed by the sharing of infrastructure planning related staff either between councils or between the Department and local government, as required, and as supported by the NSW Government.*
>
> Inner West Council submission

Provide clear and consolidated policy guidance

Much complexity is due to the implementation of various ad hoc policy changes and the array of guidance and requirements on infrastructure contributions—Environmental Planning and Assessment Regulation 2000 (EP&A Regulation), planning circulars, ministerial directions etc. The Department has released five practice notes (three issued in 2005 and still in use today) and 18 ministerial directions related to infrastructure contributions (see Table 6.2).

Table 6.2: Departmental advice on local infrastructure contributions and planning agreements overtime

	Practice Notes	Ministerial Directions
2020	0	4
2019	1	2 (1 relates to planning agreements)
2018	0	2
2017	0	1
2016	0	2
2015	0	1
2014	0	1
2013	0	3
2012	0	1
2007	0	1
2006	1	0
2005	3 (1 relates to planning agreements)	0
Total	**5**	**18**

Source: NSW Productivity Commission using the Department of Planning, Industry and Environment's data

The absence of clear, current and consolidated guidance has made the system difficult to navigate and increased uncertainty. This creates additional development costs and can lead to disputes requiring resolution in the NSW Land and Environment Court.

A comprehensive review and consolidation of all planning guidance would increase certainty and simplicity. To maintain its currency, it should be subject to a rolling review at least every five years (or more frequently if required). Guidance should use plain English and include best practice examples.

The Department's reforms exhibited in April 2020 are a good first step towards making the system easier to navigate. Other simplifying recommendations include:

- increasing the rate for section 7.12 contributions
- implementation of a simple, broad based state infrastructure contribution
- developing a simple, clear and centralised exemptions policy
- streamlining the Independent Pricing and Regulatory Tribunal review process
- development of digital tools, such as ePlanning and an online contributions calculator.

Encourage a knowledge sharing culture within the planning system

To date, the Western Sydney Planning Partnership has been a successful forum supporting a knowledge sharing culture within local government to facilitate delivery of shared outcomes, including the development of the Western Sydney Aerotropolis Plan. It was established in 2018 under the Western Sydney City Deal framework to deliver the 20-year vision for the development of the Western Parkland City.

The 2013 White Paper: A New Planning System recommended improving the delivery culture within the planning system, including through greater ongoing training and professional development for planning practitioners. It highlighted a United Kingdom case study, where the value of a good planning culture is recognised and supported through the establishment of the Planning Advisory Service (see Box 6.2). A similar approach could play a role enhancing local government planning capability and expertise for infrastructure contributions.

Box 6.2: The United Kingdom Case Study: Planning Advisory Service

The Planning Advisory Service is an initiative led by the Local Government Association and funded by the Department for Communities and Local Government.

The Planning Advisory Service aims to promote robust strategic planning and effective decision-making by assisting local government authorities in understanding and responding to planning reform by:

- publishing learning resources (such as the Local Plan Route Mapper & Toolkit) and case studies to facilitate ongoing reskilling and upskilling within the sector
- hosting workshops, seminars and events to promote sharing of insights and best practice
- providing consultancy support in plan making and planning applications.

Source: Planning Advisory Service (2020)

Recommendation 6.3: Build the capability and expertise of the planning sector

i. Create and maintain consolidated guidance material for each contribution mechanism that reflects up-to-date information and integrates with the digital tool.

ii. Implement a training and professional development program to support planning practitioners and build a knowledge sharing culture within the planning system.

6.4 Exemptions

The current exemptions framework is complex and inconsistent

Exemptions remove, or reduce, the contribution obligation for developments that provide a public benefit. This shifts the cost burden to local government who remains responsible for the provision of the local infrastructure required to service these developments. A range of exemption mechanisms are used, leading to inconsistencies in application (see Table 6.3).

Table 6.3: Exemptions by type of development and contribution mechanism

Type of Development	Type of Exemption		
	Section 7.11	Section 7.12	Special Infrastructure Contributions
Seniors Housing (provided by Social Housing Provider)	Fully exempted by Ministerial Direction	Fully exempted by Ministerial Direction	No overarching exemption
Affordable housing (Crown)	Partly exempt by Circular D6	Fully exempt by cl25J of EP&A Regulation	Multiple approaches
Affordable housing (Other)	No overarching exemption	Fully exempt by cl25J of EP&A Regulation	Multiple approaches
Educational establishments (Crown)	Partly exempt by Circular D6	No overarching exemption	Fully exempt (schools and TAFE)
Educational establishments (Private)	No overarching exemption	No overarching exemption	Fully exempt
Law/Order services (Crown)	Partly exempt by Circular D6	No overarching exemption	No overarching exemption
Health services (Crown)	Partly exempt by Circular D6	No overarching exemption	Fully exempt
Public utility undertakings	No overarching exemption	No overarching exemption	Fully exempt
Complying development	No overarching exemption	No overarching exemption	Multiple approaches

Source: Department of Planning, Industry and Environment

Stakeholder views

Overall, both councils and industry agree that exemptions should only be applied in limited circumstances where a public benefit is clearly demonstrated. Exemptions should not, however, be granted to development undertaken for profit or personal gain.

> *Unless the exemption being granted is for a development that offers a benefit to the broader community e.g. a hospital, school, emergency services, this form of cost-shifting undermines the principles of equity and transparency that underpin the contributions system.*
>
> Shellharbour City Council submission

There are mixed views on who should bear shortfalls arising from exemptions (i.e. shared across other development within the precinct or paid through general revenue sources). Where there are broader public objectives (e.g. affordable housing, public healthcare), some acknowledge a government subsidy should be used in place of exemptions.

Councils raise concerns over the fragmented approach to decision-making through the various mechanisms used to apply exemptions, with many calling for a complete review of exemptions to replace the outdated and redundant policies.

> *The current approach, with exemptions scattered through various legislative and policy documents and requiring discretion in their implementation, results in a lack of efficiency and certainty.*
>
> City of Sydney submission

Several councils indicate that the application of exemptions should not be mandated, and that they should retain the ability to issue further exemptions at their discretion, provided there is full transparency and accountability of costs as part of the decision.

> *Exemptions to infrastructure contributions should not be mandated, however councils should be able to include exemptions in their contributions plans if they choose.*
>
> Northern Beaches Council submission

Introduce a simple, clear and centralised exemptions policy

Under the impactor pays principle, developers should make a fair contribution to development-contingent costs. There are, however, a range of situations where an exemption may be appropriate.

The current array of exemptions mechanisms should be reviewed and replaced with a simple, clear and standardised exemptions policy. This would ensure transparency and accord with a principles-based approach. The exemptions policy should include a limited number of mandated Statewide exemptions, and guiding principles for other types of exemptions to be defined locally or on a case-by-case basis. Principles to guide local exemptions are outlined in Box 6.3. As for all development, the local impact of the development should be considered as part of the development assessment process, and managed through appropriate conditions of development consent.

Statewide exemptions could apply to a development that:

- does not create a demand for off-site infrastructure (e.g. solar or wind farms)
- is provided by the State for a public purpose (e.g. education, hospitals, seniors and social housing, public recreation facilities)
- is itself public infrastructure (e.g. roads, public utility undertakings, rail projects).

Regular review of the exemptions policy is required to ensure it reflects changing priorities and market trends (e.g. public private partnership and inclusion of public services in mixed-use development).

Box 6.3: Issues to consider in granting exemptions

The following is a non-exhaustive list of principles that could be applied to exemptions:

- **infrastructure demand created** – based on the concepts of nexus and apportionment, developers should only be liable for their share of additional infrastructure demand. An exemption may be considered for certain developments (e.g. those that have on-site facilities or those that do not generate infrastructure demand)
- **social benefit provided** – an exemption may be considered where the social benefit from a development exceeds the economic benefit from a contribution payment
- **capacity to pay** – an exemption may be considered for community developments that have a limited capacity to pay and nature of service provision (e.g. not-for-profits, charities etc)
- **opportunity cost of granting an exemption** – in granting an exemption, the implications for the funding and provision of necessary infrastructure for the development should be considered. Any forgone contributions from an exemption should not place undue pressure on other funding streams.

Recommendation 6.4: Introduce a simple, clear, *standardised* exemptions policy

Produce a simple, clear, standardised exemptions policy, underpinned by guiding principles, to ensure a consistent and transparent application of exemptions.

6.5 Better integration of infrastructure contributions with strategic infrastructure planning and delivery

Infrastructure contributions are currently siloed from strategic infrastructure planning and delivery

One of the main objectives of the planning system under the *Environmental Planning and Assessment Act 1979* (EP&A Act) is to encourage economic growth and development for the benefit of the wider community, while ensuring development is ecologically sustainable. Upfront strategic planning is central to this. It can ensure that the right infrastructure is delivered at the right time and in the right locations to promote the creation of jobs and housing to support economic growth.

Where infrastructure delivery fails to keep pace with development, our cities and regions become less liveable and productive. Infrastructure funding and delivery which goes hand in hand with strategic planning can mitigate this. Such integration ensures that Government decisions are well informed, including regarding the full costs of rezoning. While historically this has been done poorly, there has been recent movement towards better co-ordination of infrastructure and land use planning. For example, the 2018 State Infrastructure Strategy and 2018 Future Transport Strategy were prepared simultaneously with the 10 regional plans to ensure alignment of land use and infrastructure priorities.

Planning means little if funding is not available for delivery, even more so given the fiscal and economic challenges outlined in Chapter 2. Coordination of planning and delivery, both within and across local and State governments, is also an enduring challenge. Multiple layers of strategic planning require that financial and economic incentives are aligned with the planning and delivery of infrastructure, by all levels of government.

Infrastructure contributions are the only funding source with a direct link to development. To date, however, efforts to integrate infrastructure planning and delivery have not included consideration of the possible role for contributions. The interrelationship is often unclear, with the systems operating in siloes.

Stakeholder views

There is widespread agreement on the need to improve the integration of infrastructure and land use planning through the planning and funding of place-based outcomes.

A few submissions (councils, IPART and the Planning Institute of Australia) quote the Greater Sydney Commission's Place Infrastructure Compact as a potential tool that could be used to foster better collaboration and engagement between State and local stakeholders in undertaking place-based infrastructure planning.

The infrastructure contributions system could better support the improved integration of land use planning and infrastructure delivery by engaging in holistic infrastructure planning, funding and sequencing. e.g. developing single comprehensive district or precinct infrastructure plans which fully ascertain what infrastructure is required to be provided; whose responsibility it is to provide the infrastructure; and by what means is the funding to occur.

Inner West Council submission

A key to integration of land use planning and infrastructure delivery is funding place outcomes. The current siloed approach means that land use planning and infrastructure funding sources are rarely considered together in a sequenced and integrated way.

Southern Sydney Regional Organisation of Councils submission

Councils highlight strong views on the need to integrate the infrastructure contributions system into existing statutory processes to support timely infrastructure delivery.

