

INFRASTRUCTURE CONTRIBUTIONS

Discussion Paper

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The Local Government Association of Tasmania

The Local Government Association of Tasmania (LGAT) is the peak body for local government in Tasmania. Our role is to support, promote, advocate for and represent the local government sector, so our members are in the best position to serve their communities.

We work collaboratively with all 29 Tasmanian council members to support them and the communities they serve and represent.

Executive Summary

This discussion paper examines infrastructure contributions systems, schemes and frameworks in Tasmania, New South Wales, Queensland and Victoria to inform the design of a best practice framework for Tasmania. The focus of this paper is on civil infrastructure, rather than utilities (electricity, telecommunications, water and sewerage), with the exception of TasWater given its comparability with the stormwater infrastructure of local government.

Infrastructure delivery is fundamental to activating development and creating the vibrant communities of the future. However, each time development expands or intensifies it consumes some capacity of existing network infrastructure and increasingly constrains future development. As this network demand adds up, upgrades may be required to increase capacity and to ensure an acceptable level of service is provided by the whole network before further development can proceed. Without adequate and efficient ways of resourcing the infrastructure delivery, this constraint to planned development causes a suite of land development issues for both developers and infrastructure providers. These problems include delayed development, inequitable cost distribution, development subsidisation and poor infrastructure outcomes. Tasmania is experiencing all of these development problems.

Infrastructure contributions are key to resolving these problems and boosting investment in infrastructure. They facilitate development by contributing to the solutions that the developments rely upon and allow resourcing to increase with the rate of development and more closely match the infrastructure need. Contributions schemes are a crucial tool for any infrastructure provider, particularly local government, to partially or fully fund the delivery of infrastructure required to support development, improving financial sustainability and relieving pressure on general revenue, such as rates.

Financing infrastructure with contributions schemes can be categorised into four approaches that align with levels of maturity:

1. **No contributions (Level 0) – fully subsidised:** development does not contribute to network infrastructure, which must be fully delivered from general revenue sources, such as rates.
2. **Basic contributions (Level 1) – via agreements:** agreements to pay contributions are negotiated between the infrastructure authority and the development proponent/landowner.
3. **Intermediate contributions (Level 2) – via offsets to standards:** infrastructure providers may present development proponents with the option of paying financial contributions instead of meeting certain development standards as an offset for impacts.
4. **Advanced contributions (Level 3) – general charging via infrastructure plans:** development pays a general charge based on the proposal's demand or impact on infrastructure networks, established through infrastructure planning.

These approaches are not mutually exclusive, all can potentially be used by an infrastructure authority provided it is supported by legislation. Each mechanism will delineate the infrastructure it is funding which prevents double charging.

This review found that other Australian jurisdictions have more advanced and mature contributions systems than Tasmania's. New South Wales, Queensland and Victoria all have more cohesive and comprehensive legislative frameworks to support local government in implementing their own infrastructure contributions schemes. These frameworks are integrated into state planning legislation and are supported with detailed resources and guidance for councils to implement their schemes. All frameworks support the most advanced level of infrastructure contributions schemes, being general charging, backed by infrastructure planning. The systems also fund all classes of council-managed infrastructure, essential for developing communities. Some of these charging frameworks also support early dispute resolution in combination with limitations on appeals, to reduce later-stage delays and promote smooth, certain and efficient charging. All of these frameworks have continued to be supported by state governments and, where dissatisfaction has occurred, the frameworks have been reviewed and improved.

Relative to these other jurisdictions, Tasmania has a lower level of maturity to support the implementation of infrastructure contributions schemes. There is no single, coherent legislative framework for applying infrastructure contributions in a consistent and predictable way, or that encourages the more advanced general charging approach with supporting guidance material for implementation. Instead, powers to levy charges for infrastructure are dispersed across a number of Acts that apply in specific circumstances, are only for a specific class of infrastructure, are fragmented and isolated from the planning process, or charges can be easily disputed and appealed, undermining certainty. None of the mechanisms provide a framework for delivering a consistent statewide approach or clear guidance on establishing fully effective and efficient infrastructure contributions schemes. This leaves uncertainty for councils to resolve the extent of their legal authority to apply infrastructure contributions schemes and how schemes should be implemented in a fair and legally defensible way. As a result, Tasmania almost entirely lacks general charging schemes, the most efficient form of infrastructure contributions.

As Tasmania continues to grow, a modern infrastructure contributions framework is essential to allow infrastructure delivery to keep pace with development. Our review makes ten recommendations for developing a Tasmanian infrastructure contributions system:

1. **A proper system of infrastructure charging:** Tasmania develop a cohesive and complete infrastructure contributions framework that enables advanced-level infrastructure contributions (general charging) to be implemented.
2. **Prioritise simplicity:** the contributions system developed for Tasmania prioritise simplicity and usability for councils, developers and other stakeholders, in both implementation and administration.

3. **Principles-based:** a cohesive and complete infrastructure contributions framework be developed to achieve a fairly apportioned, beneficiary pays system that enables development, based on the following principles:
 - a. simple and consistent
 - b. certain and predictable
 - c. equitable and reasonable
 - d. transparent and accountable
 - e. efficient.
4. **Integrated into planning legislation:** the framework be integrated into the *Land Use Planning and Approvals Act 1993* and include guiding material to support implementation.
5. **Infrastructure planning:** infrastructure planning be integral to the general charging infrastructure contributions framework.
6. **Simple charging:** a consistent and simple charging methodology, supporting incremental accounting of infrastructure demand, be part of the legislative framework.
7. **Offsetting supported:** an offsets and refunds mechanism be embedded to facilitate land and works-in-kind contributions.
8. **Local pricing control:** councils be enabled to implement local pricing control over charging that applies to infrastructure networks managed by local government through discount policies.
9. **Appeal limitations for proper planning:** efficiency and incentivisation mechanisms for participation are embedded into the framework. In particular, by implementing specific limitations on appeals where a council has undertaken robust infrastructure planning, including public consultation, to support its charging.
10. **Infrastructure agreements:** infrastructure agreements be strengthened under the legislative framework as a flexible mechanism for customised infrastructure needs that fall outside the planned infrastructure delivery of general charging.

Until a well-defined infrastructure contributions framework is implemented locally, Tasmania will continue to experience pressures from needing to accommodate growth without the financial tools to properly support it. This includes pressures on rates for councils, pressures on infrastructure and service levels as growth consumes capacity, and constraints on development as infrastructure and service levels struggle to keep up with demand.

Tasmania has the opportunity to develop a coherent infrastructure contributions framework that can underpin councils' ability to support development and growth in their areas. Such a framework would allow councils to develop consistent approaches to infrastructure charging and support timely financing and delivery of infrastructure in their municipality.

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1 Introduction

Infrastructure is an essential and basic need of all communities and enables the development and use of land.

- Road and transport infrastructure provides safe and convenient access between land uses.
- Water supply infrastructure provides safe drinking water.
- Sewerage infrastructure removes wastewater and prevents disease.
- Stormwater infrastructure protects land users from routine inundation, pollution, and water-borne diseases.
- Open space infrastructure provides urban amenity that creates liveable towns and cities, supporting pleasant and healthy lifestyles.

Each of these are networks of infrastructure that extend across the places we live, work and play, supporting our modern living standards, and that we enjoy the benefits of every day. These are often taken for granted – their construction, maintenance and renewal – until they fail, or are missing.

However, funding the establishment and ongoing costs of this infrastructure as communities develop and grow is a major challenge for infrastructure providers, particularly local government. This discussion paper explores what a best practice infrastructure contributions framework that meets the needs of the development industry, local government and local communities looks like. It examines the use of infrastructure contributions in Tasmania and three other Australian states (New South Wales, Queensland, and Victoria) to inform this framework.

1.1 Network infrastructure and demand

Infrastructure can be broadly categorised into two categories: *connection infrastructure* that connects individual lots and land uses to the infrastructure network and *network infrastructure*, the network itself that services multiple lots and land uses.

Network infrastructure includes not only linear and reticulated infrastructure, such as roads and pipes, but also point infrastructure, such as the network of parks and open space across a municipality, or the network of community facilities, including halls and recreation centres, in a local government area. Point infrastructure functions collectively as a network across a municipality, delivering a desired level of service for the community.

During development, proponents will normally construct the connection infrastructure needed to connect their development to the rest of the infrastructure network. This may be the pipes needed to connect to water, sewerage or stormwater networks, the roads needed to access the

road network, or point infrastructure like parks, to ensure their development has access to necessary services and facilities. For greenfield development, this starts at the subdivision stage, where part of the land to be subdivided must be devoted to providing the connecting roads, water reticulation, stormwater drainage and treatment and parkland to service the lots that will be created by the subdivision. For infill development, connection has typically already been made, but continued growth will eventually require capacity upgrades to meet the intensified demands of new development.

At the end of development, particularly for subdivisions, much of the connecting and reticulated infrastructure internal to the development site constructed by the proponent will be handed over to councils and other infrastructure authorities to manage into the future. At this point, much of the connection infrastructure will become part of the infrastructure network.

However, in addition to needing connection infrastructure to join the lots to the infrastructure network, the newly created lots and land uses will also add to the demand on the infrastructure network as a whole and incrementally consume some of its spare capacity. This could mean that:

- A wider diameter water supply pipe or pump station is needed to keep the network functioning, or larger stormwater drainage and filtration to prevent downstream impacts.
- Increased traffic on the road network requires additional lanes on arterial roads, or more specific treatments such as upgraded intersections, merging or turning lanes, new or upgraded bus stops, more complete cycleways, or improved pedestrian safety measures.

Eventually, the substantial core components of the network infrastructure will require upgraded capacity to meet the increased development demand, including major additions to the network, such as new water treatment facilities, or new collector or arterial roads.

This incremental increase in demand on infrastructure networks created by development must be met to permit any further development, and this can create challenges for developers and infrastructure providers alike. Infrastructure providers, such as local governments, can sometimes be forced to hold back development until all the necessary infrastructure networks have capacity to support it.

1.2 Land development issues

As development reaches capacity limits of the infrastructure networks that service it, various network upgrades will be required to meet the growing demand. However, achieving fair and timely financing of these upgrades is a major challenge and can cause a range of undesirable outcomes.

