

Department of Planning, Housing and Infrastructure

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# Submission summary and response

Infrastructure contributions practice notes exhibition

May 2025



# Acknowledgement of Country

The Department of Planning, Housing and Infrastructure acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land, and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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# Submissions summary

The new practice notes were exhibited for three months from December 2023 to February 2024. The exhibition focused on working directly with stakeholders to test the material provided and identify where additional guidance, templates and resources may be useful. We received 30 submissions in total, including:

- 25 council submissions, including:
  - 17 councils from the Greater Sydney region
  - 8 regional councils
- 2 state agencies submissions
- 2 submissions from members of the public
- 1 submission from a consultant working in the contributions field

Submissions were supportive of the updates to the practice notes and noted that the new guidance was a significant improvement.

“The exhibition of the [draft practice notes] represents an important overhaul and update to the existing contributions practice note first published in 2005. We commend the Department for undertaking this work and for seeking feedback on the draft documents prior to their adoption.”

“The updated practice notes provide greater detail and are in a more accessible format than the previous practice notes and should assist councils in preparing contributions plans, entering into planning agreements and adhering to the reporting requirements.”

“Council welcomes the revised, consolidated practice notes and improved usability. The changes will better guide councils' work relating to local infrastructure contributions planning. They help stakeholders to better understand the local contributions system.”

Submissions were detailed, well considered and covered a large range of topics. Stakeholders took significant time and effort to communicate their knowledge and expertise in infrastructure contributions, to help collaboratively build this important resource.

Over 600 individual pieces of feedback were provided in the 30 submissions, touching on 26 high level topics. The four topics receiving the most feedback were:

- the purpose, structure, and functionality of the practice notes
- the IPART review process including the essential works list and thresholds
- section 7.12 policy including administration costs
- exemptions policy including exemptions to Crown development

Feedback was grouped into the six broad types. These were:

- **Support:** where a stakeholder supported what had been written
- **Clarification or suggestion:** where stakeholders asked for a topic to be clarified, or suggested an alternative way of doing something
- **Gaps:** topics or issues that had not been covered at all
- **Resources or templates:** requests for a specific template, case study or resource
- **Policy comment:** comment or suggested change to a current policy position

43% of all feedback was a clarification or suggestion, providing valuable information that was readily implemented to better explain existing policy. 31% of the feedback provided comment on policy matters or requested changes to existing policy. No policy changes are currently proposed. The remainder identified gaps (12%), requested additional resources (8%) and offered support (6%).

# Immediate updates

Immediate updates have been made to clarify, amend or expand upon advice to better explain existing concepts and policy.

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## Practice note structure

Stakeholders noted that several modules had content covering more than one mechanism. Some found it confusing to encounter content relating to, for example, section 7.11 when reading the practice note for section 7.12 and that it was difficult to find information relating to security for planning agreements.

We reviewed the modules for clarity and to ensure that this overlap only occurred where necessary and made amendments where it improved readability. However, as each module focuses on one policy area or topic, it is important that it includes all the information relevant to that topic.

Some suggested that the practice notes should be expanded to also cover contributions for affordable housing. However, the scope of the practice notes is limited to infrastructure contributions under Part 7 Division 7.1 of the EP&A Act. Affordable housing contributions under division 7.2 have different guidance requirements.

### Changes made

- Strengthened linkages and language to ensure information on security is easy to find.
- Separated the *Principles of infrastructure contributions* module into three separate modules specific each mechanism.
- Removed *Estimating cost* module from the section 7.12 practice note, and instead linked it as optional content.
- Clarified that section 208 of the EP&A Regulation refers to determining the proposed cost of development, rather than exemptions from contributions.
- Moved advice on writing conditions of consent into its own module.
- Minor changes to some definitions, terms and references.

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## Purpose of the practice notes

Some stakeholders asked for clarification around the legislative weight of the practice notes and the power they carry, and whether they could pursue an option or alternative that wasn't specifically mentioned in the practice notes. The practice notes are policy and best practice guidance only, which is discussed in detail in the module *Role of the practice notes*.

### Changes made

- Made the *Role of the practice notes* module more prominent on the webpage so all stakeholders are aware of the legislative status of practice notes.

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## Section 7.11 and 7.12 plan preparation

Stakeholders provided useful feedback on how contributions plans are written and made in practice, including the different steps that are taken and how certain issues are approached. Much of this feedback was incorporated into the guidance.

Some asked for improved guidance on the process for requesting a higher section 7.12 maximum rate, including the steps to be taken both by the council and the Department.