Contributions plans not only need to integrate with strategic plans but also delivery plans. Strategic planning and principles such as placemaking need to be supported by infrastructure plans that can help to deliver not only cost effective infrastructure but desired and sustainable place outcomes.

Shoalhaven City Council submission

Section 27(1) of the EP&A Act lists the requirements to be included in an infrastructure contributions plan, including a map outlining the proposed infrastructure to be delivered, supported by a works schedule that contains cost estimates and staging. But there is no mention of an 'infrastructure delivery plan' to support the infrastructure contributions plan.

What is missing is an 'Infrastructure Delivery Plan', which would support the improved integration of land use planning and infrastructure delivery.

Blacktown City Council submission

Better integration of strategic infrastructure and land use planning

The 2018 State Infrastructure Strategy highlights the need for better integration of land use and infrastructure planning. Its recommendations were adopted by Government, including:

- preparation of a strategic business case for the Place Infrastructure Compact pilot in the Greater Parramatta to the Olympic Peninsula (GPOP) area
- subject to the outcomes of the pilot, preparation of similar business cases to inform future updates to regional and district plans
- integration of infrastructure priorities to support growth areas, planned precincts and growth infrastructure compacts into asset management and capital infrastructure planning.

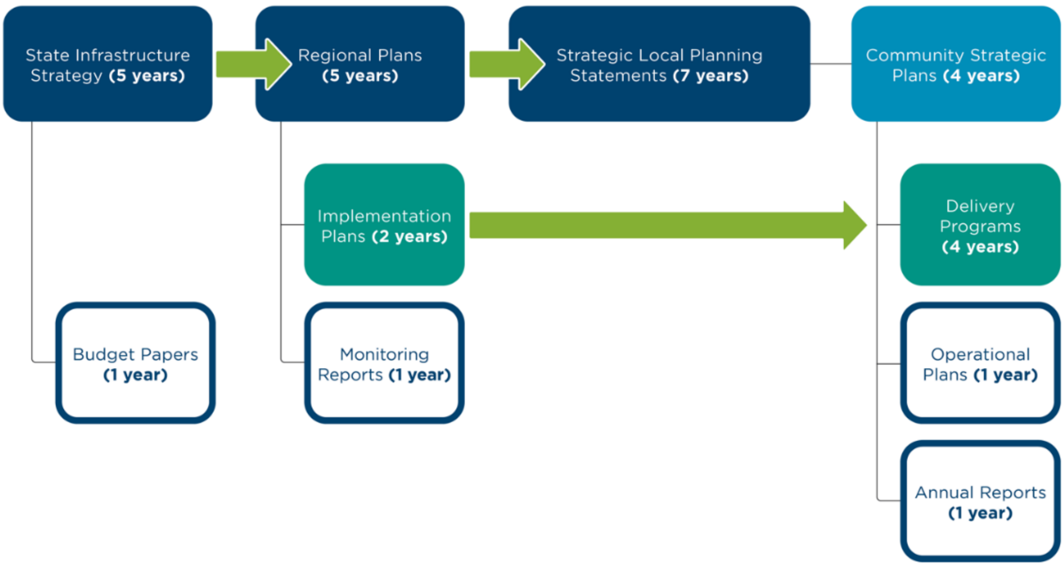
The Greater Sydney Commission released its draft GPOP Place Infrastructure Compact pilot for public feedback in November 2019 and subsequently provided its final recommendations to the Government. This promising development could provide a place-based strategic planning tool to align growth with infrastructure provision.

A key element of the Place Infrastructure Compact framework is the early identification of high-level infrastructure requirements over 10, 20 and 40-year horizons. This is in line with Recommendation 4.1, which requires the preparation of contributions plans (i.e. upfront assessment of infrastructure needs and costs) as part of the rezoning process.

There are misalignments between the various layers of strategic planning, including review timeframes. The State Infrastructure Strategy and regional plans are reviewed at least every five years, while councils are required to review and update their Local Strategic Planning Statements at least every seven years (see Figure 6.1). Aligning these would ensure local and State strategic planning can inform one another.

There is also a misalignment in implementation timelines. Regional implementation plans follow a 2-year cycle, compared to the 4-year council delivery program under the Integrated Performance and Reporting framework. The last two years of a council's delivery program may not align to the priorities outlined in the relevant regional plan. Under section 3.3(3)(f) of the EP&A Act, the Minister for Planning can direct the relevant strategic planning authority to have regard to any matter in preparing the draft regional plan, including the relevant implementation plan timeframe.

Figure 6.1: Review timeframes for the various layers of strategic planning



Recommendation 6.5: Better synchronise State and local strategic planning frameworks

i. Amend legislation to update the review timeframes of Local Strategic Planning Statements to five years, in line with other State and regional plans.

ii. Issue a Ministerial direction extending the regional implementation plan timeframe to cover a 4-year period to align with councils' delivery program.

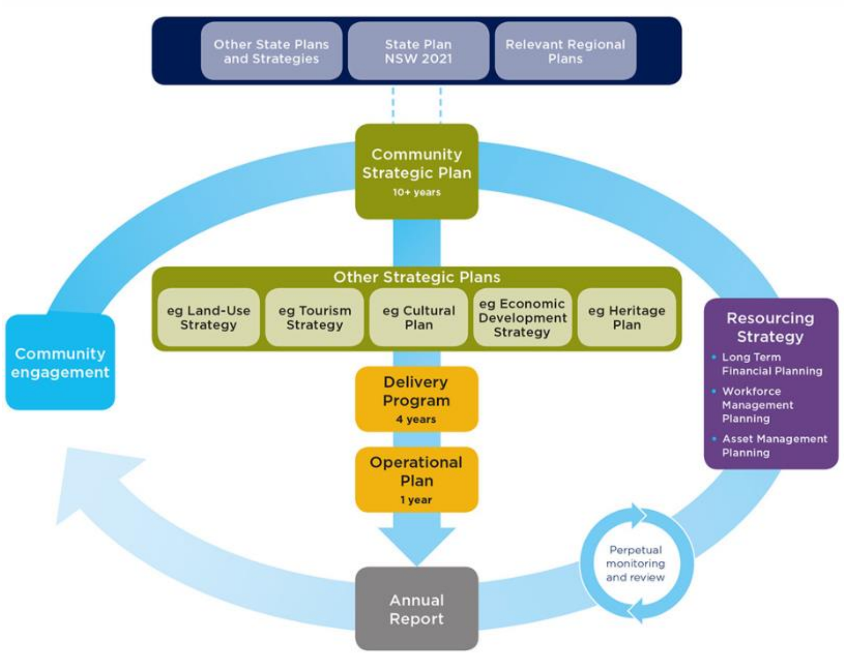
Integrate the infrastructure contributions system into the local strategic planning framework

In 2009, the Integrated Planning and Reporting framework was introduced to streamline and integrate strategic planning and reporting of local government. The various components within the Integrated Planning and Reporting framework are underpinned by the *Local Government Act 1993* and the Local Government (General) Regulation 2005.

Figure 6.2 provides an overview of the Integrated Planning and Reporting framework and its components, including:

- community strategic plans, which outline the main priorities and objectives for a local government area over a minimum 10-year period, as well as the strategies to achieve them. It is reviewed and updated every four years and must give effect to the relevant State, regional, and district plans
- delivery programs, which identify the principal activities (and financial estimates) that the council has prioritised over a 4-year term to achieve the objectives of the Community Strategic Plan. It is reviewed annually by councils when preparing their operational plan
- resourcing strategies, which support the delivery program and identity the resources (time, money, assets and people) required to give effect to the Community Strategic Plan
- operational plans, which detail the project-level information of the activities (and budget) to be undertaken by council each year, as part of the delivery program
- annual reports on the implementation a council's delivery program and operational plan, additional to annual financial reporting obligations under the *Local Government Act 1993.*

Figure 6.2: Integrated Planning and Reporting framework



Source: Integrated Planning and Reporting Guidelines for local government in New South Wales (2013)

In preparing their long-term financial plan, councils must project their revenue (inflows) and expenditure (outflows), including any additional borrowing required to deliver the priorities and objectives in their Community Strategic Plan. Infrastructure contributions, however, currently operate outside of the Integrated Planning and Reporting framework, and are not included in overall revenue projections.

This creates:

- minimal oversight and poor governance – councillors do not have the same level of oversight in the implementation of contributions plans as with a council's Community Strategic Plan and delivery program
- lack of a coordinated approach to infrastructure delivery – the main purpose of a contributions plan is to justify the collection and spending of contributions based on a works schedule. It does not, however, plan for the prioritisation and sequencing of infrastructure delivery alongside the broader council capital works program, nor does it integrate with a council's broader fiscal strategy and consider how to forward fund infrastructure, for example through borrowing.

Local infrastructure contributions should be part of the Integrated Planning and Reporting framework, with councils required to have regard to their contributions plans in meeting their Integrated Planning and Reporting requirements. Where possible, contributions plans should complement the delivery program (and operational plan), by providing project-level information underpinning the delivery of strategies (and subsequent actions). For example, councils should prioritise and sequence infrastructure delivery recognising their collection of contributions. Where required, councils may pool contributions both within and across contributions plans to facilitate the timely provision of priority infrastructure.

Councils are required to report annually on their contributions in accordance with clause 35(3) of the EP&A Regulation. This requirement could be met in the annual report prepared under the Integrated Planning and Reporting framework, with no increase in reporting burden.

Regular reviews of infrastructure contributions plans

Strategic planning is a long-term exercise and most contributions plans have timeframes of 10 to 20 years. Contributions plans require periodic review to ensure infrastructure requirements and cost estimates remain current. The Development Contributions Plans Practice Note 2005 recommends contributions plans be reviewed at least every five years.

Regular review is required to accommodate change in design standards, technology and costs, as well as community expectations and infrastructure needs. Planning assumptions, such as expected density and development outcomes, also change. Despite this, almost 40 per cent of councils have contributions plans more than 10 years old.

Councils should undertake a comprehensive review of their contributions plans every four years, aligned with preparation of their delivery program. This would ensure they remain fit-for-purpose to inform the council’s delivery program.

Implementation and timing

The Departmental Chief Executive (Deputy Secretary of the Office of Local Government) can issue updated Integrated Planning and Reporting guidelines to implement the recommended changes. Due to the COVID-19 pandemic, the Minister for Local Government made an order under the *Local Government Act 1993* to postpone the local government elections by 12 months, to September 2021. This will extend application of the delivery program by 12 months, meaning the next Integrated Planning and Reporting cycle will commence in July 2022.

This provides time for the Office of Local Government to incorporate the infrastructure contributions system into the Integrated Planning and Reporting framework and provide updated guidance to councils in time for the next Integrated Planning and Reporting cycle. This timeframe will also provide councils with the opportunity to review existing contributions plans and update them by 1 July 2024 to align with the upcoming 4-year review cycle for the 2022-25 delivery program.