These land development issues include:

1. **Delayed development** – Development is delayed, so cannot meet community needs when it is needed (e.g., housing).
2. **Unfair cost distribution** – Capacity upgrades are borne unfairly, resulting in one or a small number of developers having to bear the majority of costs and others getting the advantage without contributing (free-riding).
3. **Beneficiaries subsidised** – Private development value is created through unfair public subsidisation of development infrastructure.
4. **Substandard solutions** – Developments each deliver their own separate infrastructure solution, creating a disorganised and inefficient network. Land owners are obliged to maintain these infrastructure solutions, a burden which often leads to poor maintenance and poor quality service.
5. **Impacted infrastructure** – Development proceeds but causes network impacts and reduced service standard. This problem is closely related to the substandard solutions problem (4 by its impacts to the network and the beneficiaries subsidised problem (3 as the development is benefited by impacts to the network that must be funded by the council's general revenue (i.e. rates).

Figure 1. Land development issues from infrastructure capacity limits.

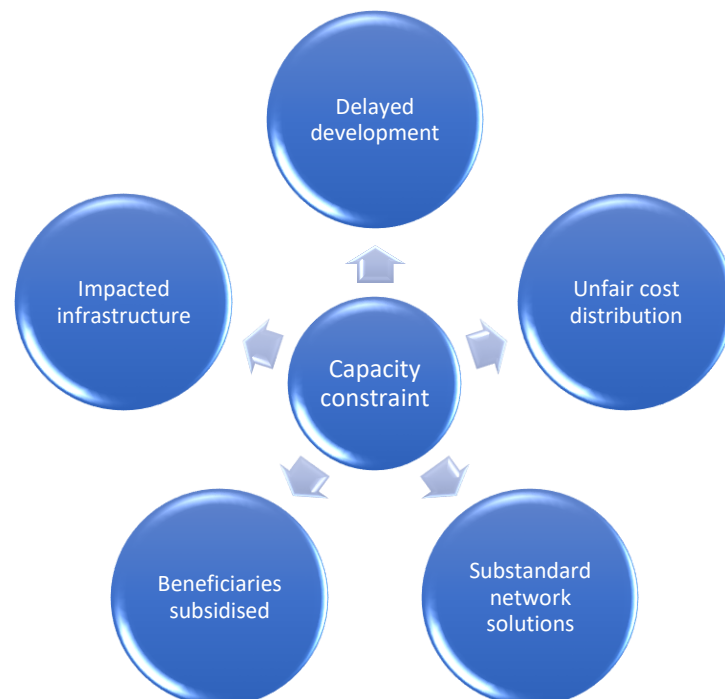


Table 1 below provides a range of case studies of what these problems look like in different parts of Tasmania.

Many of these problems are revealed in the so-called “first mover” problem. In infrastructure catchment areas needing capacity upgrades, the first landowner to develop will need to supply network infrastructure to activate their own development, which will ultimately benefit all other developers in the catchment area. Without a way to equitably distribute these costs in a certain and legally binding way, none of the landowners want to be the first to develop and incur the costs to establish this infrastructure.

The first mover problem is a very common development scenario, resulting from limits in network infrastructure and leading to all of these land development problems. It leads to:

- delayed development as everyone waits for a first mover to pay for the infrastructure that they will benefit from
- unfair cost distribution for the first mover if one landowner chooses to go first and pay for the infrastructure
- substandard and unoptimised infrastructure solutions are often created when each developer comes up with their own site-specific infrastructure solution to the problem in their own time
- subsidisation of private land and development businesses if an infrastructure provider steps in to fund with ratepayer revenue (for councils) or service charges (for enterprise infrastructure managers) revenue to resolve the delay
- impacted infrastructure where the development is allowed to proceed without network impacts being addressed.

Where the infrastructure provider steps in to attempt to facilitate an equitable solution and fund the upfront costs of infrastructure, it must have absolute confidence that it has legally binding mechanisms to recoup these costs from beneficiaries that develop at a later date.

Table 1: Cases of land development issues

Location	Land development issues	Case description
St Leonards, Launceston City Council	Delayed development, substandard solutions	<p>Council identified road, stormwater, and public open space infrastructure issues early and attempted to resolve them by equitably distributing the infrastructure establishment costs across the beneficiaries (landowners/developers).</p> <p>For stormwater, the objective was to ensure that all lots within the development would contribute equitably to infrastructure needed to service the entire development, rather than just to service individual lots. The scheme was challenged by a landowner at the bottom of the catchment with no current development intentions, making development of the site for future landowners prohibitively expensive.</p>

Location	Land development issues	Case description
Lenah Valley, City of Hobart	Impacted infrastructure and beneficiaries subsidised	Completion of the subdivision caused substantial early degradation of the road leading to the subdivision (road network infrastructure) from increased traffic volumes. The Council then had to divert substantial rate revenue for early renewal and upgrades to the road, resulting in ratepayers subsidising the external costs of the development.
Meander Valley Council	Unfair cost distribution	<p>A new residential estate within the municipality needed substantial road safety upgrades at intersections along a State road to cater for the increased pedestrian, bicycle and motor vehicle traffic the subdivision would generate.</p> <p>The council was able secure contributions for these upgrades from concurrent development. However, if the estate expands, then future development will benefit from the infrastructure upgrades provided by the first developer and, under a business-as-usual approach, may not need to make a similar and equitable contribution for those improvements.</p>
Brighton Council	Beneficiaries subsidised, unfair cost distribution, and substandard solutions	<p>Council noticed that many small developers meeting stormwater quality standards, particularly on unit blocks, were experiencing significant costs for engineering design of onsite treatment measures. These onsite measures would take up land space from the development and would require private residents or a body corporate to maintain the system for the life of the development, something they tend not to have the skills or resources to keep in sound condition.</p> <p>In many of the cases, there was an opportunity to implement a more effective measure offsite as part of Council's stormwater network infrastructure and relieve the development site and future owners from this burden. However, without a mechanism to effectively recoup these costs from the developments that it benefits, it is impossible to deliver these solutions without inequitably subsidising the beneficiary.</p>
Brighton Council	Delayed development or substandard solutions	<p>A large group of 30 or more neighbouring landowners and developers in the Brighton Council area, including State Government, need new sewerage infrastructure to increase network capacity in their local area and allow their sites to be developed. If they could concentrate their collective financial resources, they could construct a proper network solution to service all their properties and activate their developments. However, to do this, they need a clear mechanism to collect finances from all benefited parties equitably, and at different times, depending on which of them develops first or at a later stage.</p> <p>Various attempts to negotiate a solution between them and with TasWater have not found an effective and mutually agreeable solution that suits the timing and cost expectations of all. The group has even approached Council to broker or sponsor a solution, but Council does not manage the water supply and sewerage networks, so the same problem remains: how will costs be recouped equitably after the substantial upfront investment? As a result, the most likely outcome will be for each proponent to construct their own site solution, leading to overall greater costs and to the detriment of an optimised and cohesive network solution.</p>

2 Financing growth with infrastructure contributions

To combat these development problems and activate development, many councils and other infrastructure providers across Australia, and internationally, use mechanisms to facilitate developers contributing to the infrastructure solutions that they rely upon. These are variously referred to as headworks charges, infrastructure contributions or charges, development contributions or developer charges.

Infrastructure contributions are a class of user-charging mechanism of levying fees for the cost of establishing infrastructure upon the beneficiaries of that infrastructure, being development proponents. As a charge linked to development and its supporting infrastructure networks, infrastructure contributions are typically applied through development regulation at the development approval stage, or through infrastructure management regulation at the connection stage. The contributions are then brought together by infrastructure providers to deliver the network infrastructure to support development.

By supporting developers to contribute to infrastructure networks, contributions schemes boost investment in infrastructure, allowing infrastructure delivery to more closely keep pace with the rate of development.

“An effective infrastructure contributions system is key to delivering vital public infrastructure, unlocking new housing supply, supporting commercial development, and boosting investment.”

– NSW Productivity Commission¹

Because of their benefits for development, clear supporting frameworks for implementing infrastructure contributions have been integrated into state planning legislation throughout all Australian states. Infrastructure providers, particularly councils, can use these frameworks in applying their own contributions schemes to deliver infrastructure for development.

Infrastructure contribution schemes are usually applied as one-off charges timed with development. This timing means they are overwhelmingly used to fund establishment and upgrade costs, rather than operation and maintenance costs. Contributions are used to fund a wide array of infrastructure classes that are managed by local government including:

- transport network infrastructure, including state and local roads, footpaths, cycleways, bus stops and street landscaping

¹ NSW Productivity Commission., 2020, Review of Infrastructure Contributions in New South Wales – Issues Paper p. 4

- stormwater drainage and treatment
- water supply conveyance, reticulation, and treatment
- wastewater and sewerage conveyance and treatment
- electricity networks and public lighting
- public open space networks, including parks and public recreation facilities
- community facilities, including community halls, public recreation centres and public libraries.

2.1 Comparing financing sources

Infrastructure contributions differ from rates in that they are one-off charges levied on development expansion or intensification, so relate specifically to land use changes. They are usually charged on some measure of changed impact to, or demand on, the infrastructure network. Less commonly they can be calculated on land uplift value, or development construction value. Contributions are collected to fund the delivery of infrastructure necessary for development, related to desired service levels, or an essential minimum standard of infrastructure service. Because they are one-off charges and not ongoing, they are overwhelmingly for the initial establishment of new or upgraded infrastructure and not typically for ongoing infrastructure operation or maintenance which is typically funded from periodic revenue sources, such as rates.

Rates, on the other hand, are charged on land value measures on an ongoing basis. Being ongoing general revenue they are ideally allocated towards the operation, maintenance and renewal stages of the asset lifecycle and other council services.

Value capture, or value enabling, mechanisms appear similar to infrastructure contributions in typically being one-off charges for infrastructure establishment (new and upgrades). However, where infrastructure contributions are typically for funding a basic or essential level of infrastructure, value capture is typically for major and very significant public works, far above a typical minimum standard. Value capture works best for major works that will result in significant increase in development opportunity, which creates substantial uplifted land value, within a defined area. Value capture is then charged, not on impact or demand on infrastructure, but on the land value increase caused by the major infrastructure. In that way, the major infrastructure enables the land value increase that enables the infrastructure in the first place. Value capture is most commonly applied for major public transport infrastructure works and associated transport-oriented developments, where a well-planned major transport station can provide a substantial uplift to surrounding land values. This uplift can be measured and then be charged and directed to facilitate the infrastructure that caused the development opportunity uplift and raised land values.

The typical attributes of these funding mechanisms are compared in **Table 2**.