### Changes made

- Included a new step by step process for preparing the works schedule, based on suggested processes provided in submissions.
- Included details on both a simple and complex methodology for providing credits, as some noted that the method of providing credits described in the practice notes may not be suitable for all situations.
- Provided additional guidance on some indexes that may be considered (but do not have to be used).
- Provided more information on the process for requesting a higher section 7.12 maximum rate.
- Simplified the guidance and clarified the risks and benefits of borrowing and pooling.
- Removed content on [Low Cost Loans Initiative](#) as this is a funding program, rather than a fundamental feature of the contributions system.

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## The relationship between development and infrastructure for section 7.12 plans

The draft practice notes included new guidance that stated section 7.12 plans must demonstrate the general relationship between expected development and demand for infrastructure. While clarifying this wasn't as detailed as nexus for 7.11 plans, the new guidance linked to the 7.11 nexus module as a source of useful information.

Several stakeholders thought this was increasing the importance of this relationship beyond the scope of the Act and Regulation requirements. This has been clarified in the guidance.

### Changes made

- Clarified that the degree of connection between infrastructure and development for section 7.12 plans has not changed.
- Highlighted that *Determining demand and demonstrating nexus* module is optional content for section 7.12 plans.

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## What can be funded

Stakeholders asked for a simpler way to calculate the administration costs in a section 7.11 plans. Many IPART reviewed contributions plans include plan administration costs as a percentage of the cost of works in a plan, so the stance around this existing policy position was clarified in the practice notes.

Stakeholders also asked for clarification on whether strata space met the definition of land for the purposes of the essential works list. Existing IPART reviewed contributions plans have included strata space for community facilities. We have clarified this existing policy position in the practice notes.

**Changes made**

- Included advice that allows admin cost in section 7.11 plan to be included as the actual itemised costs, or as 1.5% of the cost of the infrastructure works in the plan.
- Clarified that strata space in a building does meet the criteria of land for community services on the essential works list, in line with IPART's current position.



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## Net present value methodology

Stakeholders expressed different views on how apportionment impacts net present value cost models. In particular when infrastructure costs have increased more than was initially anticipated, how this should be treated in the model. Guidance was updated to clarify how apportionment interacts with a net present value model.

### Changes made

- Clarified how apportionment is considered in a net present value model, noting that when councils review their net present value models, they must update both the infrastructure costs and their apportionment details in the model to ensure that future development is not paying more than its share of any updated costs.
- Reviewed the net present value examples and made minor changes for clarity.

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## Planning agreements

Stakeholders also asked for explanation on the perceived changes to value capture policy in the new guidance. The changes to how the policy was expressed were not intended to signify a change the Department's policy towards value capture. This has been clarified in the practice notes.

Some stakeholders indicated that information on security was much harder to be find in the new practice notes, and that advice on the requirements for planning agreement policies was still wordy and unclear. Stakeholders also asked that the practice notes specify that planning agreements are voluntary for all parties, not just the developer.

### Changes made

- Simplified language surrounding value capture.
- Clarified that planning agreements are voluntary for all parties.
- Made links clearer and highlighted where to find information on security.
- Removed unnecessary duplication and simplified guidance around writing planning agreement policies.
- Moved guidance on planning agreement governance to the module on negotiating and entering into planning agreements

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## Works in kind agreements

Several stakeholders noted that there is ongoing confusion around how works in kind legislation should be interpreted, and that the new practice notes did not clarify this.

Stakeholders commented on the different provisions for works in kind, including towards the future provision of infrastructure under section 7.11 (1) and works in kind accepted towards recouping the costs of infrastructure items already provided under section 7.11 (3). The interpretation proposed is that material public benefit can be accepted in lieu of a contribution for both, but land can only be accepted in lieu of a contribution for recoupment under 7.11(3).

Other stakeholders proposed that this interpretation was unnecessarily strict and restrictive and may significantly impact council's ability to deliver infrastructure through works in kind.

### Changes made

- Updated guidance to reflect a more detailed interpretation.

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## Exemptions and Circular D6

Stakeholders noted it was confusing that advice on exemptions to Crown development was included in a Circular D6 instead of in the revised practice notes and asked that the relevant information from Circular D6 be moved into the practice notes.

### Changes made

- Guidance on Crown development exemptions has been moved from Circular D6 to the local infrastructure contributions practice notes.
- The guidance has been rewritten in plain language and simplified, including updates to reflect current legislative terminology and to modernise the language. The suggested exemptions in the policy remain consistent with those in the original Circular D6, with no policy changes being proposed at this time.

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## Reporting requirements and reporting templates

Several stakeholders noted that reporting requirements for contributions plans and planning agreement were onerous and confusing. Existing templates were appreciated, but some stakeholders noted that they were still complex and difficult to complete.