Recommendation 6.6: Incorporate the local infrastructure contributions system into the Integrated Planning and Reporting framework

Update the Integrated Planning and Reporting Framework to require councils to:

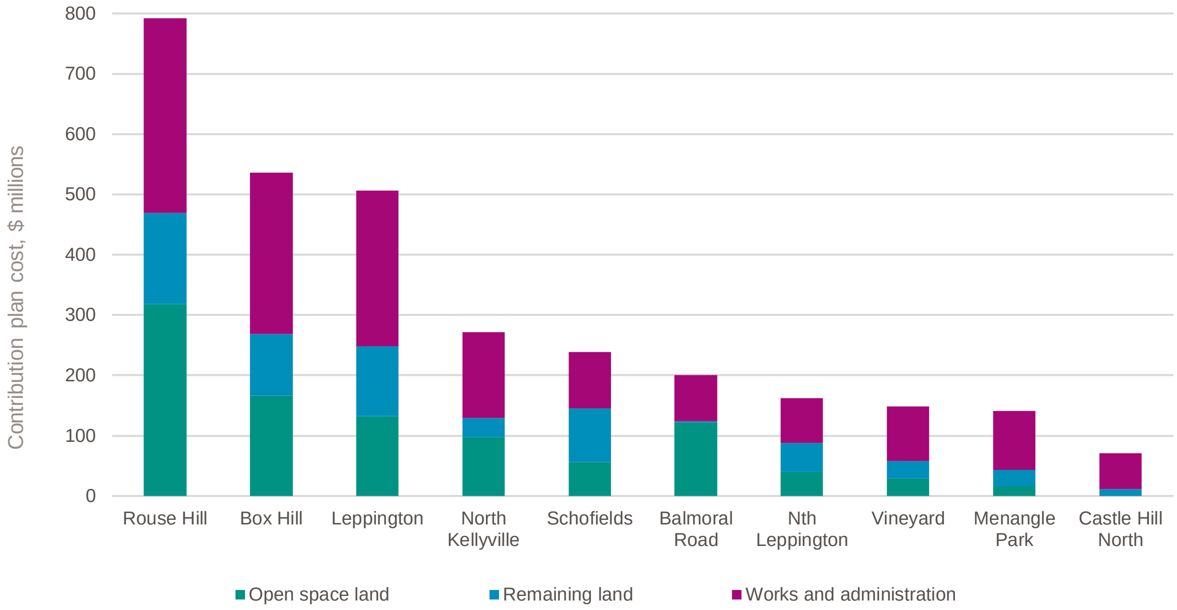
- include infrastructure contribution plans in their reporting
- review their infrastructure contributions plans by 1 July 2024, and every four years thereafter (or earlier if required), to align with their delivery program.

6.6 Open space

Open space standards are dated and drive high land acquisition costs

Land for open space typically constitutes the majority of land costs (see Figure 6.3), driving the cost pressures outlined in Section 4.2. This suggests examining whether there is scope to plan and use open space more efficiently to help alleviate cost pressures.

Figure 6.3: IPART assessed reasonable costs



Source: NSW Productivity Commission analysis using IPART data for reviews completed in 2018 and 2019

Open space provision continues to be based on an early 1900's British standard of 2.83 hectares for every 1,000 people. This lacks an evidentiary base and does not differentiate the needs of low-density and high-density development. A performance-based approach would focus on outcomes, rather than a land input, with scope for more innovative and efficient mechanisms to fulfill open space objectives. For example, in greenfield areas, passive recreation areas could be on land that is also part of the stormwater management system.

Stakeholder views

Most councils are supportive of a performance-based criteria to contain the costs of open space and provide greater flexibility to local conditions. The criteria would require clear definitions on the need, use and function of open space. Some councils also point towards the opportunity to use performance criteria to support the use of existing open space more intensively.

> *Performance criteria can provide a benchmark to deliver open space infrastructure that is responsive to the needs of the current and growing population, as well as the site context.*
>
> Shoalhaven City Council submission

Some councils disagree. The key drawbacks noted are that a move away from population density standards could make it difficult for councils to secure enough open space for new development, and that councils are best placed to determine their requirements.

> *Open space requirements should not be mandated. Most councils are best placed to determine their own open space requirements, which could be guided by state government guidelines.*
>
> Northern Beaches Council submission

Councils agree that infrastructure contributions are an appropriate mechanism used to fund the costs of open space provision so long as a nexus to development is established. Industry representative groups (Urban Taskforce of Australia and Property Council of Australia) disagree noting that its costs should be borne by the wider community as the provision of open space benefits the entire locality and not just the development.

Infrastructure contributions an appropriate way to fund the capital (land and works) costs of public open space that meets the demand created by new development. This is consistent with the impactor-pays principle of infrastructure funding.

Western Sydney Planning Partnership submission

Government (both local and state) should fund public open space as they have historically always done. New home buyers should not be required to bear the burden of funding open space, when existing residents have not been required to contribute at all.

Urban Taskforce of Australia submission

Infrastructure contributions should only fund open space with a nexus to development

Open space supports recreation, health and quality of life for our communities. Funding open space for growing communities is an important role of the infrastructure contributions system. At the 2.83 hectare per 1,000 persons standard, some areas in New South Wales under provide open space. This can create pressure for infrastructure contributions to fund infrastructure to meet existing resident demand, which is not in accordance with the proposed principles-based system. Open space grant programs (see Box 6.4) are an important funding source for improving access to and quality of existing open space.

Box 6.4: Alternative open space funding programs

The Department of Planning, Infrastructure and Environment administers the following open space funding programs:

- The Open Spaces and Greener Sydney package
  - Everyone Can Play in New South Wales – constructing new or renovating existing inclusive play spaces across New South Wales
  - Parks for People – delivering better access to open space through new and upgraded parks
- NSW Public Spaces Legacy Program – funding for the planning, design, construction or land acquisition costs for new and existing public spaces, and
- Metropolitan Green Space Program – helping to deliver the green grid connecting communities to a network of open space, natural areas and recreational facilities.

More efficient use of land can help control land costs

The Draft NSW Government Architect Greener Places Design Guide (2020) suggests that a spatial standard, such as the longstanding 2.8 hectares per 1,000 people, can work against multiple use and other innovative solutions. The draft Guide establishes a set of performance indicators that consider different urban settings and community needs, with multi-use of recreation spaces established as a key principle.

There are opportunities for infrastructure contributions for open space provision to go further. IPART's contributions plan reviews have highlighted potential for the dual use of drainage lands for passive open space. But, by the time IPART reviews are completed, zonings are already locked in. These opportunities must be considered in land use planning upfront and applied in contributions plans.

Some land has constraints that may make it less suitable for recreational use, for example transmission line easements. Additional costs can be incurred to make the land suitable for use as open space, which may be passed on as higher infrastructure contributions. Ongoing maintenance costs may also be higher. This should be considered when planning for open space.

The Department of Education runs Share Our Space and Community Use programs. The Share Our Space Program allows for the playgrounds, ovals and sports courts in government schools to be open to local communities in the school holidays, and is an example of joint-use of land. Though the Community Use program, councils may partner with Schools Infrastructure NSW on a school facility, such as a hall, library or sporting facility, for joint use. These arrangements offer more efficient use of land, access to higher quality assets and opportunities for sharing operational costs.

Each of these opportunities must be considered in land use planning upfront and applied in contributions plans. Section 9.1 of the EPA&A Act enables the Minister to provide directions to councils in relation to preparation of planning proposals. This could be used to ensure that efficient use of land is embedded early in the planning process.

Recommendation 6.7: Strategic planning to maximise the efficient use of land

i. Issue a Ministerial Direction to require planning proposals to demonstrate consideration of efficient use of land, including opportunities for dual-use and joint-use.

ii. Develop a practice note to establish performance-based benchmarks for open space planning.

6.7 Corridors

Corridor protection can minimise future development costs

Corridor protection is the setting aside of land for future construction of major infrastructure, such as motorways or railway lines. It can reduce future land acquisition costs and the social and economic impacts from acquiring homes and disrupting businesses. The potential benefits are large. Modelling by Infrastructure Australia (2017) has estimated that corridor protection for seven corridors in the Infrastructure Priority List could save $10.8 billion in real dollars with a 7 per cent discount rate, or $57.1 billion undiscounted.

Corridor protection, however, has costs. These include holding costs, the opportunity cost of foregone uses and the risk that the investment will become stranded because infrastructure priorities change and the corridor is no longer be required. Corridor preservation can also create uncertainty for landowners, particularly where there is speculation regarding a potential corridor, but the land is not acquired until the project commences.

Stakeholder views

Councils and industry agree that corridor protection should be identified upfront in strategic planning documents to provide certainty to landowners and developers. Councils stress that identification of corridors should be accompanied by funding and acquisition mechanisms, with some suggesting public announcements should not be made until these are in place.

> *The ideal outcome is to have funding mechanisms available to secure infrastructure corridors at the time they are identified, to avoid problems with land speculation driving up future acquisition costs for the corridor.*
>
> Parramatta Council submission

No stakeholders indicate that corridors should be funded through local infrastructure contributions. Borrowing and value sharing are pointed to as potential funding mechanisms. Whatever the mechanism, there is a need to assess the costs and benefits of early acquisition before any land is acquired.

> *A risk assessment needs to be undertaken on the implications/costs for future delivery of the infrastructure if the land containing the potential corridor is redeveloped in the future in a way that prohibits or significantly increases the future delivery cost of the new infrastructure.*
>
> Parramatta Council submission

Corridors should be identified and managed through the planning system

Corridor protection is the setting aside of land for future construction of major infrastructure, such as motorways or railway lines. The premise is that early acquisition of land minimises costs and maximises the Government's ability to capture value uplift, when it occurs.

The location and land requirements for future corridors can be uncertain. Planning mechanisms provide a tool to manage this. For example, the State Environmental Planning Policy (Western Sydney Aerotropolis) 2020 identifies the Outer Sydney Orbital corridor. The controls allow for development to continue to occur, with some limitations, and delays any land acquisitions until there is certainty of land requirements and a clear government commitment.

When final corridors are confirmed, the land can be rezoned and reserved for infrastructure purposes. This is the approach in the State Environmental Planning Policy (Major Infrastructure Corridors) 2020 to support future transport links to the Western Parklands City. The Policy identifies and reserves land for the North South Rail Line, South West Rail Link Extension and the Western Sydney Freight Line corridors. This type of strategic planning, which identifies corridors and enables their interim usage, ensures that long-term protection, continues.

Early identification of corridors has the potential to result in better land use and investment decisions. While the identification and acquisition of corridors is a key issue for urban strategic planning, and much work has been done to lift capability in this area, the weak link with specific developments—means it is not appropriate to fund via contributions. Unfortunately, the lack of a sustainable approach to funding to enable progressing land acquisition within corridors materially adds to the cost of projects.