Table 2. Rates, Infrastructure Contributions, and Value Capture mechanisms compared (typical attributes).

	Charged on	Timing	Asset Stage	Funds Enable
Rates	Land value	Ongoing	Operation, maintenance, renewal	General ongoing functions
Infrastructure Contributions	Proposal impact / demand	Once off	Establishment (new and upgrades)	Essential infrastructure for development
Value Capture	Land value uplift	Once off	Establishment (new and upgrades)	Major public works

2.2 Approaches to charging

We have categorised infrastructure financing and contributions schemes into four approaches, indicating levels of maturity.

No contributions (Level 0) – fully subsidised:

- Development does not contribute financially to network infrastructure.
- Development is fully subsidised with network infrastructure provision by infrastructure authorities financed via general revenue (rates, taxation, ongoing service consumption charges) or grants.
- Without a financial mechanism linked to development, infrastructure provision may be slow and limiting for development.
- For local government infrastructure in Tasmania this is the default approach infrastructure financing method.

Basic contributions (Level 1) – via agreement:

- Basic contributions occur as ad hoc, as needed, agreements negotiated between the infrastructure authority and the development proponent/landowner. When network capacity upgrades are needed for development, agreements are negotiated with development proponents that facilitate their contribution to the infrastructure establishment costs.
- Where network infrastructure has remaining capacity, development consumes capacity without contributing to its demand impact and future upgrades. Most general network upgrades are usually funded with rates.
- Agreements are a flexible mechanism that can be tailored to circumstances.
- Agreements can be challenging, time consuming and costly to negotiate. Significant time is needed by technical experts to scope the infrastructure cost and then attribute these costs fairly. Nobody wants to pay too much, and it can be difficult for a developer

to accept a cost as fair if they have little to compare to, or worse, if they are aware of other developments where no charge was levied. New agreements must be negotiated for each new development area or site that needs network infrastructure capacity upgrades. Agreements are typically impossible for development proponents to predict.

- Agreements tend to be a reactive response to development need. The infrastructure needs of development often may not be known until a development application is lodged to trigger investigation into the works required.
- Outside of full subsidisation, agreements may be the most common method of achieving contributions for development infrastructure in Tasmania. However, this is difficult to measure without an in-depth study of these arrangements across all councils.

Intermediate contributions (Level 2) – via financial offsets to standards:

- Desired service level outcomes to be achieved onsite are set through development regulation (e.g., in planning scheme or infrastructure connection regulation). They can alternatively be achieved offsite by contributing to network infrastructure. For example, stormwater quality offset contributions; or cash in lieu of carparking arrangements.
- These are much less flexible than basic (agreement) contributions, only applying to specific circumstances. However, they are generally applied when these circumstances are met, regardless of whether the network has spare capacity or not.
- The majority of Tasmanian Council contributions policies fall into this category (see section 3.2 and **Appendix A**).
- Only development not meeting the standard is required to contribute, otherwise development consumes capacity without contributing to its demand impact on network infrastructure.
- These are sometimes referred to as voluntary contributions, as proponents can choose to either meet the development standard or contribute to a network solution.
- The opt-in nature of standard offsets makes revenue less predictable and reliable, which can inhibit reliable infrastructure planning and delivery. Indeed, criticisms of schemes, such as cash in lieu of carparking, is often that revenue doesn't result in the provision of the network infrastructure solution (e.g. a car parking facility).
- Alternatively where a network solution is delivered, such as a catchment stormwater treatment facility, but not all proponents choose to contribute, instead meeting the standard on-site, leading to underfunded infrastructure. Compounding this, meeting an optional, offsettable standard onsite can consume some land space, leading to underdevelopment.

Advanced contributions (Level 3) – general charges via infrastructure plans:

- These occur as general demand/user charges based on infrastructure planning. Infrastructure plans are usually a requisite and necessary to demonstrate development demands, infrastructure provisions and to support cost distribution methodology.
- All infrastructure identified in the infrastructure plan are financed by infrastructure contributions, with other sources of revenue such as rates and grants only used to supplement this revenue stream.
 - Any class of public infrastructure can be planned and charged for.
 - Classes of infrastructure that are typically supported by general charges include transport, stormwater, water supply, sewerage, public parks, and community facilities.
 - Classes of infrastructure and components are usually selected based on being essential for achieving a desired level of service for the community.
- All forms of development that impose additional demand and require approval from the infrastructure authority are subject to charges. Discounts and offsets can be made available (temporarily or indefinitely) to incentivise particular needed land use types (e.g., affordable housing) or particular onsite measures (e.g. improved stormwater management), or to support particular charitable uses.
- These contributions schemes tend to apply to all development that places an increased demand on network infrastructure and requires development approval. The charges apply regardless of whether there is spare capacity in the network.
- General charging is more proactive for two reasons:
 - It charges for a development's demand or impact on network infrastructure ahead of capacity limits being reached; and
 - Charging ahead of reaching capacity limits enables more sophisticated infrastructure planning and delivery, so infrastructure requirements can be better understood well before a development application is received.
- The infrastructure contributions systems of NSW, Queensland, and Victoria are all examples of advanced systems. Some Tasmanian councils have moved towards general charging policies (for example, Clarence City Council's Headworks Levy Policy), but these are not yet widespread.

These approaches are not mutually exclusive, all can potentially operate simultaneously and complement each other, provided legislation supports their use. Each mechanism needs to delineate the infrastructure it is funding, which prevents double charging. For example, under infrastructure contributions frameworks dominated by general charging (advanced) schemes, agreements (basic) contributions continue to be a flexible alternative mechanism for cases requiring a custom solution and operate alongside. Agreements can be used in addition to general charges when a development requires specific infrastructure solutions that were not

anticipated in the infrastructure plan supporting general charges, or for specific uses with extreme impacts on the network, such as the heavy vehicle usage of a quarry. Wherever infrastructure contributions schemes cannot completely cover the cost of infrastructure establishment, some amount of general revenue subsidisation exists to cover the gap.

General charging schemes, particularly where it includes offsets and agreements, are considered the most advanced contributions mechanism. It offers better ability for all impacting development to contribute to network solutions, improved certainty for developers in both their infrastructure costs and infrastructure delivery, better revenue reliability, leading to better infrastructure planning and delivery reliability.

Table 3 provides a comparative summary of these approaches to infrastructure contributions.

Table 3. Comparison of approaches to infrastructure contributions (typical attributes)

Financing model	Applies to	Trigger	Pros	Cons
No contributions (fully subsidised)	None	None	<ul style="list-style-type: none"> No setup 	<ul style="list-style-type: none"> Strong rates pressure Slow response to development
Basic (agreements)	Specific areas	Network capacity limit	<ul style="list-style-type: none"> Customisable, flexible solution Ideal for unusual developments with significant infrastructure impacts or requirements 	<ul style="list-style-type: none"> Onerous, subject to negotiation and agreement, new set up each scenario Misses many developments
Intermediate (offsets to standards)	Anywhere	DA, where standard not met	<ul style="list-style-type: none"> Promotes achieving standard Charge linked to impact linked to solution 	<ul style="list-style-type: none"> Partial and supplementary Only partially predictable and reliable Partially supports planning
Advanced (general charging)	Everywhere	DA, based on network impact/demand	<ul style="list-style-type: none"> Charge linked to impact linked to solution Supports infrastructure planning Reliable funding source 	<ul style="list-style-type: none"> Infrastructure planning setup can be intensive Calculation methods can be unnecessarily complex for end users

3 Tasmanian infrastructure financing

Tasmania's legislative framework and how it is being used is examined below to provide a basis to understand other models in NSW, Queensland and Victoria.

3.1 Tasmania's legislative framework

Tasmanian councils have several legislative mechanisms to levy charges across different Acts.

3.1.1 *Local Government (Building and Miscellaneous Provisions) Act 1993*

The most explicit legislative mechanism for infrastructure charging is section 117 of the *Local Government (Building and Miscellaneous Provisions) Act 1993*. This allows councils to accept a payment in lieu of a developer providing a required amount of public open space for a subdivision. This mechanism is specific, limited only to public open space infrastructure and not available for other infrastructure networks that councils manage, such as roads, stormwater, and community facilities. It strictly limits the charging amounts on subdivisions for public open space. Because it only applies to subdivisions, this provision misses land use changes that impose a higher demand on public open space that do not involve subdivision, such as for multiple dwellings.

3.1.2 *Urban Drainage Act 2013*

Councils are empowered under section 19(3) of the *Urban Drainage Act 2013* to “set an appropriate fee for the cost of providing a stormwater connection point to a property”. The Act does not provide guidance as to what is an appropriate fee, whether this can include the development's impact on the stormwater infrastructure network or if it must apply exclusively to construction of the stormwater reticulation to connection point only, ignoring broader network, or trunk costs. Nevertheless, it appears reasonable that broader stormwater network infrastructure costs could be collected under this power where they are needed to support the connection.

3.1.3 *Local Government Act 1993*

Councils have reasonably broad authority under the *Local Government Act 1993* to set various rates, fees and charges. Section 205 allows councils to impose charges for “the use of any property or facility owned, controlled, managed or maintained by the council”, as well as “services supplied... [and] carrying out work at a person's request”. There is no guidance regarding whether it can be relied upon to implement an infrastructure charging scheme or how a council should go about such a scheme, creating uncertainty.

3.1.4 *Land Use Planning and Approvals Act 1993*

Infrastructure charges can be levied as conditions of planning permits under section 51(3A) and (4) of the *Land Use Planning and Approvals Act 1993* (LUPAA). This can involve agreements under Part 5 of the LUPAA, which specifically provides for payments or contributions for infrastructure (section 73A). Again, there is no guidance, through regulation or otherwise, regarding how to implement an infrastructure charging scheme under the LUPAA. This forces councils to navigate this open-ended territory and establish their own defensible basis if they want to implement an infrastructure contributions scheme.

Applying infrastructure charges as conditions of approval is subject to the principles of permit conditions set out by case law². These are a legal test of conditions, typically expressed as:

1. **Planning purpose:** the condition (or charge) must be for a planning purpose and not for an ulterior purpose, usually demonstrated by a head of power or requirement in legislation or planning instrument.
2. **Relevant:** the condition (or charge) must reasonably relate to the approved development and not simply address a general pre-existing need.
3. **Reasonable:** the condition (or charge) must be certain and reasonable.