Several stakeholders questioned the requirement to keep a register of all relevant planning agreements within their local government area, including ones they are not party to. This is an existing requirement under the EP&A Regulation, where a relevant planning agreement means *“if the planning authority is a council—a planning agreement that applies to the area of the council, including an amendment to the planning agreement, whether or not the council is a party to the agreement”* (206 (6) EP&A Regulation). The legislation also states that other planning authorities must send copies of all planning agreements to the appropriate local council (7.5(4) EP&A Act).

Stakeholders also noted that the process for uploading contributions plans and reporting documentation onto the NSW Planning Portal was complex, there is no ‘contributions plan’ upload type to select, and there are duplicate pages.

### Changes made

- Legislative requirements table updated to explain the legislative reporting requirements more thoroughly.
- Templates reviewed and simplified, including removing templates that duplicated ones already by OLG and simply linking to the OLG material instead.
- Guidance updated to note the requirement for planning authorities to send copies of planning agreements to the relevant council.
- Updates to upload functionality are being investigated.

# Issues for future consideration and review

Stakeholders also provided feedback on more complex matters, requested new resources and advocated for changes to existing policy. This work will require significant research and collaboration.

This more complex feedback is being used to develop a forward program of work to be explored and delivered collaboratively with council's overtime.

No commitment has been made to any policy changes, feedback provided on these issues will be considered over time.

At this stage the Department will be progressing policy development on the following matters:

- Advice on planning agreements in response to [ICAC Operation Galley](#).
- Advice detailing how funds from repealed contributions plans is to be treated in response to NSW Audit Office's [Local Government 2023 Audit](#).

Finalisation of the new practice notes is required before any further policy development of changes are considered. This will ensure stakeholders understand and have access to clear guidance on the current policy positions, so they can have a full and engaged discussion of any changes or additions.

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## Complex updates

More complex issues raised by stakeholders include improving or developing new guidance on:

- Governance and probity, including a threshold for when more rigorous governance measures should be implemented.
- Amending and repealing contributions plans, and how to determine whether a plan is performing well or not.
- Responsibilities of private certifiers around contributions.
- Writing conditions of consent.
- Calculating the cost of development for section 7.12 levies, including the interpretation of section 208 of the EP&A Regulations.
- How borrowing and pooling should be recorded in financial statements and reporting.
- How to do income testing as part of the process for selecting a mechanism.
- Cash flow modelling.
- Requirements and limitations of recouping unpaid contributions.
- Calculating infrastructure works on-costs and contingencies.
- Land dedication and acquisition, and valuing land.
- Planning agreement processes including what constitutes an offer and what information should be contained in an offer.

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## Policy issues

Stakeholders raised many important policy issues and questions during the exhibition, including around the following policy areas:

- Section 7.11 plan thresholds, essential works list and the IPART review process.
- Process and criteria for section 7.12 individual higher rate requests.
- Section 7.12 policy including how administration costs are treated and requests for an overarching high rate.
- Barriers and issues with reporting requirements for contributions plans and planning agreements
- Barriers to regular plan review.
- Exemptions policy and Crown development exemptions.
- Issues with rapidly increasing infrastructure costs and land costs.

These issues will be explored by the policy team. No commitment is being made to any policy changes at this stage, but the feedback provided on these issues will be considered.

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## Templates

Many different templates and models were raised, including:

- Section 7.11 and section 7.12 plan template
- Works schedule templates
- Infrastructure map and catchment map templates
- Section 7.12 cost of development calculation template
- Planning agreement policy template
- Planning agreement template
- Planning agreement explanatory note templates
- Planning agreement letter of offer template
- Works in kind policy template
- Works in kind agreement template
- Cash flow model template
- Net present value model template
- Model resolutions for making, repealing and amending contributions plans
- Standard scopes for tendering and for procuring infrastructure and land cost estimates

# Next steps

The new Infrastructure Contributions Practice Notes have been updated to take on the simple feedback. They have now been published as a digital hub on the NSW Planning Portal.

## Infrastructure Contributions Practice Notes

Updates to the practice notes in the future will be clearly communicated through:

- Announcement on the on the updates page on practice note hub
- Updates in regular email communication and newsletters

Any future changes to policy will also be exhibited to seek feedback from stakeholders. Future updates will be iteratively developed, exhibited and released which we hope will help to minimise the consultation burden and allow for genuine collaboration on each specific issue and topic. It will also allow us to respond to current or changing issues quickly and efficiently.

**In the meantime, for any questions please contact: [infrastructure.contributions@planning.nsw.gov.au](mailto:infrastructure.contributions@planning.nsw.gov.au)**