In New South Wales and other Australian jurisdictions, the most robust approaches to corridor protection have relied on hypothecated funding arrangements, underpinned by strong governance processes. In New South Wales, the Sydney Region Development Fund was used to acquire land for a range of transport corridors, regional open space, and other public purposes. Revenue into the Fund came from a levy on councils in the Sydney region and from the Government. In Melbourne, corridors and regional open space were protected through a hypothecated levy applied by the Melbourne Metropolitan Board of Works. In Western Australia, the Metropolitan Region Improvement Tax (a land tax supplement on properties in the Perth region that are already liable for land tax) is still used to fund land acquisition for transport corridors, regional open space and other public purposes. It is presently raising approximately between $90 million and $100 million per year for these purposes.

Progressing an approach to the protection of corridors and sites requires a sustainable funding solution for progressive acquisition of corridor land.

Chapter 7: Implementation plan for a reformed infrastructure contributions system

Findings

- Changes to legislation, policy and digital systems are required.
- An Implementation Steering Committee should monitor progress, identify risks, provide strategic direction and report every six months to Government.
- The Steering Committee should be supported by an Advisory Group, with representatives from councils, property developers and industry groups to work through detailed design and implementation issues.

Recommendation

- Establish an Implementation Steering Committee to oversee implementation of the reforms.

7.1 Implementation timeline

The proposed reforms will take time to implement, and involve:

- changes to primary legislation
- amendments to the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation)
- development of a comprehensive suite of digital tools
- review and consolidation of policy materials including Ministerial Directions, Practice Notes and Planning Circulars.

Table 7.1 outlines an implementation timeline for the proposed recommendations. The implementation plan takes into account interdependencies between recommendations and the need to complete certain actions before progressing others. For example, changing the approach to how the Independent Pricing and Regulatory Review Tribunal (IPART) reviews contribution plans to ‘by exception’ with criteria related to the cost and scope of infrastructure (Recommendation 4.7), first requires benchmark costs to have been published (Recommendation 4.5) and the Essential Works List to be reviewed (Recommendation 4.6).

The following key dates and assumptions inform the implementation plan:

- legislative amendments require time for drafting, consultation and approval processes—and are expected to be in force by 1 July 2022
- recommendations that rely on amendment to the EP&A Regulation are also anticipated to come into effect on 1 July 2022
- new or revised local contributions plans that have not been publicly exhibited prior to 1 July 2022 should reflect the reformed contributions system
- reforms related to the local government rate peg are being progressed through the Office of Local Government and IPART, and are expected to take effect from 1 July 2023.

While some recommendations may be implemented early, the principles-based framework for local contributions is expected to be established by 1 July 2022 and apply to new plans, and draft plans that have not been publicly exhibited. It is expected that new or revised contributions plans that are based on the new system likely to come into effect from January 2023.

7.2 Implementation governance

Implementation Steering Committee

A Steering Committee should be established to oversee implementation.

Role

The Implementation Steering Committee's role is to ensure that reforms are coordinated and implemented and risks to implementation are addressed promptly as they arise. The Committee should provide regular progress reports (six monthly) to Government.

Membership

The Committee should include Deputy Secretary and Executive Director representation from the Department of Planning, Industry and Environment and Treasury, with participation from other agencies (i.e. Transport for New South Wales and Department of Customer Service) as required. It should be chaired by the Department of Planning, Industry and Environment (the Department).

Functions

The Committee members' responsibilities include:

- reviewing and monitoring implementation progress to ensure timeline and targets are being met
- identifying risks to implementation and resolving issues
- providing direction, executive leadership, support and guidance where required.

Stakeholder Advisory Group

Some recommendations will require further engagement with councils and industry stakeholders to work through design detail, transition and implementation issues. A Stakeholder Advisory Group should be created and include representatives of local councils, property developers and industry groups. The Department will liaise with the Advisory Group on implementation, with the Implementation Steering Committee consulting with the Advisory Group on issues or risks as necessary.

The Department has established a Planning Reform Oversight Steering Committee to oversee the implementation of the planning reforms. Consideration should be given to using this existing governance structure to also oversee the implementation of the infrastructure contributions reforms.

Recommendation 7.1: Strong governance to guide implementation
Establish an Implementation Steering Committee to oversee implementation of the reforms.

Table 7.1: Implementation Plan

Recommendation: Principles	Agency	Timing
2.1: Enhance efficiency of the infrastructure contributions system Implement reform to deliver an efficient infrastructure contributions system so: ▪ local contributions are cost-reflective charges on impactors, applied through a consistent framework but with flexibility for adaptation to local circumstances ▪ State contributions are simple and certain charges on impactors and beneficiaries of State service delivery.	Department of Planning, Industry and Environment	Commence immediately, with legislative amendments in place by 1 July 2022 Applicable to contributions plans developed from 1 July 2022
Recommendation: Local government rates	**Agency**	**Timing**
3.1: Allow councils' general income to increase with population Subject to review by the Independent Pricing and Regulatory Tribunal, reform the local government rate peg to allow councils' general income to increase with population.	Office of Local Government Independent Pricing and Regulatory Tribunal	Rate peg recommendations by November 2021 New arrangements in place for 2023-24 rates
Recommendations: Local infrastructure contributions	**Agency**	**Timing**
4.1: Develop infrastructure contribution plans upfront as part of the zoning process Amend legislation to require: ▪ where land is being rezoned, the draft infrastructure contributions plan must be publicly exhibited at the same time as the planning proposal ▪ adoption of the infrastructure contributions plan before any determination is made on a development application.	Department of Planning, Industry and Environment	Regulation amendments effective from 1 July 2022
4.2: Introduce a direct land contribution mechanism to improve both efficiency and certainty for funding land acquisition i. Amend legislation to introduce a direct land contribution mechanism to: ▪ apply a statutory charge on the land at the time of rezoning that requires land contribution be made ▪ require the contribution on sale of the land, or subdivision development application, whichever comes first ▪ allow the contribution to be satisfied as a monetary payment, or dedication of land. ii. Consult with key stakeholders from councils and industry in the design and implementation of a direct land contribution mechanism.	Department of Planning, Industry and Environment	Legislative amendments in place by 1 July 2022 Applicable to contributions plans developed from 1 July 2022

Recommendations: Local infrastructure contributions	Agency	Timing
4.3: Issue advice for land valuation to improve consistency and accuracy Develop a practice note, in consultation with the Valuer General, to guide land valuation, including assumptions and methodology, particularly for land that is yet to be rezoned and may be constrained.	Department of Planning, Industry and Environment Valuer General	Practice note published by end 2021
4.4: Index land contribution amounts to changing land values i. The Valuer General prepare a methodology and publish appropriate land value indices. ii. Amend legislation to require new contributions plans to separately identify and escalate land contribution amounts by the appropriate index. iii. The Minister to direct councils to separately identify and escalate land contribution amounts by the appropriate index when reviewing contributions plans.	Valuer General Department of Planning, Industry and Environment	Immediate development of index Legislative amendments in place from 1 July 2022
4.5: Section 7.11 contributions plans use benchmarked costs Independent Pricing and Regulatory Tribunal to develop and maintain standardised benchmark costs for local infrastructure that reflect the efficient cost of provision.	Independent Pricing and Regulatory Tribunal	Develop standard provision rates and benchmarks by 1 July 2022 Applies to contributions on/after 1 July 2022
4.6: Contribution plans reflect development-contingent costs only i. Apply the essential works list to all section 7.11 contributions plans. ii. Independent Pricing and Regulatory Tribunal to review the essential works list and provide advice on the approach to considering efficient infrastructure design and application of nexus. iii. Subject to review by the Independent Pricing and Regulatory Tribunal, issue a revised practice note.	Department of Planning, Industry and Environment Independent Pricing and Regulatory Tribunal	IPART review of essential works list by 1 July 2021 Develop practice note by 1 July 2022 Applies to contributions plans with resolution to prepare on/after 1 July 2022
4.7: Independent Pricing and Regulatory Tribunal review of contributions plans be 'by exception' and based on efficient costs i. Remove the monetary trigger for review of contributions plans by the Independent Pricing and Regulatory Tribunal. ii. Develop Terms of Reference for the Independent Pricing and Regulatory Tribunal to review any costs in a section 7.11 contributions plan on a 'by exception' basis with the option of a 'targeted' review of specific sections of a plan. iii. Prepare a practice note to reflect the 'by exception' review process and requirements for local contributions plans.	Department of Planning, Industry and Environment Independent Pricing and Regulatory Tribunal	Following development of standard provision rates and benchmarks (Recommendation 4.5). Applies from 1 January 2023

Recommendations: Local infrastructure contributions	Agency	Timing
4.8: Contributions plans are prepared using standard online templates and digital tools i. Develop standard online contributions plan templates for section 7.11 local contributions and section 7.12 fixed levies. ii. Amend legislation to require new contributions plans to be made using the standard templates and housed within the contributions digital tool to be developed on the NSW Planning Portal. iii. Require contribution plans upon review to transition to the digital tool.	Department of Planning, Industry and Environment	Digital tool available by early 2022 Legislative amendments effective by 1 July 2022 to mandate usage
4.9: Encourage councils to forward fund infrastructure, through borrowing and pooling of funds i. Amend legislation to allow: ▪ pooling of contributions funds as the default option ▪ interest costs associated with borrowing for infrastructure to be collected through contributions plans. ii. Incentivise councils to borrow to forward fund infrastructure, including by: ▪ Treasury Corporation reviewing their lending criteria to consider allowing capital grants and contributions (including infrastructure contributions) to be included in debt serviceability calculations where contributions relate specifically to the project for which council is seeking funding ▪ establishing a program to provide an additional financial incentive when councils borrow to build infrastructure.	Department of Planning, Industry and Environment Treasury Corporation	Legislative amendments effective 1 July 2022 Low cost loans initiative changes in place for next funding round
4.10: Defer payment of contributions to the occupation certificate stage i. Extend permanently the Environmental Planning and Assessment (Local Infrastructure Contributions – Timing of Payments) Direction 2020 that was introduced as a temporary measure in response to the COVID-19 pandemic. ii. Design the NSW Planning Portal so that the release of occupation certificates is contingent upon payment of infrastructure contributions. iii. Increase oversight of private certifiers by requiring that the certifying authority must confirm payment of contributions before issuing an occupation certificate. iv. Amend legislation to create an offence should certifiers issue a certificate without an infrastructure contribution payment.	Department of Planning, Industry and Environment	Immediate. Extend current Ministerial Direction until legislative change can be implemented Digital tool rollout from mid-2022

Recommendations: Local infrastructure contributions	Agency	Timing
4.11: Increase the maximum allowable rate for section 7.12 fixed development consent levies i. Amend the maximum rate for section 7.12 contributions as follows: ▪ $10,000 per additional dwelling for houses (detached, semi-detached, townhouses ▪ $8,000 per additional dwelling for all other residential accommodation ▪ $35 per square metre of additional gross floor area for commercial uses ▪ $25 per square metre of additional gross floor area for retail uses ▪ $13 per square metre of additional gross floor area for industrial uses. ii. Index contribution rates quarterly using the Producer Price Index (Road and Bridge Construction – New South Wales) and review periodically (approximately every three to five years) to ensure they remain in line with the intended proportion of development costs.	Department of Planning, Industry and Environment	Legislation effective 1 July 2022 Applies to contributions plans with resolution to prepare on/after 1 July 2022
4.12: Planning agreements consistent with the principles-based approach i. Adopt the Draft Planning Agreements Practice Note 2020 and EP&A Regulation amendments exhibited by the Department in April 2020 to provide immediate improvements to the operation of planning agreements. ii. Amend the practice note to embed the principles of the contributions system so that planning agreements are: ▪ for the delivery of infrastructure to support development that is out-of-sequence or unexpected, or ▪ to facilitate the direct delivery of development-contingent infrastructure or impact mitigation works. iii. Amend the legislation to require planning authorities to: ▪ register planning agreements and draft planning agreements in a centralised system, contained within the NSW Planning Portal ▪ 'publicly exhibit' rather than 'publicly notify' planning agreements, including requirements to receive and consider public submissions.	Department of Planning, Industry and Environment	Immediate adoption of draft practice note Updated practice note in place by 1 July 2022 Legislation effective 1 July 2022
4.13: Publish guidelines for planning agreements for mining and energy related projects consistent with the principles-based approach Publish a guideline for mining and energy related projects consistent with the principles-based approach, so that planning agreements primarily relate to direct delivery of development-contingent infrastructure.	Department of Planning, Industry and Environment	Guidelines in place by 1 July 2022.