Therefore, to pass this legal test, charges imposed as conditions should not be a one-size fits all approach and should instead scale proportionately with the nature, scale and intensity of the proposed development. Exactly how this should work is open to interpretation and will vary from lawyers, to planners, to engineers and according to approach and methodology used. Unfortunately, this encourages, and has led to, a variable response from councils in implementing charging schemes. Variable responses lead to complexity and confusion for councils and developers, a sense of unfairness as charging amounts and calculation methods vary between councils and create cause to challenge these variable costs through appeal.

3.1.5 *Legislation and case law*

This scan of Tasmania's legislation shows that councils currently do have powers to levy charges for infrastructure upon development. However, these powers are general in nature and lack of a cohesive support framework to facilitate consistent, effective implementation and progress toward mature contributions schemes. Given a head of power to levy contributions but no supporting framework, it is natural for a variety of inconsistent approaches to be applied, as each council takes its own initiative and develops its own charging policy and scheme. A formal wholesale review of infrastructure charging systems in Tasmania has never been undertaken, as has been done for other jurisdictions.

² See *Western Australian Planning Commission v Temwood Holdings Pty Ltd* [2004] HCA 63: <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2004/63.html>

A preliminary scan of Tasmanian planning case law³ provides evidence that there is a history of developers challenging headworks charges and infrastructure contributions applied as conditions on planning approvals by councils. In these cases, it appears that the Resource Management and Planning Appeal Tribunal of Tasmania (RMPAT) (now incorporated under TasCAT) typically dismisses challenges to infrastructure contributions and upholds councils applying these conditions.

3.2 Council contributions policies

Tasmania's councils have found their own solutions to financing the infrastructure needed to support development, with the power to levy contributions but without a cohesive supporting framework embedded in planning legislation. Naturally, this has created a variety of approaches.

In our review of Tasmanian council policies related to contributions for infrastructure provision, we found that 20 of Tasmania's 29 councils had some sort of policy relating to infrastructure contributions. These policies overwhelmingly dealt with public open space only. This is undoubtedly because this is the only type of infrastructure given clear charging authority and guidance in Tasmania's legislation (section 117 of the *Local Government (Building and Miscellaneous Provisions) Act 1993*). The policies are primarily about the contribution of land for infrastructure works internal to the development, with financial contributions for network infrastructure a secondary option where land contribution amounts are not met. Where financial contributions are involved, these work as financial offsets for proposals not meeting the standard (described as intermediate-level contributions schemes in section 2.2).

The next most common type of contributions policy was cash-in-lieu of car parking. These policies are intermediate-level contributions schemes, being offsets to standards. The types of policies tend to be only moderately effective because they are usually not backed by clearly defined infrastructure plans to generate infrastructure provision on the ground. Instead, their primary practical effect is to incentivise development providing the level of car parking required by standards.

A small number of councils operate contributions policies for stormwater infrastructure. These policies are mostly intermediate-level contributions schemes, being offsets to standards.

Only a few councils have infrastructure contributions policies that are similar to the advanced-level, general charging, achieved in other states. Perhaps the best example of this is Clarence City Council's Headworks Levy Policy. This policy stands out as, similar to other states, it applies

³ See: <http://www.austlii.edu.au/cgi-bin/viewdb/au/cases/tas/TASRMPAT/>

to all the essential forms of local government infrastructure, including public open space, roads, water and sewerage (legacy, now TasWater responsibility), stormwater and car parking, irrespective of spare capacity. However, the policy is not applied in every instance of development intensification, meaning some capacity consumption occurs without contributing to network infrastructure.

A dedicated piece of work would be needed to accurately quantify the effectiveness of Tasmanian councils' policies in financing and supporting timely infrastructure delivery for development. However, it is clear that the current mechanisms and policies are unable to facilitate all expanding and intensifying developments to contribute to the network infrastructure capacity that they incrementally consume.

A list of Tasmanian council infrastructure contributions policies can be found at **Appendix A**.

3.3 Findings

However, from the review of council policies above, we can make the following observations:

- 9 councils appear to have no infrastructure contributions policy.
 - These councils likely still collect contributions via agreements (basic level) in specific circumstances where needed.
- 20 councils have some form of policy:
 - Policies are overwhelmingly dominated by intermediate-level contributions approaches – offsets to standards.
 - Most policies are largely limited to public open space, less often car parking cash in lieu, and to a far lesser extent, stormwater.
 - Large financing gaps remain with major infrastructure classes not covered, particularly roads and stormwater.
 - Only one council (Clarence City) had a policy applying to all classes of infrastructure.
- Agreements (basic) are likely the dominant way for councils to achieve infrastructure outcomes on the ground to support planned development.
 - Agreement arrangements do not tend to feature explicitly in council policies as they require a customised approach and a formal policy is often not necessary to achieve an outcome.
 - However, as agreements tend to be dependent on identified network capacity issues with direct links to the development in question, agreements will not pick up everything so a substantial amount of development that increases demand on infrastructure networks go under the radar without generally applied mechanisms.

- Subsidisation from general revenue sources such as rates are likely to be substantial to plug the gap created by development demand that is not fulfilled by the contributions mechanisms we have today.

Discussions with councils confirm these findings that a significant proportion of infrastructure that supports development is financed by general revenue (Level 0 – no contributions), with limited revenue from infrastructure agreements (Level 1 – basic contributions) and offsets to standards (Level 2 – intermediate contributions). Indeed, it appears that general revenue sources fund much of the network infrastructure establishment costs incurred by local government to support the development and growth of communities in Tasmania.

In NSW, Queensland and Victoria, where general charging systems have been widely implemented, councils are far less reliant on general revenue sources to support development infrastructure, substantially reducing pressure on rates and undermining of financial sustainability.

3.4 TasWater

TasWater has developed new approach to developer charging as part of its fourth Price and Service Plan (PSP4). The review comes after stakeholder and community feedback cited the need for further investment into TasWater's network, particularly in higher growth areas of Tasmania where sewerage systems are at capacity. While previously some developers have paid the full cost of small capacity upgrades, TasWater have typically absorbed the cost of upgrading larger capacity systems. As a result, existing customers are subsidising new development.

Without a funding stream to support growth, and with current pricing caps in place, this may result in a lack of funds to invest in the infrastructure needs for Tasmania. As a result, growth-related upgrades must compete for priority with other infrastructure investments, such as renewal of existing infrastructure.

To resolve this, TasWater commissioned an investigation into their developer charging approach and potential options. After significant stakeholder consultation and options development work, TasWater submitted their proposed new Developer Charges Policy with their PSP4 to the Tasmanian Economic Regulator. The new Policy would consist of two charges:

1. **Standard charge:** this will be a consistent, statewide, standard charge applied to all developments, calculated incrementally, and used to fund infrastructure in TasWater's Growth and Capacity Plans. This is an example of level 3 – advanced contributions, comprised of a general charging mechanism supporting infrastructure plans.
2. **Capacity augmentation charge (previously negotiated charge):** this will be a customised charge for development requiring unplanned infrastructure network upgrades. As a funding solution of tailored infrastructure solutions for development

beyond what was planned for, this charge resembles level 1 – basic contributions, via agreements.

The combination of the two charges provides certainty, consistency and, where needed, flexibility. This charging policy will improve cost recovery, help to support future growth and resolve development issues, such as the first mover problem. TasWater's proposed Developer Charges Policy is a substantial step forward for the financing and delivery of water and sewerage infrastructure in Tasmania.

4 Interstate models for infrastructure contributions

To determine how infrastructure contributions could be applied in Tasmania, we reviewed how they are implemented in NSW, Queensland and Victoria. These jurisdictions were selected because they have experienced major urban growth and development over a long period, so have a significant history of working on their own infrastructure contributions systems and frameworks. For each of these, this section discusses the effectiveness, principles and noteworthy components and mechanisms. As detailed in section 2.2 we have classified these systems as 'Advanced contributions (Level 3) – general charges via infrastructure plans'.

Our review considered indicators of relative success of each state's contributions framework, as evidenced by their longevity, review status and any known advocacy for change.

A detailed exploration of these state's infrastructure charging frameworks can be found at **Appendix B**.

4.1 How successful have other states been?

The NSW, Queensland and Victorian legislative frameworks all adopt the most advanced level of infrastructure contributions: generalised charging based on infrastructure planning. Despite this high level of maturity in all systems, some state systems are more settled than others and all systems contend with variable levels of dissatisfaction. This is a result of any system having to address a range of complex issues and trade-offs while catering for the varying needs of a range of stakeholders.

To build a picture of the relative success and performance of each state's charging framework, we used qualitative indicators, including:

1. Level of advocacy for change from local government and development industry. Greater advocacy for more wholesale change shows greater dissatisfaction with a system's performance. Similarly, advocacy for more granular, specific points of change may suggest relative satisfaction in, or success of, the framework generally.

2. Level and nature of independent audit and performance reporting, such as from state audit offices or commissions. Independent bodies such as audit offices and productivity commissions can uncover flaws and deficiencies in systems, triggering review.
3. Legislative review status, including time since last review, degree of completion or implementation of last review.
 - 3.1. A comprehensive review of an infrastructure contributions framework is a strong indicator that the system preceding review was not fit for purpose.
 - 3.2. Newer frameworks may be relatively untested.
 - 3.3. A longer time since last comprehensive review shows the system has been tested and may suggest a more successful framework, particularly if advocacy has been low and independent reporting has not revealed problems. Caution must be applied, as there may be limited legislative maintenance, which is why all of the indicators must be considered together.

4.1.1 New South Wales

The NSW infrastructure contributions framework is the least settled, currently undergoing a major review by the NSW Productivity Commission with changes imminent through the NSW Parliament. This recent review status may indicate the greatest level of dissatisfaction between the three states reviewed. This is useful as the lessons from the review can be extracted from summary reports, noting that any proposed changes have not yet been tested in operation for effectiveness. The extensive list of problems reported in the review of the NSW system are dominated by themes of excessive complexity for councils and developers to use and navigate, as well as the onerousness and inefficiency of setting up and administering charging schemes.

At the time of writing, NSW infrastructure contributions reform continues to be a contentious issue and the NSW Government's current package of proposed changes⁴ are the subject of vigorous advocacy efforts in resistance from local government⁵.