Recommendations: Local infrastructure contributions	Agency	Timing
4.14: Improve accountability for affordable housing contributions i. Require affordable housing contributions received through section 7.32 contribution mechanisms and planning agreements be reported by councils, including: ▪ the amount of monetary contributions received ▪ the value and location of any in-kind provision, both works and land ▪ expenditure of monetary contributions ▪ transfer and management of assets. ii. Undertake a future evaluation of section 7.32 affordable housing contribution programs to determine their effectiveness and efficiency.	Department of Planning, Industry and Environment	Regulation amendment in force by 1 July 2022.
Recommendations: State infrastructure contributions	**Agency**	**Timing**
Recommendation 5.1: Adopt regional infrastructure contributions i. Prepare and implement state contributions for Greater Sydney, Central Coast, Hunter, and Illawarra-Shoalhaven regions. ii. Greater Sydney region charges (subject to no substantial impacts on feasibility) as follows: ▪ $12,000 per dwelling for houses (detached, semi-detached, townhouses) ▪ $10,000 per dwelling for all other residential accommodation ▪ $10 to $15 per square metre for industrial ▪ $20 to $30 per square metre for commercial ▪ $30 to $40 per square metre for mixed uses. iii. Central Coast, Hunter and Illawarra-Shoalhaven region charges (subject to no substantial impacts on feasibility) as follows: ▪ $10,000 per dwelling for houses (detached, semi-detached, townhouses) ▪ $8,000 per dwelling for all other residential accommodation ▪ $10 to $15 per square metre for industrial ▪ $20 to $30 per square metre for commercial ▪ $30 to $40 per square metre for mixed uses. iv. Governance arrangements and criteria for infrastructure projects to be established.	Department of Planning, Industry and Environment Treasury Infrastructure NSW	Ministerial Determinations by 1 January 2022

<table>
<tr><th>Recommendations: State infrastructure contributions</th><th>Agency</th><th>Timing</th></tr>
<tr><td>5.2: Improve guidance for state planning agreements
Publish a guideline for state planning agreements to ensure they:
▪ support out-of-sequence development in areas not supported by special infrastructure contributions plans, or
▪ facilitate the direct delivery of development-contingent infrastructure.</td><td>Department of Planning, Industry and Environment</td><td>Guidelines in place by 1 July 2022.</td></tr>
<tr><td>5.3: Adopt transport contributions for major projects
i. Prepare and implement a transport contribution for major projects that:
▪ is additional to regional infrastructure contributions, where these apply
▪ applies to properties within a service catchment and is subject to additional development capacity created as a result of the investment.
ii. Contribution charges should be established for residential and non-residential uses. A minimum charge of $5,000 per dwelling should be applied, with Transport for NSW required to apply higher charges where costs and benefits are relatively higher.</td><td>Department of Planning, Industry and Environment

Transport for NSW</td><td>Ministerial Determinations by 1 January 2022</td></tr>
<tr><td>5.4: Create a new category of contributions specific to biodiversity
i. Create a new contribution category under Part 7 of the EP&A Act for biodiversity offsets.
ii. Prepare and implement a biodiversity contribution for areas subject to biodiversity certification.</td><td>Department of Planning, Industry and Environment</td><td>Ministerial Determinations by 1 January 2022</td></tr>
<tr><td>5.5: Phase in metropolitan water charges for more efficient delivery of water infrastructure
i. Rescind the 2008 Section 18 Direction that approved zero developer charges for water, wastewater and stormwater services for Sydney Water and Hunter Water.
ii. Direct Sydney Water and Hunter Water to reintroduce water charges and include provision for:
▪ the approach to phase-in, and
▪ exemptions for development completed prior to 1 July 2026.
iii. Establish a service level agreement for Sydney Water and Hunter Water for expenditure of water charges funding.</td><td>Treasurer

Sydney Water

Hunter Water</td><td>Phased reintroduction from 2022.</td></tr>
</table>

Recommendations: Further issues	Agency	Timing
6.1: Develop and implement a centralised contributions digital tool i. Develop a contributions digital tool in the NSW Planning Portal, integrated with the spatial mapping and development application system, which requires: ▪ councils and the State to make contributions plans ▪ receive and track payments ▪ report on contributions spending, fulfill accounting requirements, and report on the infrastructure delivery pipeline ▪ landowners and developers to estimate, calculate, and pay their infrastructure contributions for both local and state infrastructure in one place, ideally in one payment. ii. Amend legislation to support the digital tools and require their use to be phased in.	Department of Planning, Industry and Environment	Development during 2021 User testing and onboarding in early 2022 Rollout from mid-2022
6.2: Promote consistency and transparency in works-in-kind agreements Develop a practice note to guide efficient and consistent use of works-in-kind agreements.	Department of Planning, Industry and Environment	1 July 2022
6.3: Build the capability and expertise of the planning sector i. Create and maintain consolidated guidance material for each contribution mechanism that reflects up-to-date information and integrates with the digital tool. ii. Implement a training and professional development program to support planning practitioners and build a knowledge sharing culture within the planning system.	Department of Planning, Industry and Environment	1 July 2022
6.4: Introduce a simple, clear, standardised exemptions policy Produce a simple, clear, standardised exemptions policy, underpinned by guiding principles, to ensure a consistent and transparent application of exemptions.	Department of Planning, Industry and Environment	1 December 2021
6.5: Better synchronise State and local strategic planning frameworks i. Amend legislation to update the review timeframes of Local Strategic Planning Statements to five years, in line with other State and regional plans. ii. Issue a Ministerial direction extending the regional implementation plan timeframe to cover a 4-year period to align with councils' delivery program.	Department of Planning, Industry and Environment	Legislation effective from 1 July 2022 Ministerial Direction by mid-2021

Recommendations: Further issues	Agency	Timing
6.6: Incorporate the local infrastructure contributions system into the Integrated and Performance Reporting framework i. Update the Integrated and Performance Reporting guidelines to require councils to: ▪ include infrastructure contribution plans in their reporting ▪ review their infrastructure contributions plans by 1 July 2024, and every four years thereafter (or earlier if required), to align with their delivery program.	Department of Planning, Industry and Environment Office of Local Government	Updated guidelines in place by 1 July 2022
6.7: Strategic planning to maximise the efficient use of land i. Issue a Ministerial Direction to require planning proposals to demonstrate consideration of efficient use of land, including opportunities for dual-use and joint-use. ii. Develop a practice note to establish performance-based benchmarks for open space planning.	Department of Planning, Industry and Environment	Application to gateway determinations from 1 July 2022 Practice note issued by 1 July 2022

Recommendation: Implementation	Agency	Timing
7.1: Strong governance to guide implementation Establish an Implementation Steering Committee to oversee implementation of the reforms.	Department of Planning, Industry and Environment	Immediate

Appendix A – Terms of Reference

The NSW Productivity Commission should:

1. review the infrastructure contributions system to determine whether it meets the objectives of certainty and efficiency while delivering public infrastructure required to support development
2. make recommendations for reform aimed at delivering a principles-based system that delivers the infrastructure required to accompany growth, and
3. identify legislative and regulatory changes necessary to implement the proposed reforms.

Contributions under Part 7 of the *Environmental Planning and Assessment Act 1979* are within the scope of the Review. The Review should also have consideration of the relationship to and impact of other charges and levies relating to the development process.

In reviewing the contributions system, the Commission should, at a minimum, consider the following:

- certainty and transparency for communities, local government and developers
- the extent that contributions rates reflect efficient costs and the principle that beneficiaries should pay
- the major cost drivers in the contributions system and how these factors can be managed
- the relationship with local government funding and service provision, and
- implications for the volume and nature of the housing market and the delivery of public open space.

The Review should be complementary to broader reforms to the planning system. The Review will coincide with system improvements led by the Department of Planning, Industry and Environment.

The Commission should provide a Final Report to the Minister for Planning and Public Spaces by the end of 2020. In undertaking its review, the Commission should:

- consult with NSW Government agencies, external stakeholders, and the community, as appropriate
- assemble and analyse relevant data, and
- draw on best practice in other jurisdictions, previous review and published research.

Appendix B – Stakeholders involved in the public consultation process

Pre-consultation (face-to-face interviews)

- Hon. Robert Stokes, Minister for Planning and Public Spaces
- Hon. Shelley Hancock, Minister for Local Government
- Local Government NSW
- Independent Pricing and Regulatory Tribunal
- Experts: Dr Marcus Spiller, Dr Lindsay Taylor
- Western Sydney Planning Partnership
- Urban Development Industry of Australia
- Urban Taskforce of Australia
- Better Planning Network
- Western Sydney Leadership Dialogue
- Planning Institute of Australia
- Greater Sydney Commission

Submissions to the Issues Paper

Community and environmental groups

- Australian Library and Information Association
- Public Libraries of NSW
- NSW Vice Chancellors' Committee
- Office of Jamie Parker, Member for Balmain
- Catholic Education Diocese of Wollongong
- The Association of Independent Schools of NSW
- Catholic Schools NSW
- Australasian Railway Association
- State Library of NSW
- Better Planning Network
- NSW Famers
- City West Housing
- Community Housing Industry Association

Developers and industry groups

- NSW Minerals Council
- Walker Corporation
- Urban Development Institute of Australia
- Housing Industry Association
- Stockland
- Urban Taskforce of Australia
- Mecone
- Planning Institute of Australia
- J Group
- Novoplan
- Rawson Communities
- Property Council of Australia
- Cameron Brae Group
- Association of Mining & Energy Related Councils NSW

Others, including individuals and academics

- Individuals (x6)
- NSW Revenue Professionals
- SGS Economics & Planning
- Business NSW
- Prosper Australia
- Law Society of NSW
- GLN Planning
- Evans Head Memorial Aerodrome Committee Inc.
- Henry Halloran Trust, The University of Sydney

State Government agencies and State-owned corporations

- Independent Pricing and Regulatory Tribunal
- NSW Health Infrastructure
- School Infrastructure NSW
- Sydney Water
- Water Services Association of Australia
- Office of Sport
- Landcom

Local government councils and representatives

- Hornsby Shire Council
- Gunnedah Shire Council
- Waverley Council
- City of Ryde Council
- Western Sydney Regional Organisation of Councils
- Inner West Council
- Queanbeyan-Palerang Regional Council
- Southern Sydney Regional Organisation of Councils
- City of Canada Bay
- Lake Macquarie City Council
- Northern Sydney Regional Organisation of Councils
- Local Government NSW
- Western Sydney Planning Partnership
- Shoalhaven City Council
- Wollondilly Shire Council
- Goulburn Mulwaree Council
- Canterbury Bankstown Council
- The Hills Shire Council
- North Sydney Council
- Blue Mountains Council
- City of Newcastle Council
- Tamworth Regional Council
- Shellharbour City Council
- Camden Council
- City of Sydney
- Sutherland Shire Council
- Port Stephens Council
- Wollongong City Council
- Penrith City Council
- Blacktown City Council
- Campbelltown Council
- Parramatta Council
- Liverpool City Council
- Northern Beaches Council
- MidCoast Council
- Cessnock City Council
- Ku-ring-gai Council
- Bayside Council
- Regional Cities New South Wales

Stakeholder roundtable participants

Peak industry groups

- Urban Taskforce of Australia
- Property Council of Australia
- Urban Development Industry of Australia
- Planning Institute of Australia
- NSW Minerals Council
- Shopping Centre Council of Australia

Community and environmental groups

- Shelter NSW
- Housing Industry Association
- Community Housing Industry Association
- NSW Council of Social Services
- Better Planning Network

Local government representative groups

- Local Government NSW
- Western Sydney Regional Organisation of Councils
- Local Government Professionals Australia, NSW
- Illawarra Shoalhaven Joint Organisation of Councils
- Port Macquarie-Hastings Council
- Western Sydney Planning Partnership
- Hunter Joint Organisation of Councils
- Georges River Council

State Government agencies and State-owned corporations

- Hunter Water
- Department of Planning, Industry and Environment
- Independent Pricing and Regulatory Tribunal
- Sydney Water
- Land and Housing Corporation NSW
- Landcom

Others

- Western Sydney Business Chamber
- Business NSW
- Western Sydney Leadership Dialogue
- Committee for Sydney

Appendix C – Background to infrastructure contributions in New South Wales

Origins of infrastructure contributions

The principle that beneficiaries of development-related infrastructure should share in the cost of the services provided is a relatively recent phenomenon. In conducting this Review, it is helpful to understand the context in which the current system originated and how each of its component parts has evolved. Perhaps surprisingly, the story is one of incremental improvements to a system that does not have a long history in New South Wales.

Until passage of the *Environmental Planning and Assessment Act 1979* ('the EPA Act'), there was no formal cost-recovery mechanism for publicly provided infrastructure. Settlement patterns in New South Wales were based on subdivisions by Crown authorities, with infrastructure delivered at the cost of the public purse (State or local).

The post-Second World War years saw two trends that would change public perceptions about service provision and industry's responsibilities. The first was rapid population growth—driven by both high fertility rates (the so-called 'baby boom') and high immigration—that required more land, housing, and public services. The second was rising living standards, driving increasing expectations for the level and quality of public services on a per person basis. From these combined forces came calls for industry to contribute to the provision of infrastructure as a condition of development approval.

From this perspective, the advent of infrastructure contributions came relatively late. Section 94 of the EP&A Act allowed councils to levy contributions for infrastructure provision with a nexus to development. Improvements would be made in subsequent years as both Government and the private sector grappled with the complexity of cost-recovery mechanisms.

Earlier attempts at reform

A perceived lack of transparency and consistency in how charges were applied was addressed by the Simpson Review of the EP&A Act in 1989. That review recommended that councils prepare and exhibit contributions plans when levying section 94 charges. This was legislated in 1991.

The early 2000s saw further efforts to improve and expand section 94 of the EP&A Act. In 2000, a Review of the Developer Contributions System resulted in amendments allowing councils to apply contributions for affordable housing.

Following the 2004 Contributions and Development Levies Taskforce Report, further amendments—legislated in 2005—introduced:

- section 93F planning agreements
- section 94A fixed development consent levies, initially set at a maximum of 1 per cent.

Further reforms were implemented in 2006; section 94EF was introduced allowing for the imposition of special infrastructure contributions. These aim to recover 75 per cent of costs of providing regional infrastructure to support growth. This includes major roads, some public transport, land for health, education, emergency services and justice facilities, and biodiversity offsets.

The 2008 changes and their legacy

Yet another review was conducted in 2008 in the context of the Global Financial Crisis and additional amendments to the EP&A Act were enacted. Unlike earlier reforms, these measures, for the most part, did little to improve the economic efficiency of how contributions were being applied. Instead, they introduced distortions into the system, some of which remain to this day.

Changes, implemented in 2009, included:

- removal of some types of infrastructure from the special infrastructure contributions framework, such as rail and bus infrastructure, even though they had a direct link to development
- reduction of special infrastructure contributions recovery for state infrastructure from 75 per cent to 50 per cent
- capping of local contributions at $20,000 per residential lot, except with ministerial approval
- abolition of charges payable to Sydney Water and Hunter Water Corporation.

In 2010, the cap on local contributions was lifted to $30,000 for greenfield areas. For some specific areas, contribution plans were exempted from the caps where development was well advanced and applying the cap would result in significant disruption. A funding scheme was introduced, where the State covered the shortfall between the contribution amount and the prescribed caps, but only where the contribution related to infrastructure identified as 'essential works'.

The change of Government in March 2011 brought new momentum for comprehensive reform. The Coalition was elected on a platform that included a new planning system. In July 2012, A New Planning System for NSW - Green Paper was issued that flagged comprehensive reform to infrastructure contributions. Issues with the existing system highlighted include:

- varying standards of administration of, and accounting for, contributions revenues
- holding costs for industry, through levying contributions in advance of cash flow needed for project delivery
- a lack of transparency in how contributions revenues are maintained and allocated.

The 2013 Planning White Paper proposed the following elements of reform:

- Introduction of Growth Infrastructure Plans to align land use planning with infrastructure delivery. These plans were to be informed by a Subregional Delivery Plan and identify infrastructure needs over a 10-year timeframe. A regional infrastructure contribution was to be introduced to fund this infrastructure, charged on a sub-regional basis.
- Introduction of a separate Regional Growth Fund for the acquisition of land needed for public open space and drainage. This contribution was to be charged on a regional basis.
- Local infrastructure contributions were to remain with the caps of $20,000 and $30,000 to be removed, as they were considered 'artificial' and 'inefficient'. The scope of infrastructure that could be funded through these contributions was to be narrowed.

These reforms were not implemented and broader planning reform has not proceeded following the White Paper.

In 2017, the Government announced its housing affordability strategy A Fair Go for First Home Buyers that includes:

- rollout of additional special infrastructure contributions plans in growth areas
- phase out of the Local Infrastructure Growth Scheme by 30 June 2020.

A suite of reforms was introduced to the EP&A Act under the *Environmental Planning and Assessment Amendment Act 2017* (assented to on 23 November 2017), including a re-numbering of provisions. Local infrastructure contributions will now be made under section 7.11 or section 7.12 (replacing section 94 and section 94A respectively). It also introduced two new types of plans—Community Participation Plan and Local Strategic Planning Statements—which consent authorities must prepare and implement.

Timeline of system reforms

Year	Reform
1979	Enactment of the EP&A Act, including section 94 which allowed councils to levy infrastructure contributions on developers.
1989	Simpson Inquiry conducted in response to concerns regarding the application and administration of the infrastructure contributions system.
1991	In response to the Simpson Inquiry, the *EP&A Amendment (Contributions Plans) Act 1991* was introduced, requiring councils to prepare and exhibit contributions plans when levying section 94 charges.
2000	Following the publication of the 'Review of Developer Contributions System 2000', the *EP&A Amendment (Affordable Housing) Act 2000* was introduced to allow the levying of affordable housing contributions (section 94F-G).
2004	Established in September 2003 to review the process for levying contributions, the Final Report of the Section 94 Contributions and Development Levies Taskforce contained 21 recommendations to improve the system.
2005	Planning agreements (section 93F) and fixed development consent levies (section 94A) were introduced under the *EP&A Amendment (Development Contributions) Act 2005.*
2006	The imposition of special infrastructure contributions (section 94EF) was legislated (*EP&A Amendment Act 2006*) to recover the costs of regional and state infrastructure provision. On 10 November 2006, the Minister for Planning issued a direction introducing changes to the application of section 94A.
2007	The Department introduced non-statutory reforms, including changes to the types of infrastructure funded by special infrastructure contributions and local infrastructure funded by sections 94 and 94A (which must be directly related to a development site).
2008	Another review was conducted to ensure that the contributions framework was supporting the State's housing and employment targets.
2009	From 30 April 2009, contributions payable to local councils was capped at $20,000 per residential dwelling/lot.
2010	The cap on local contributions was lifted to $30,000 for greenfield areas.
2012	Release of *A* New Planning System for NSW – Green Paper that flagged comprehensive reform to infrastructure contributions and resulted in Draft Planning Bill 2013 however this was not enacted.
2013	The Government introduced the Local Infrastructure Growth Scheme to fund the gap between contributions caps and approved contribution rates for Local Infrastructure Growth Scheme transition areas.
2017	Government announced its housing affordability strategy *A Fair Go for First Home Buyers* that included the rollout of additional special infrastructure contributions plans in growth areas and phase out of the Local Infrastructure Growth Scheme by 30 June 2020. Introduction of the *Environmental Planning and Assessment Amendment Act 2017,* which included a re-numbering of all the provisions in the EP&A Act.
2018	The caps were increased by $5,000 from 1 January 2018 to $25,000 for infill and $35,000 for greenfield areas. From 1 July 2018, an additional $5,000 is added to both caps.
2019	On 1 July 2019, the caps were increased to $35,000 and $45,000 for infill and greenfield developments respectively.
2020	The cap was removed entirely, with the Local Infrastructure Growth Scheme ending on 1 July 2020.