4.1.2 Victoria

Victoria's last major review of their contributions framework was in 2015, but problems remain. A recent review by the Victorian Auditor-General's Office in 2020⁶ was highly critical of the Victorian situation and determined a range of ongoing and unresolved issues. Many of these problems were substantial or systemic and some a result of incomplete implementation of the

⁴ See: <https://www.planning.nsw.gov.au/contributions-reform>

⁵ See: https://www.lgnsw.org.au/Public/Policy/Campaigns-and-Initiatives/Infrastructure-Contributions-Reform/Public/Advocacy/Infrastructure_Contributions_Reform.aspx

⁶ See: <https://www.audit.vic.gov.au/report/managing-development-contributions>

2015 review across all local government areas. These identified issues echo those found in NSW, particularly the unnecessary complexity and cost to setup and administer charging schemes, as well as complexity for councils and developers to use and navigate.

4.1.3 Queensland

The Queensland charging framework is the most settled out of all the three states, having undergone their last major review a decade ago in 2011 by their Infrastructure Charges Taskforce. That review completely overhauled and unified local government infrastructure charging in Queensland. Since that time the system has had minor improvements in 2014 and 2017 but the fundamental system has remained largely the same, with the later changes likely undetectable for most end-users. The Local Government Association of Queensland is currently advocating for limited, specific improvements, including reducing the funding gap that exists under their capped charging regime and streamlining their infrastructure planning process⁷. We are unaware of industry advocacy against the Queensland system. This suggests a certain level of satisfaction in the current framework given that the items sought are narrow in scope, improvements to the existing system rather than a call for systemic change. The Queensland system appears to be relatively straightforward for councils and developers to use. This may go some way to explaining the system's longevity and stability of the system, relative to NSW and Victoria.

4.2 Lessons

The status of reviews and advocacy around these systems gives some indication of what works well and may be worth striving for, and what does not and should be avoided. Complexity and difficulty to use, are issues raised both by the NSW Productivity Commission and the Victorian Auditor-General's Office, so should clearly be avoided and effort given to achieving simplicity and usability. Conscious effort has been made in Queensland to simplify and harmonise its contributions regime, particularly at the public interface when it comes to proponents calculating and understanding their costs.

Overly complex and unnecessarily onerous infrastructure planning processes appear to be issues common to all three states (to varying degrees). A streamlined infrastructure plan development and review process should be the objective, where each mandated step delivers value worth its effort. A cumbersome, onerous and unclear system will only set the stage for iterations of reviews and dissatisfied councils and developers that other states have experienced.

⁷ See LGAQ Advocacy Action Plan 2021, items 105 & 106: <https://www.lgaq.asn.au/downloads/file/383/advocacy-action-plan-2021>

It is worth noting that, the historical reviews in these states over the last decade have identified and sought to resolve issues and improve infrastructure charging systems, yet none sought to remove infrastructure contributions as a financing tool or to change their approach to charging to a lower maturity tier (discussed at section 2.2). The value of advanced systems of contributions is clear, the goal is then how to implement them with most effectiveness.

From this review, the following recommendations can be made for Tasmania:

Recommendation 1: that, learning from other states, Tasmania should develop a cohesive and complete infrastructure contributions framework that enables advanced-level infrastructure contributions to be implemented, being general charging

Recommendation 2: that the infrastructure contributions system developed for Tasmania prioritise simplicity and usability for councils, developers and other stakeholders, in both implementation and administration

5 A model for Tasmania

Further interrogation of these interstate infrastructure charging frameworks, including their legislation, supporting material, and independent reviews, provides helpful examples of how a model of charging could be developed in Tasmania. This includes not only specific attributes and mechanisms, but also the foundational principles for designing an effective system.

5.1 Principles

Reviewing the contributions frameworks of these states and their various reviews reveals that they share similar general principles of financing infrastructure provision. These lead to more specific principles for designing an effective infrastructure charging framework.

5.1.1 General principles – infrastructure financing

The principles of financing infrastructure provision are best expressed as:

1. **Beneficiary/impactor pays:** those benefited by or impacting the need for infrastructure provision should pay for its establishment and subsidisation of infrastructure beneficiaries from general revenue sources be minimised.
2. **Fair apportionment:** the infrastructure charging costs applied should reflect both fair apportionment of network infrastructure establishment costs and a development's impact or demand on the infrastructure network.

3. **Enable planned development:** enable planned-for development and planning scheme objectives with best practice user pays infrastructure financing.

5.1.2 Specific principles – designing a charging framework

The specific principles for designing an effective infrastructure contributions framework flow from the general financing principles. These are expressed a little differently between the NSW, Queensland and Victorian systems. This is unsurprising given their varying development pathways, review stages and relative successes. Nevertheless, there are some clear lessons and similarities between them that allow us to infer the practical principles for infrastructure contributions schemes and the frameworks that enable them:

1. **Simple and consistent:** infrastructure contributions should be simple to determine with consistent calculation methodologies and application across infrastructure authorities (or at least local government) to support clarity and usability for all stakeholders.
2. **Certain and predictable:** infrastructure contributions need to provide clear and predictable costs and timing to development proponents to lower risk and improve conditions for development project delivery.
3. **Equitable and reasonable:** infrastructure contribution amounts should be proportionate to the nature, scale and intensity of additional demand generated by the development proposed. Contributions should be equitably apportioned between development proponents so as to not unfairly advantage any or disincentivise first movers.
4. **Transparent and accountable:** infrastructure contributions should be seen to achieve action in activating the infrastructure delivery that facilitates development and be traceable and accountable when this is not apparent.
5. **Efficient:** infrastructure contributions schemes should be efficient, should not be unnecessarily burdensome to develop and to administer, delivering more output value than their cost to implement and maintain and should address and resolve disputes and contestability proactively so as to stimulate action in planned development.

Recommendation 3: that a cohesive and mature infrastructure contributions framework be developed to achieve a fairly apportioned, beneficiary pays system that enables development, based on the following principles:

1. Simple and consistent.
2. Certain and predictable.
3. Equitable and reasonable.
4. Transparent and accountable.
5. Efficient.

5.2 Key attributes and mechanisms

Delving deeper into the more noteworthy components and mechanisms of contributions frameworks from NSW, Queensland and Victoria reveals what might be developed for Tasmania.

5.2.1 Embedded in planning legislation, with supporting framework

NSW, Queensland and Victoria all embed their infrastructure charging framework within their planning legislation. This helps to ensure that infrastructure planning and land use planning are considered together and improve levels of integration and alignment.

These states do not take a set-and-forget approach to contributions legislation. Instead, their legislation is supported by a framework of subordinate legislation and guiding material, including regulations, guides, templates and fact sheets. The State Government can have a role in reviewing and approving key components produced by local government, such as infrastructure plans.

Recommendation 4: that the infrastructure contributions framework be integrated into the *Land Use Planning and Approvals Act 1993*, including guiding material to support implementation

5.2.2 Effective infrastructure planning

Local government infrastructure planning forms a fundamental component of these contributions schemes. Infrastructure planning is used to evaluate and justify the costs that will be applied to development, which necessitates a level of rigour in the plan development process. It is also the subject of dissatisfaction in all three states (to varying degrees) for being unnecessarily complex or onerous. This suggests progress could be made to streamline the development of these key documents.

As an example, developing a local government infrastructure plan (LGIP) in Queensland requires the following steps:

1. Plan preparation by the council, which requires:
 - 1.1. making projections for development and its infrastructure demand
 - 1.2. Setting the desired standards of service for the infrastructure to be delivered
 - 1.3. determining the establishment cost of the infrastructure to be delivered.
2. Plan review, approval and adoption, including:
 - 2.1. a compliance check (the first of two) by an appointed independent reviewer

- 2.2. State Government review
- 2.3. public consultation
- 2.4. a second compliance check by the independent reviewer
- 2.5. Ministerial approval
- 2.6. adoption by the council.

Queensland is notable in requiring public consultation for infrastructure plans, which is related to its special limitations on appeals regarding infrastructure charges, discussed at section 5.2.6 below.

NSW is notable for allowing a reduced requirements for infrastructure plan review where charges will be under a capped amount, or rather, increasing the review requirements if a local government proposes to exceed a capped amount for charges. Queensland does not allow councils to exceed their maximum charge rates.

The systems of all three states suffer from varying degrees of criticism of complexity and onerous infrastructure planning and setup requirements.

Nevertheless, infrastructure planning adds transparency and certainty to a general charging infrastructure contributions scheme by communicating what infrastructure will be funded to support land use planning goals. Infrastructure planning also helps to curtail unintended cost from unplanned infrastructure needs. It does this by clearly delineating and efficiently describing what infrastructure will be delivered within the revenue provided by general charges, and, by omission, what other infrastructure is unplanned and must be funded by other sources.

Recommendation 5: that infrastructure planning be integral to the general charging infrastructure contributions framework

5.2.3 Simple, broad-based charging calculation and methodology

The Queensland system is notable for being very clear, simple, consistent, and predictable for proponents and for this reason is worth considering in more detail. The maximum charge rates that councils can impose are set under Schedule 16 of the Queensland *Planning Regulation 2017*.

All the maximum charge rates are applied according to land use, and all land uses have a mandatory definition used in planning schemes across the state. If a proponent knows the land use they intend to lodge a development application for, then they can easily look up the maximum charge rates in the Regulation, knowing that any council's charge rates cannot exceed those set in the Regulation. A proponent can similarly look up the charge rates that their council has adopted (in an 'adopted charges resolution').

The charge rates scale according to the intensity of the proposed use and use the following methodology:

- For residential or accommodation uses:
 - Fixed charge per dwelling or accommodation unit:
 - Lower charge for two or less bedrooms.
 - Higher charge for three bedrooms or more.
- For any other commercial, industrial, community or other use:
 - A charge per square metre of impervious area for stormwater infrastructure.
 - A charge per square metre of gross floor area for all other infrastructure.

So to calculate their charges, a proponent needs to know:

- The proposed land use, as consistently defined in planning schemes across the state
- Either:
 - For residential or accommodation uses, the number of two or less and three or more dwelling or accommodation units they propose.
 - For any other use:
 - Their proposed impervious area.
 - Their proposed gross floor area.
- The adopted charge rate of their council.

The charge rate is a fixed fee per unit for dwelling units or accommodation units, with a lower cost for two or less bedrooms and higher cost for three or more bedrooms.

All types of other uses, including commercial, industrial, community and other uses have a charge based on two rates:

- A charge rate that scales with the use, calculated on gross floor area.
- A charge rate that scales with the stormwater impacts, calculated on impervious area.

Charges are only applied for extra demand generated on the network infrastructure. If a development proposal is to change a use from a food and drink outlet to a shop without increasing floor area or impervious area, no charges will be attracted. If a proposal is to expand a 1200 m² low impact industry into a 2000 m² warehouse, the proponent will only be charged for the additional 800 m² expansion.

This simple calculation methodology is broad-based and incremental. It allows for incremental development intensification/expansion to still contribute to the networks it will connect to or be part of. In other words, even adding one more residential lot, or one more apartment

dwelling, or an extension to a growing commercial use can still contribute to network infrastructure upgrades in a proportionate and incremental way. Precision in the calculation, as well as charging broadly and incrementally, allows charging to be fair between all infrastructure beneficiaries, while still being easy to calculate and providing predictable costs for proponents.

Incremental accounting of increasing demand is important for resolving the first mover problem and its effects. This is because it maximises fair distribution of network infrastructure establishment costs with broad and general charging and provides smoother revenue flow, improving infrastructure investment to support delivery.

Recommendation 6: that a consistent and simple charging methodology, supporting incremental accounting of infrastructure demand, be part of the legislative framework

5.2.4 Offsets and refunds

NSW, Queensland and Victoria, all allow for infrastructure charging costs to be offset or refunded for agreed works-in-kind and land contributions. Valuing these works and land contributions can be contestable, so defining some recognised methods for evidencing offset and refund amounts is important for reducing disputes and improving efficiency.

Recommendation 7: that an offsets and refunds mechanism be embedded to facilitate land and works-in-kind contributions

5.2.5 Discounts and local control

Queensland councils are afforded the ability to apply discounts to infrastructure charges, implemented either via a formalised policy or via the infrastructure charges resolution. This allows some local control and are usually applied to not-for profit, charitable or community organisations. These discounts can also be directed at specific land uses that the council has identified a need for in its municipality. These tend to be applied temporarily and often require that the development is completed within a certain time.

Recommendation 8: that councils be enabled to implement local pricing control over charging that applies to infrastructure networks managed by local government through discount policies

5.2.6 Dispute resolution and appeals

The Queensland system applies a valuable reward for councils who undertake the rigorous infrastructure planning process and adopt the charging system established under their planning

legislation. Essentially, if a council has undertaken this process, complete with independent review, State review, and public consultation, then there are limitations on what a proponent can appeal in their infrastructure charges. Neither the local government infrastructure plan, nor the charges can be appealed.

This has the effect of improving administrative efficiency by limiting the number, complexity, and scope of appeals toward more correcting clerical and interpretation errors in applying set charges. By dealing with potential disputes early in the infrastructure planning phase (particularly with public consultation), this can substantially reduce costs that can be involved from repeated court battles challenging the fundamentals of applying charges. This is a worthwhile return and incentive for councils in delivering robust infrastructure plans.

Recommendation 9: that efficiency and incentivisation mechanisms for participation be embedded in the contributions framework. In particular by implementing specific limitations on appeals where a council has undertaken robust infrastructure planning, including public consultation, to support its charging.

5.2.7 Agreements for contingency

Despite being a broad-based mechanism, general charging cannot cover for every situation and network impact that development can present.

Agreements are used by all jurisdictions alongside general charges as a type of backstop mechanism that can be applied in a variety of situations to enable bespoke outcomes on infrastructure matters and facilitate approved development. Agreements can be used to facilitate developments that result in additional, unplanned for, or extreme demand on network infrastructure, or where a custom infrastructure solution is preferable. Alternatively, where the applicant seeks to provide infrastructure that is not planned for, or to achieve infrastructure outcomes not appropriately resolved through approval conditions, agreements can be used alongside general charges.

Quarries are a good example of where an agreement about infrastructure may be an appropriate mechanism. The heavy vehicle haulage associated with quarries often places an extreme impact on local roads, well beyond what would commonly be planned for. An infrastructure agreement might stipulate road upgrades and/or a maintenance regime for the applicant, or additional payments to facilitate the council to undertake or commission the work required to support the use.

Recommendation 10: that infrastructure contributions agreements be strengthened under the legislative framework as a flexible mechanism for customised infrastructure needs that fall outside the planned infrastructure delivery of general charging.

5.2.8 Price signalling versus simple charges

Economic theory can assert that infrastructure charges should create a price signal so that resources are allocated to their best, most efficient use⁸, locational pricing. At a theoretical level this makes sense, development is encouraged in areas with the lowest costs, allowing more development across the economy. However, for the local government context specific locational pricing (as distinct from different rates for greenfield or infill development) adds complexity without providing commensurate benefit.

Local government's regional planning and land use zoning incorporates land suitability and infrastructure servicing assessments, embedding location selection and sequencing. The objectives underpinning this process reflect the local and regional needs of community, economic development, health, liveability, to mention a few.

Creating accurate locational price signals adds significantly more work and complexity to establishing and maintaining infrastructure charging schemes. Infrastructure planning brings all costs together and apportions them according to demand, already a complex task. An additional level of complexity would be added calculating locational price signals, including the direct and diffuse network impacts that may occur outside the infrastructure network. Given the existing land use planning system that has broad objectives that must be met, there is limited value to justify applying locational pricing. Location pricing is also complex for developers and councils to understand and navigate, undermining the principle of simplicity.

Locational price signalling may increase barriers to planned development, such as the first mover problem, as the costs borne by a single developer may be significantly higher.

It should be noted that in developing their PSP4 Developer Charges Policy, TasWater considered location price signalling and rejected it, citing unnecessary complexity to calculate, administer and communicate to stakeholders. The Tasmanian Economic Regulator assessed this in its review and proposes to approve this decision. This is consistent with principles of simplicity, consistency, transparency and efficiency.

⁸ NSW Productivity Commission, 2020, Review of Infrastructure Contributions in New South Wales – Issues Paper, p. 14

6 Conclusion

This review into infrastructure contributions systems found other Australian jurisdictions in a more advanced and mature state than Tasmania. We found that NSW, Queensland and Victoria, all have more cohesive and comprehensive legislative frameworks to support local government in implementing their own infrastructure contributions schemes. These frameworks are integrated into state planning legislation and replete with detailed resources and guidance for infrastructure managers to implement their charging schemes. All frameworks support the most advanced level of infrastructure contributions schemes, being general charging, backed by infrastructure planning. They also fund all classes of infrastructure networks that local governments manage, which is essential for development and growing communities. Some of these charging frameworks also support early dispute resolution in combination with a limitation on appeals, to reduce later-stage delays and promote smooth, certain and efficient charging. All of these frameworks have continued to be maintained in those states and where dissatisfaction has occurred, the frameworks for charging have been reviewed and improved.

Tasmania does not have a single, coherent legislative framework for applying infrastructure contributions in a consistent and predictable way. It doesn't provide legislative support for the more advanced general charging approach, or provide supporting guidance material for implementation. Instead, the powers to levy charges for infrastructure are dispersed across a number of Acts that apply in specific circumstances, or only for a specific class of infrastructure. The powers are not integrated and are isolated from the planning process, with charges that can be disputed and appealed, undermining certainty. None of the existing mechanisms provide a framework for delivering a consistent statewide approach, or even provide clear guidance on establishing fully effective and efficient infrastructure contributions schemes under the current powers. This has left substantial uncertainty for councils to resolve in both the extent of their legal authority to apply infrastructure contributions schemes and how exactly schemes should be implemented in a legally defensible way.

Given only general powers to levy contributions with no clear guiding framework, it is natural for a variety of inconsistent approaches to be applied, as each council must take its own initiative and develop its own charging policy and scheme. The unclear legal framework for councils has led to limited and variable implementations of this key infrastructure investment tool to support development. This creates uncertainty for development, for local government, adding time and cost and leaving a gap in infrastructure to support development.

As Tasmania continues to grow, a modern infrastructure contributions framework is essential to allow infrastructure delivery to keep pace with development. In reviewing the development of infrastructure contributions schemes and frameworks in other states, we have made ten

recommendations for developing a Tasmanian local government infrastructure contributions system. These are:

1. **A proper system of infrastructure charging:** Tasmania develop a cohesive and complete infrastructure contributions framework that enables advanced-level infrastructure contributions (general charging) to be implemented.
2. **Prioritise simplicity:** the contributions system developed for Tasmania prioritise simplicity and usability for councils, developers and other stakeholders, in both implementation and administration.
3. **Principles-based:** a cohesive and complete infrastructure contributions framework be developed to achieve a fairly apportioned, beneficiary pays system that enables development, based on the following principles:
 - a. simple and consistent
 - b. certain and predictable
 - c. equitable and reasonable
 - d. transparent and accountable
 - e. efficient.
4. **Integrated into planning legislation:** the framework be integrated into the *Land Use Planning and Approvals Act 1993*, including guiding material to support implementation.
5. **Infrastructure planning:** infrastructure planning be integral to the general charging infrastructure contributions framework.
6. **Simple charging:** a consistent and simple charging methodology, supporting incremental accounting of infrastructure demand, be part of the legislative framework.
7. **Offsetting supported:** an offsets and refunds mechanism be embedded to facilitate land and works-in-kind contributions.
8. **Local pricing control:** councils be enabled to implement local pricing control over charging that applies to infrastructure networks managed by local government through discount policies.
9. **Appeal limitations for proper planning:** efficiency and incentivisation mechanisms for participation are embedded into the framework. In particular, by implementing specific limitations on appeals where a council has undertaken robust infrastructure planning, including public consultation, to support its charging.
10. **Infrastructure agreements:** infrastructure agreements be strengthened under the legislative framework as a flexible mechanism for customised infrastructure needs that fall outside the planned infrastructure delivery of general charging.

Until a well-defined infrastructure contributions framework is implemented locally, Tasmania will continue to experience problems with accommodating growth without the financial tools to

properly support it. This includes pressures on rates for councils, pressures on infrastructure and service levels as growth consumes capacity, and constraints on development as infrastructure and service levels struggle to keep up with demand.

Infrastructure contributions are the key to addressing these problems and boosting infrastructure investment to underpin development, as they facilitate development contributing to the solutions they rely upon. This allows resourcing to increase with the rate of development and more closely match the infrastructure need.

Tasmania has the opportunity to develop a coherent infrastructure contributions framework that can underpin local government's ability to support development and growth in areas across the state. Such a framework would allow councils to develop consistent approaches to infrastructure charging and support timely financing and delivery of infrastructure in their municipality.