Source: NSW Parliamentary Library Research Service (2011), DPIE (2020b)

Appendix D – Jurisdictional analysis of infrastructure contributions frameworks

	United Kingdom	New Zealand	New South Wales	Victoria	Western Australia	Queensland	South Australia
Strategic planning	Local Plan which incorporates the Community Infrastructure Levy charging schedules. From December 2020, local authorities must publish an infrastructure funding statement which identifies their infrastructure needs and the total cost of service provision, anticipated developer contributions and how this funding will be spent.	National Environmental Standards and Policy Statements. Regional and District Plans. Long Term Plan which sets out a council's policy on development contributions.	State Environmental Planning Policies (including regional environmental plans). Local Environmental Plans and Development Contributions Plans.	Planning schemes are developed by both State and local governments in accordance with planning policies and strategies. The Infrastructure Contributions Plan forms part of the planning scheme and can only be prepared for Melbourne's metropolitan greenfield growth areas.	State Planning Policies and Regional and Sub-regional Strategies. Local Planning Scheme (including Development Contributions Plans).	State planning instruments (state planning policies, regulatory provisions, regional plans). Local planning schemes such as the Local Government Infrastructure Plan.	State Planning Strategy (including plans for regional areas), which informs the planning policies in Structure Plans, Precinct Plans and local government development plans.
Infrastructure contributions mechanisms	Any development which creates net additional floor space of 100 square metres or more is liable to a standard levy rate known as the Community Infrastructure Levy. This limit does not apply to new houses or flats and the Community Infrastructure Levy can be levied on a single house or flat of any size.	Contributions are implemented through a development contributions policy, contained in a Long Term Plan. Development agreements can be entered into between a developer and the consent authority.	Local community infrastructure is funded through section 7.11 contributions and section 7.12 fixed levies. Key infrastructure in priority growth areas is provided under section 7.24 special infrastructure contributions. Section 7.4 planning agreements can be used to fund a wider range of infrastructure such as affordable	Contributions can be sought and collected through Infrastructure Contributions Plan conditions on planning permits and voluntary agreements. Standard levy rates apply for the Metropolitan Greenfield Growth Areas (set by the Minister for Planning). A supplementary levy is designed to fund infrastructure	Much of the standard infrastructure related to a development is paid for or provided directly by the developer. Infrastructure contributions beyond the standard requirements or community infrastructure can only be sought if they have been identified in a Development Contributions Plan, or through voluntary agreement with the developer.	Contributions for trunk infrastructure (i.e. infrastructure that is shared between multiple developments) may be levied by councils under the Local Government Infrastructure Plan or through an Infrastructure Agreement. Developers are responsible for funding and providing all non-trunk infrastructure within a development or that connects a	Two new infrastructure schemes are being phased in from 1 July 2019 under the new planning system: ▪ Basic Infrastructure Scheme – used to provide basic infrastructure in rezoned and existing infill areas. ▪ General Infrastructure Scheme – provides

	United Kingdom	New Zealand	New South Wales	Victoria	Western Australia	Queensland	South Australia
			housing or environmental conservation.	that is 'non-standard' or involves costs over and above the standard levy. Only certain state infrastructure can be funded from supplementary levy. A Community Infrastructure Levy may also be applied to fund the provision of community facilities. Public open space contributions may also be collected under clause 52.01 of the planning scheme and *Subdivision Act 1988*.		development to trunk infrastructure.	essential infrastructure to facilitate significant development or urban renewal. Land Management & Infrastructure Agreements are executed with individual land owners to cover the costs of significant infrastructure works need to make the land suitable for intended purposes.
Enabling legislation	*Planning Act 2008*	*Local Government Act 2002 Amendment Act 2014*	*Environmental Planning and Assessment Act 1979*	*Planning and Environment Act 1987*	*Planning and Development Act 2005*	*Planning Act 2016*	*Planning, Development and Infrastructure Act 2016* (to replace the current *Development Act 1993* when the new reforms are implemented)
What can it be used to fund?	Wide range of infrastructure as outlined in section 216(2) of the *Planning Act 2008* (i.e. open space, community and recreational facilities, education and medical infrastructure, roads and transport facilities).	Broad infrastructure classes such as reserves, network infrastructure (water, wastewater, stormwater, roads and transport) and community infrastructure (land	Local contribution plans proposing amounts over the prescribed caps for infill ($20,000) and greenfield ($30,000) areas can only be used to fund 'essential' infrastructure	The Ministerial Direction contains separate lists for allowable items to be funded from the standard levy or the supplementary levy.	Standard contributions requirements listed under Appendix 1 (State Planning Policy 3.6) such as: ▪ Land contributions such as primary schools, roads and public open	Trunk infrastructure includes essential development works such as water, roads, sewerage, stormwater, parks and land for community facilities.	Basic Infrastructure Scheme delivers community infrastructure (such as water, sewerage, utilities, local roads) in 'designated growth areas'.

	United Kingdom	New Zealand	New South Wales	Victoria	Western Australia	Queensland	South Australia
	The levy cannot be used to fund affordable housing.	or provision of public amenities).	described in the Essential Works List. SICs are applied to priority growth areas and is used to fund key infrastructure such as major roads, regional open space, land for schools and hospitals.		space (equivalent to 10 per cent of the gross subdividable area) ▪ Infrastructure works such as public utilities and roads (including footpaths) ▪ Monetary contributions for water, sewerage and drainage headworks.	Non-trunk infrastructure includes works that is generally internal to a development site.	General Infrastructure Scheme delivers a wider range of infrastructure such as public transport, health, education and community facilities etc. Current legislation also contains a provision for dedicating up to 12 per cent for open space (or cash contribution) as well as allowing councils to establish funds for developers to contribute to car parking.
How is the liability calculated?	The amount of levy payable is calculated by multiplying the additional gross internal area by the rate for a development type (expressed as pounds per square metre). The applicable rates are set out in a charging schedule, which is prepared by the charging authority. Differential rates can also be set with reference to: • intended uses of development (reduced rate of levy to encourage delivery of social housing)	Calculated by multiplying the household unit of demand by the standard rates for each service type (stormwater, water, wastewater and transportation). Depending on catchment areas, FY2020 rates vary between $1,401 to $28,625 per household unit of demand.	Section 7.11 contributions are calculated based on an apportionment of infrastructure costs that is attributable to development-growth (generally expressed as per dwelling or per square metre). Section 7.12 levies are calculated as a standard rate (generally up to a maximum of 1 per cent) of the estimated development cost.	In a metropolitan greenfield growth area, the liability is determined by multiplying the applicable standard levy by the amount of net developable hectares in a parcel of land. For 2020-21, they are: residential development ($217,763) and commercial and industrial development ($126,713). The rate of supplementary levy is based on the	The cost apportionment schedule within a Development Contributions Plan sets out the calculation of infrastructure costs.	A local government may, by a charges resolution, adopt charges for providing trunk infrastructure for development (which must be no more than the maximum adopted charge prescribed under the Planning Regulation 2017). The resolution must include a method for working out the infrastructure costs and criteria for deciding a conversion application (if works	An independent scheme coordinator is responsible for preparing and administering the schemes including developing a work program and determining the apportionment of charges between stakeholders.

	United Kingdom	New Zealand	New South Wales	Victoria	Western Australia	Queensland	South Australia
	• scale (i.e. floor area or number of dwelling units). Any differential rates must be supported by robust evidence on viability.			estimated cost of the specific infrastructure. A maximum Community Infrastructure Levy applies: $450 per dwelling constructed and 0.25 cents in the dollar of the cost of building work in any other case, with the liability capped at $1,210 for FY2021).		serve a trunk function).	
When is it levied?	On commencement of development.	When a development contributions notice is issued granting resource consent for a development, building consent, or authorisation for service connection.	As part of the subdivision clearance process or prior to commencement of construction.	Development levies are collected through conditions on planning permits. Community Infrastructure Levy is collected at the building permit stage.	As part of the subdivision clearance process or prior to commencement of construction.	When the infrastructure charges notice is issued by the charging authority.	At the depositing of a land division plan or the undertaking of an approved development. Basic Infrastructure Scheme is a one-off charge payable at the time when the benefit is realised. General Infrastructure Scheme involves contributions over a period of time.

Source: MHCLG (2019), DPLH (2019), DELWP (2020), Department of Infrastructure (2007), DSDMIP (2020), DILGP (2017), Tasman District Council (2020), Department of Internal Affairs (2019), DPTI (2018, 2020)

References

Abelson, P. (2018). An Analysis of Value Capture Instruments. *A Journal of Applied Economics and Policy*, 37(4), 399-411. https://onlinelibrary.wiley.com/doi/abs/10.1111/1759-3441.12234?af=R

Arcadis. (2020). *International Construction Costs Comparison 2020: Rethinking Resilience*. Retrieved from https://www.arcadis.com/media/7/3/5/%7B735539E4-5C0A-4692-829B-4577718130BF%7DAUS_ICC%202020_Web%20version_single%20page.pdf

Archer, R. W. (1976). The Sydney Betterment Levy, 1969-1973: An Experiment in Functional Funding for Metropolitan Development. Urban Studies, 10(3), 367-372. Retrieved from https://journals.sagepub.com/doi/abs/10.1080/00420987620080631

Australian Bureau of Statistics. (2020a). *National, State and Territory Population, March* 2020 (Cat 3101.0). Retrieved from https://www.abs.gov.au/statistics/people/population/national-state-and-territory-population/latest-release

———. (2020b). *Residential Property Price Indexes: Eight Capital Cities, June 2020* (Cat 6416.0). Retrieved from https://www.abs.gov.au/ausstats/abs@.nsf/mf/6416.0

———. (2020c). Labour Force, Australia, Detailed, Quarterly, August 2020 (Cat 6291.0). Retrieved from https://www.abs.gov.au/articles/insights-industry-and-occupation-august-2020

Bureau of Infrastructure, Transport and Regional Economics. (2015). *Transport infrastructure and land value uplift*. Retrieved from: https://bitre.gov.au/publications/2015/is_069.aspx

Centre for International Economics. (2020). *Evaluation of infrastructure contributions reform in New South Wales.* Prepared for the NSW Productivity Commission.