Appendix A. List of Infrastructure Contributions Policies of Tasmanian Councils

Council	Infrastructure Charges Policies
Break O'Day	AM02 Public-Open-Space-Policy <ul style="list-style-type: none"> See: https://www.bodc.tas.gov.au/council/policies/
Brighton	Policy 1.7 – Key Infrastructure Investments and Defined Infrastructure Charges Policy 6.1 – Stormwater Quality Control Contributions 2021 <ul style="list-style-type: none"> See: https://www.brighton.tas.gov.au/council/policies/
Burnie City	N/A
Central Coast	Car Parking Cash-In-Lieu Contribution Policy Public Open Space Contributions Policy <ul style="list-style-type: none"> See: https://www.centralcoast.tas.gov.au/policies/
Central Highlands	2013-08 Public Open Space Policy <ul style="list-style-type: none"> See: https://centralhighlands.tas.gov.au/council/council-policies/
Circular Head	N/A
Clarence	Headworks Levy Policy Public Open Space Policy <ul style="list-style-type: none"> See: https://www.ccc.tas.gov.au/documents/policies/
Derwent Valley	Community Infrastructure Contributions Policy <ul style="list-style-type: none"> See: https://www.derwentvalley.tas.gov.au/council-documents/council-policy-documents
Devonport City	N/A
Dorset	Policy 46 - Public Open Space Contribution <ul style="list-style-type: none"> See: https://www.dorset.tas.gov.au/policies
Flinders	N/A
George Town	GTC-P6 Car Parking Policy Cash in Lieu Contributions.pdf <ul style="list-style-type: none"> See: https://georgetown.tas.gov.au/policies
Glamorgan Spring Bay	Car Parking Cash-In-Lieu Contribution Policy Public Open Space Contribution Policy <ul style="list-style-type: none"> See: https://gsbc.tas.gov.au/council/council-policies/
Glenorchy	Subdivisions – Public Open Space Acquisitions and Contributions (June 2017) <ul style="list-style-type: none"> See: https://www.gcc.tas.gov.au/council/documents-and-publications/council-policies/
Hobart City	Public Open Space Contribution Policy <ul style="list-style-type: none"> See: https://www.hobartcity.com.au/Council/About-Council/Council-Policies
Huon Valley	Cash in lieu of car parking contribution policy Community Infrastructure Contributions Policy Public Open Space Contribution Policy <ul style="list-style-type: none"> See: https://www.huonvalley.tas.gov.au/council/reports-and-publications/policies/
Kentish	N/A
Kingborough	Cash-In-Lieu of Parking Public Open Space Contribution Policy <ul style="list-style-type: none"> See: https://www.kingborough.tas.gov.au/council/policies/

Council	Infrastructure Charges Policies
King Island	Subdivision Control Policy Contribution – Unformed Roads Policy <ul style="list-style-type: none"> See: https://kingisland.tas.gov.au/council/policies/
Latrobe	N/A
Launceston City	No policy but has used specific area plans to implement contributions.
Meander Valley	Infrastructure Contributions (Policy 20) Public Open Space Contributions (Policy 11) <ul style="list-style-type: none"> See: https://www.meander.tas.gov.au/council-policies
Northern Midlands	Public Open Space Contribution <ul style="list-style-type: none"> See:
Sorell	Public Open Space Policy <ul style="list-style-type: none"> See: https://www.sorell.tas.gov.au/publications/policies/
Southern Midlands	N/A
Tasman	Public Open Space Contribution Policy <ul style="list-style-type: none"> See: https://www.tasman.tas.gov.au/council-documents/public-documents/
Waratah-Wynyard	Car Parking Provisions Policy Public Open Space Contribution Policy <ul style="list-style-type: none"> See: https://www.warwyn.tas.gov.au/governance/policies-codes-guidelines/
West Coast	N/A
West Tamar	N/A

Appendix B. Contributions Models of NSW, Victoria and Queensland

This section investigates the infrastructure contributions approaches and legislative frameworks in New South Wales (NSW), Victoria and Queensland.

Infrastructure contributions has been an identified policy issue in most Australian states for several decades. Since the 1980s, some states have addressed the need for organised and well-funded infrastructure through contributions on infrastructure projects to provide for continual urban growth. These contribution frameworks have developed in sophistication over time and the current systems in use are the result of an iterative process which is still on-going.⁹

Other Australian jurisdictions have been developing and reviewing their contributions frameworks as economic, developmental and societal needs evolve. This provides an opportunity to review the respective strengths and weaknesses of these systems as they have had time to mature. From reviewing other examples in Australia, this can inform a sector understanding of infrastructure contributions and provide a potential roadmap for development in Tasmania.

B.1. New South Wales – the beneficiary and impactor pays principle

The infrastructure contributions system in NSW is defined by its variety of capture methods, and the differing roles and responsibilities of State and local government in delivering infrastructure for communities. The NSW contributions system flows from a legislative framework stemming from the *Environmental Planning and Assessment Act 1979* (EP&A Act). The Act empowers State and local government to levy cost recovery user charges for greenfield and in-fill developments in the state.

The NSW infrastructure funding system is currently encapsulated by the ‘Beneficiary and Impactor Pays Principle’ where infrastructure to support new development is paid through levies whilst infrastructure in support of established communities is typically paid through rates, taxes and other charges.

Over the course of several decades, the NSW contributions system has been modified through additional mechanisms and regulatory requirements. While this been done to address systemic issues within the NSW contributions framework, it has consequently resulted in an over complex and over encumbered system with a perceived lack of transparency and efficiency amongst stakeholders. With further pressure placed by the needs of growing and expanding communities,

⁹ The NSW Productivity Commission produced a review into the state’s infrastructure contributions system, see: <https://www.productivity.nsw.gov.au/sites/default/files/2020-12/Final%20Infrastructure%20Contributions%20Review%20Report.pdf>

capturing the necessary funds through section 7.11 and 7.12 levies has become a significant focus for local government.

B.1.1.1. NSW review and reform

The NSW infrastructure contributions system has evolved through an iterative process. Since its implementation in the 1980s, infrastructure contributions have undergone numerous waves of change and reform.

Challenges to the contributions system have been recently investigated by the NSW Productivity Commission who released their review in July 2020. The Issues Paper¹⁰ outlined areas of weakness within the contributions systems and highlighted key challenges to the system, with examples including:

- uncertainty around the calculation and application of levies
- failings in local contribution plans (timing and resourcing issues for local government)
- perceptions from developers that development was 'up for sale' through permit controls by local government
- a contributions system which has become fundamentally complex and cumbersome for local and State government.

The Issues Paper framed the future review and the kind of system they were hoping to develop, through the principles of efficiency, equity, certainty and simplicity. Combined, these principles aim to “...achieve greater certainty, transparency, efficiency, and fairness in the funding and delivery of infrastructure contributions in the State.”¹¹ These principles advocated by the Productivity Commission indicate a merging of similar principles as these were similar to those implemented in Victoria. However, the Productivity Commission acknowledged that harmonisation between these principles may be difficult due to the difficult balancing act between each other, for instance balancing the needs between efficiency and equity.

The NSW Productivity Commission Final Report advanced 29 recommendations.¹² The NSW Government have since accepted all recommendations from the Report and are working to implement aspects of the review.

¹⁰ NSW Productivity Commission., 2020, Review of Infrastructure Contributions in New South Wales – Issues Paper - <http://productivity.nsw.gov.au/sites/default/files/2020-07/Issues%20Paper%20Combined%20Final.pdf>

¹¹ NSW Productivity Commission., (2020), Review of Infrastructure Contributions in New South Wales – Issues Paper p. 1

¹² NSW Productivity Commission., (2020), Review of Infrastructure Contributions in New South Wales – Final Report - <http://productivity.nsw.gov.au/sites/default/files/2020-12/Final%20Infrastructure%20Contributions%20Review%20Report.pdf>

Example reforms of key priority advocated by the Productivity Commission included:

- 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
- making the system easier to navigate and comply with by providing and maintaining clear and rationalised guidance and comprehensive digital tools.

B.1.2. Local infrastructure contributions

Local infrastructure contributions are levied by councils on developers to facilitate the construction, expansion, and maintenance of key infrastructure elements. These contributions are targeted towards the provision of:

- stormwater drainage
- local roads
- footpaths
- traffic management
- community infrastructure such as open space and community facilities.

Local Infrastructure contributions are spread over the two specific levies for local government – section 7.11 and section 7.12 contributions. The key difference between these contributions is the calculation method and their application in greenfield and growth areas. For asset managers, like local government, this distinction is intended to maximise contribution returns by delineating between areas which require different levels of infrastructure provision. Furthermore, establishing the need and nexus of development on existing infrastructure systems adds further complexity as 7.11 and 7.12 contributions are used in specific cases where the relationship of the development with the network can or cannot be established.

B.1.3. Preparing Contribution Plans

Councils can seek a contribution under s7.11 of the EP&A Act (through s7.13) and are required to prepare a 'Contribution Plan.' These plans are developed for specific development areas. The Plans must clearly establish a nexus relationship between the expected types of development in the area and the demand generated on public amenities and services from the development proposed. Section 7.11 contributions are imposed through conditions of development consent.

The Plans represent a direct link between strategic planning and asset and financial management for emerging and growing communities.

In developing a Contributions Plan, local government must:

- define the area to which the Plan applies
- define the relationship with other plans and policies
- scope out what services and infrastructure will be provided by the Plan (i.e. the Plan could concern council roads)¹³
- state at what point contributions are payable
- provide for provisions for contributions of 'in-kind' and material public benefits under the Plan
- calculate, and demonstrate, the initial cost and ongoing maintenance of the infrastructure
- articulate the charge on a per residential lot or dwelling to be charged to developers, and residents if applicable
- demonstrate how the Plan relates to state legislation and other local government planning policies.

Once the Contribution Plan has been developed, councils can submit their Plans to the Independent Pricing and Regulatory Tribunal (IPART) for review. As councils are only required to do this if they are proposing contributions above the threshold of \$30,000 per residential lot or dwelling in identified greenfield areas, and \$20,000 per residential lot or dwelling in other areas.

This would mean that most councils do not have to perform this requirement. However, due to downward pressure on council budgets and increased demand on infrastructure many councils developing Plans are typically proposing the capped price and are therefore submitting their Plans to IPART for review. This places additional pressure on resources and lengthens the time to approve these Plans.