Commonwealth Productivity Commission. (2008). *Assessing Local Government Revenue Raising Capacity (Research Report)*. Retrieved from https://www.pc.gov.au/inquiries/completed/local-government/report

———. (2014). *Public Infrastructure* (*Inquiry Report).* Retrieved from https://www.pc.gov.au/inquiries/completed/infrastructure/report

Commonwealth Treasury. (2015). *Understanding the Economy-wide Efficiency and Incidence of Major Australian Taxes (Treasury Working Paper).* Retrieved from https://treasury.gov.au/publication/understanding-the-economy-wide-efficiency-and-incidence-of-major-australian-taxes

Department of Environment, Land, Water and Planning (Vic) (DELWP). (2020). Infrastructure Contributions. Retrieved from https://www.planning.vic.gov.au/policy-and-strategy/infrastructure-contributions

Department of Environment, Land, Water and Planning. (2019). Infrastructure Contributions Plan Guidelines. Retrieved from https://www.planning.vic.gov.au/__data/assets/pdf_file/0025/433834/ICP-Guidelines.pdf

Department of Industry, Skills and Regional Development. (2017). *2017 Metropolitan Water Plan: Water for a Liveable, Growing and Resilient Greater Sydney*. Retrieved from https://www.planning.nsw.gov.au/-/media/Files/DPE/Other/About-us/Metropolitan-Water/2017-Metropolitan-Water-Plan.pdf

Department of Infrastructure (Vic). (2007). *Development Contributions Guidelines.* Retrieved from https://www.planning.vic.gov.au/__data/assets/pdf_file/0021/102981/Understanding_Development_Contributions.pdf

Department of Infrastructure, Local Government and Planning (Qld) (DILGP). (2017). *Your Guide to the Planning Act 2016.* Retrieved from https://dsdmipprd.blob.core.windows.net/general/your-guide-to-the-planning-act-2016.pdf

Department of Infrastructure and Regional Development, Bureau of Infrastructure, Transport and Regional Economics. (2015). Transport Infrastructure and Land Value Uplift (Information Sheet 69). Retrieved from https://www.bitre.gov.au/publications/2015/is_069

Department of Internal Affairs (NZ). (2019). Better Local Government. Retrieved from https://www.dia.govt.nz/Better-Local-Government

Department of Premier & Cabinet (Division of Local Government). (2013). *Integrated Planning and Reporting Guidelines for local government in NSW.* Retrieved from https://www.olg.nsw.gov.au/wp-content/uploads/Integrated-Planning-and-Reporting-Guidelines-March-2013.pdf

Department of Planning. (2008). *Planning Circular: Review of Infrastructure Contributions* (PS 08-017). Retrieved from https://www.planning.nsw.gov.au/-/media/Files/DPE/Circulars/planning-circular-review-of-infrastructure-contributions-2008-12-23.pdf

Department of Planning, Industry and Environment. (2005). *Development Contributions as a Method of Funding Public Infrastructure (Practice Note).* Retrieved from https://www.planning.nsw.gov.au/-/media/Files/DPE/Practice-notes/practice-note-development-contributions-section-94-jul05.pdf?la=en

———. (2019). *2018-19 Annual Report.* Retrieved from https://www.planning.nsw.gov.au/-/media/Files/DPE/Reports/annual-reports-and-corporate-plans/2018-2019-department-of-planning-and-environment-annual-report.pdf

———. (2020a). Infrastructure Contributions System Improvements. Retrieved from https://www.planning.nsw.gov.au/Policy-and-Legislation/Infrastructure/Infrastructure-Funding/Improving-the-infrastructure-contributions-system

———. (2020b). Local Infrastructure Growth Scheme. Retrieved from https://www.planning.nsw.gov.au/Plans-for-your-area/Infrastructure-funding/Local-Infrastructure-Growth-Scheme

Department of Planning, Lands and Heritage (WA) (DPLH). (2019). *Planning Policy 3.6 – Development Contributions for Infrastructure*. Retrieved from https://www.dplh.wa.gov.au/spp3-6

Department of Planning, Transport and Infrastructure (SA) (DPTI). (2018). *Initiating and Establishing an Infrastructure Scheme: A Toolkit for Practitioners.* Retrieved from https://www.saplanningportal.sa.gov.au/__data/assets/pdf_file/0005/526055/Infrastructure_Schemes_-_Toolkit_for_Pracitioners_-_Initiating_and_Establishing_an_Infrastructure_Scheme.pdf

———. (2020). Infrastructure Schemes. Retrieved from https://www.saplanningportal.sa.gov.au/planning_reforms/new_planning_tools/infrastructure_schemes

Department of State Development, Manufacturing, Infrastructure and Planning (Qld) (DSDMIP). (2020). Local Government Infrastructure Planning and Charging Framework. Retrieved from https://planning.dsdmip.qld.gov.au/planning/better-planning/infrastructure-planning/local-government-infrastructure-planning-and-charging-framework

Greater Sydney Commission. (2018). *Greater Sydney Region Plan*: *A Metropolis of Three Cities.* Retrieved from https://www.greater.sydney/metropolis-of-three-cities

Henry, K., Harmer, J., Piggott, J., Ridout, H. and Smith, G. (2009). *The Australia's Future Tax System Review: Final Report to the Treasurer.* Retrieved from https://treasury.gov.au/review/the-australias-future-tax-system-review/final-report

Infrastructure Australia. (2016). *Capturing Value: Advice on making value capture work in Australia*. Retrieved from https://www.infrastructureaustralia.gov.au/sites/default/files/2019-06/Capturing_Value-Advice_on_making_value_capture_work_in_Australia-acc.pdf

———. (2017). *Corridor Protection: Planning and Investing for the long term.* Retrieved from https://www.infrastructureaustralia.gov.au/sites/default/files/2019-06/CorridorProtection.pdf

———. (2019). *The Australian Infrastructure Audit 2019: An Assessment of Australia's Future Infrastructure Needs.* Retrieved from https://www.infrastructureaustralia.gov.au/publications/australian-infrastructure-audit-2019

Infrastructure NSW. (2018). *Building Momentum: State Infrastructure Strategy 2018-2038.* Retrieved from https://insw-sis.visualise.today/documents/INSW_2018SIS_BuildingMomentum.pdf

Independent Pricing and Regulatory Tribunal (IPART) of New South Wales. (2009). *Revenue Framework for Local Government (Final Report).* Retrieved from https://www.ipart.nsw.gov.au/files/sharedassets/website/trimholdingbay/final_report_-_revenue_framework_for_local_government_-_december_2009.pdf

———. (2016). *Review of the Local Government Rating System (Final Report)*. Retrieved from https://www.ipart.nsw.gov.au/files/sharedassets/website/shared-files/investigation-section-9-legislative-review-of-the-local-government-rating-system/final-report-review-of-the-local-government-rating-system-december-2016.pdf

———. (2018). *Maximum Prices to Connect, Extend or Upgrade a Service for Metropolitan Water Agencies: Sydney Water Corporation, Hunter Water Corporation and Central Coast Council (Final Report)*. Retrieved from https://www.ipart.nsw.gov.au/files/sharedassets/website/shared-files/pricing-reviews-water-services-metro-water-developer-charges-and-backlog-sewerage-charges-for-metropolitan-water-agencies-2018/legislative-requirements-developer-charges-and-backlog-sewerage-charges-for-metropolitan-water-agencies-2018/final-report-maximum-prices-to-connect-extend-or-upgrade-a-service-for-metropolitan-water-agencies-october-2018.pdf

———. (2020). *Review of Prices for Sydney Water from 1 July 2020 (Final Report)*. Retrieved from https://www.ipart.nsw.gov.au/files/sharedassets/website/shared-files/pricing-reviews-water-services-metro-water-prices-for-sydney-water-corporation-from-1-july-2020/legislative-requirements-prices-for-sydney-water-corporation-from-1-july-2020/final-report-review-of-prices-for-sydney-water-june-2020.pdf

KPMG Econtech. (2010). *CGE Analysis of the Current Australian Tax System (Final Report)*. Retrieved from https://www.murphyeconomics.com.au/Information/tax/KPMG_Econtech_Efficiency%20of%20Taxes_Final_Report.pdf

McIntosh, J., Newman, P., & Trubka, R. (2014). Tax Increment Financing Framework for Integrated Transit and Urban Renewal Projects in Car-Dependent Cities. *Urban Policy and Research, 33*(1), 37-60. https://www.tandfonline.com/doi/full/10.1080/08111146.2014.968246

Mecone. (2019). *State Development Comparisons: A Comparative Review of the NSW Plannning System.*

Ministry of Housing, Communities & Local Government (MHCLG). (2019). *Community Infrastructure Levy*. Retrieved from https://www.gov.uk/guidance/community-infrastructure-levy

Nassios, Madden, Giesecke, Dixon, Tran, Dixon, Rimmer, Adams and Freebairn. (2019). *The Economic Impact and Efficiency of State and Federal taxes in Australia*, CoPS/IMPACT Working Paper G-289, 2019. Retrieved from http://www.copsmodels.com/ftp/workpapr/g-289.pdf

Nick, K. (2018). *Review of Governance in the NSW Planning System.* Retrieved from https://www.planning.nsw.gov.au/-/media/Files/DPE/Reports/Assess-and-Regulate/compliance/review-of-governance-of-decision-making-in-the-nsw-planning-system-report-2018-12-18.pdf

NSW Auditor-General. (2020). *Performance Audit Report*: *Governance and Internal Controls over Local Infrastructure Contributions.* Retrieved from https://www.audit.nsw.gov.au/sites/default/files/documents/Final%20report%20GICOLIC_0.PDF

NSW Government. (2013). *A New Planning System for NSW: White Paper.* Retrieved from https://www.planning.nsw.gov.au/-/media/Files/DPE/Reports/a-new-planning-system-for-nsw-white-paper-2013-04.pdf

NSW Government Architect. (2020). Greener Places: An Urban Green Infrastructure Design Framework for New South Wales. Retrieved from https://www.governmentarchitect.nsw.gov.au/resources/ga/media/files/ga/design-guides/framework-document-greener-places-2020-06-02.pdf

NSW Parliamentary Library Research Service. (2011). *History of development contributions under the NSW planning system* (e-brief 3/2011). Retrieved from https://www.pc.gov.au/inquiries/completed/productivity-review/report/productivity-review-supporting16.docx

NSW Productivity Commission. (2019). *Productivity Commission Discussion Paper: Kickstarting the Productivity Conversation*.

———. (2020). *Productivity Commission Green Paper: Continuing the Productivity Conversation*. Retrieved from https://www.productivity.nsw.gov.au/sites/default/files/2020-08/Productivity_Commission_Green%20Paper_FINAL.pdf

NSW Treasury. (2016). *2016-17 Budget Paper No. 5: Intergenerational Report: Future State NSW 2056.* Retrieved from https://www.treasury.nsw.gov.au/nsw-economy/intergenerational-report

———. (2018). *NSW Government Business Case Guidelines (TPP18-06).* Retrieved from https://www.treasury.nsw.gov.au/sites/default/files/2018-08/TPP18-06%20%20NSW%20Government%20Business%20Case%20Guidelines.pdf

———. (2020a). *2020-21 Budget Paper No. 1: Budget Statement.* Retrieved from https://www.budget.nsw.gov.au/sites/default/files/2020-11/Budget%20Paper%20No.%201%20-%20Budget%20Statement%20-%202020-21%20Budget_1.pdf

———. (2020b). *2020-21 Budget Paper No. 2: Infrastructure Statement.* Retrieved from https://www.budget.nsw.gov.au/sites/default/files/2020-11/Budget%20Paper%20No.%203%20-%20Infrastructure%20Statement%20Budget%202020-21.pdf

Office of Local Government. (2020). *Government Response: IPART Review of the Local Government Rating System.* Retrieved from https://www.olg.nsw.gov.au/wp-content/uploads/2020/06/IPART-Rating-Review-Government-Response.pdf

Planning Institute of Australia (2017). *New Planner, 110 (March 2017),* 14-15. Retrieved from *https://www.planning.org.au/documents/item/8238*

Tasman District Council. (2020). Development and Financial Contributions Policy. Retrieved from https://tasman.govt.nz/my-council/key-documents/more/growth/development-and-financial-contributions-policy/

Transport for NSW. (2016). *Sydney Metro: City & Southwest (Final Business Case).* Retrieved from https://www.sydneymetro.info/sites/default/files/Sydney%20Metro%20CSW%20Business%20Case%20Summary.pdf