The IPART review process¹⁴ considers the following aspects:

- Whether the public amenities and public services in the plan are on the essential works list.
- The proposed public amenities and public services are reasonable in terms of nexus.

¹³ An example Contribution Plan concerning roads within Moree Plains Shire Council - [Moree Plains Traffic Generating Development Contribution Plan](#)

¹⁴ Information Paper – IPART assessment of local infrastructure contribution plans (2021): <https://www.ipart.nsw.gov.au/Home/Industries/Local-Government/Local-Infrastructure-Contributions-Plans>

- The proposed development contributions is based on a reasonable estimate of the cost of the proposed public amenities and public services.
- The proposed public amenities and public services can be provided within a reasonable timeframe.
- The proposed development contributions is based on a reasonable apportionment of costs.

After this assessment, IPART will:

- Consult with the lodging council.
- Consult with the NSW Department of Planning, Industry and Environment.
- Consultation with external advisors (typically specialist consultants).
- Following specialist input, publish the draft report and invite submissions from council and the public before making the final decision.
- Communicate the decision to the Minister for Planning and council with the Final Report.

IPART have indicated that where plans are submitted by local government, they aim to assess these within six months of receiving the application.

B.1.4. Issues related to Contribution Plans

Over time, these contribution plans have become cumbersome due to incremental reforms and the increased burden on local government to administer their responsibilities under the EP&A Act. As a consequence, these contribution plans have become too difficult and time consuming for local government to develop and review. With the absence of current and relevant contribution plans from local government this has made navigating the system less transparent, made it inefficient and has created difficulties in delivering important infrastructure in a timely way.

These weaknesses were a key finding of the Productivity Commission¹⁵ which highlighted how complex the NSW infrastructure contributions system had become. The inability to provide certainty for stakeholders and to build equitable infrastructure indicates the importance of integrated planning frameworks from a local government perspective. The contributions plans are an important tool for financial and asset management and provide local government with the necessary tools to budget, prepare and implement asset management. By developing current documentation to advance a strategic vision for a development area, councils can provide certainty, accountability and confidence in the infrastructure contributions system.

¹⁵ See: <https://www.productivity.nsw.gov.au/infrastructure-contributions-review>

The Productivity Commission recommended that contribution plans be reviewed to streamline the process and allow local government more time to develop and review. Where land is being rezoned for residential development, local government will be required to publicly exhibit the contribution plans. This provides up-front information to developers who can judge and assess the expected costs which will be imposed from new developments. Furthermore, as the council will have provided a contribution plan for the area, potential residents can develop an understanding of the level of infrastructure planned.

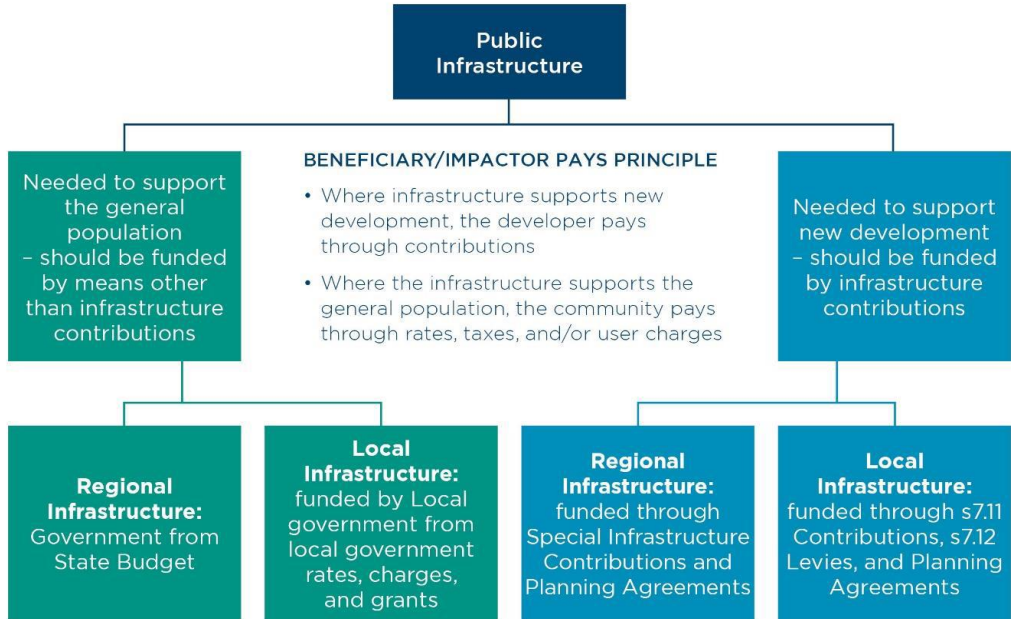


Figure 1 NSW Infrastructure Fund System – NSW Productivity Commission Issues Paper (2020) p. 13

B.1.5. Pricing calculation

Council implemented 7.11 contributions are levied on developers for the provision or extension of infrastructure where the development creates a need for that development. The relationship between the increased demand from the development and the existing infrastructure is a core component of 7.11 contributions as this connection must be established. Developers pay an apportionment based upon the nexus of the development, and the infrastructure. Councils can only charge 7.11 contributions if they have developed a contributions plan for that area.

The primary method for calculation is determined on a per dwelling per square metre basis in greenfield areas where the nexus of the development is established. Where established, councils are empowered to charge a standardized capped fee on a per dwelling basis of \$40,000 in greenfield areas and \$30,000 elsewhere. The rationale for an increased charge in greenfield areas comes as the costs of establishing services in these growing areas is higher and local governments are struggling to adequately fund infrastructure.

As an alternative, 7.12 contributions are calculated on percentage estimate of the development costs. As these contributions are charged on a percentage basis they are typically used in regional areas, infill or mixed-use sites where the relationship between the development and infrastructure is difficult to establish.

B.1.6. State and Region-wide infrastructure contributions

Region-wide infrastructure is implemented by the NSW Government through a levy system intended to retrieve partial funding for infrastructure projects. Nominally the Special Infrastructure Contributions and the Planning Agreements, these funding arrangements are levied by the NSW Government in certain growth areas of Greater Sydney and regional NSW where highlighted 'Special Contribution Areas' are charged for new development. Together, these funds are administered through the 'Special Contributions Area Infrastructure Fund'. The fund is managed by the Department of Planning, Industry and Environment in consultation with Treasury. The contributions support the funding of:

- State and regional roads
- Public transport and infrastructure
- Pedestrian and cycling paths
- Health facilities
- Emergency services
- Schools
- Open space improvements.¹⁶

Special infrastructure contributions were introduced to strengthen delivery of state infrastructure. They can be an efficient and equitable mechanism for modest infrastructure cost recovery, while helping to ensure that development is serviced in a timely way. Over time, incremental changes and ad hoc decisions have, however, led to inconsistencies in their application, which may have limited their effectiveness. This ineffectiveness has been noted by the Productivity Commission in their Issues Paper and cited that biodiversity projects and offsets have been ill-planned and inconsistently funded.

Furthermore, the ways in which special infrastructure contributions have been implemented and used has changed over time. Some of these changes and challenges include:

- discounts applied during the Global Financial Crisis remain in place over a decade later

¹⁶ For instance, the biodiversity offset programs in Western Sydney are funded through SIC funding.

- changes to the way the rate is calculated in different areas (percentage of construction costs, rate per net developable hectare and rate per dwelling)
- restrictions in the scope of infrastructure that can be funded by special infrastructure contributions, such as allowing recovery of land acquisition costs for schools and hospitals, but not cost of construction and transport interchanges but not rail lines in between.

These changes and challenges pose significant transparency issues, given that the calculation rate for these contributions is not publicly made. Furthermore, a key weakness can be seen through 'capacity to pay' assessments which calls into question the interpretation and variability of application of the contribution on developments. Lastly, payments are collected and allocated to projects by the Department. The allocation of funds to specific infrastructure projects is separate to Treasury's budget process, which has at times lead to competing priorities, uncoordinated infrastructure investment, and inefficiency. There is limited reporting on how projects are assessed, and funds are allocated.

B.1.7. Appeals

Under the *Environmental Planning and Assessment Act 1979*, parties can appeal decisions related to the calculation of infrastructure contributions. The provisions for appeals are addressed under Part 8 of the Act. Appeals and arbitration are administered by the Land and Environment Court of New South Wales (LEC).

Infrastructure contribution appeals in recent years have focussed on the following issues:

- Whether charges levied by local government exceed the permissible cap on 7.11 and 7.12 contributions.
- What scope there is for reasonable delay in granting development consent – developers impacted negatively in 2020 where the cap was increased to \$65,000 from \$45,000.
- Conditions of development and calculation based on a repealed or outdated contribution plans.
- The application of s.94 contributions as a condition of consent on development.

In the last 12 months, several cases have proceeded to the LEC where developers have appealed the application of the new cap on 7.11 and 7.12 contributions. In *TC (Tallwoods) Pty Limited v Camden Council*,¹⁷ the developer appealed the application of the \$65,000 per lot calculation cap on a proposed subdivision (totalling \$2.4 million). The cap before 1 July 2020 had previously been \$45,000. Due to administrative burdens on the Camden Council, the application had not

¹⁷ [TC \(Tallwoods\) Pty Limited v Camden Council \[2021\] NSWLEC 1212](#)

been processed after 1 July 2020 making the application fall under the new cap charge, despite the developer submitting prior to this date. The LEC dismissed the appeal on the grounds of established reasonableness tests to levy s. 7.11 contributions developed under the Act and common law precedents.¹⁸

Instances of appeal raise concerns that 7.11 and 7.12 contributions are a considerable burden on local government. This burden comes from the investment in developing, calculating and administering these contributions. Without protections or limitations on appeals from developers, the NSW contributions system is handicapped by significant risk to local government who have to defend these appeals – introducing further cost. This is encapsulated by the incentives for developers in the current environment to test issues of unreasonableness from the levying of s. 7.11 contributions by local government in the LEC¹⁹. The weakness arises from currently implemented Contribution Plans which are open to be appealed by developers seeking to challenge the imposition and reasonableness of these contributions.

Following the recommendations of the Productivity Commission's report on infrastructure contributions, the NSW Government tabled proposed changes²⁰ to the Special Infrastructure Contributions (to be replaced by the Regional Infrastructure Contributions). In a sign of shifting attitudes, the NSW Government have made provisions for RIC to be exempt from appeals.²¹ The RIC will now fall under the provisions for 'critical State significant infrastructure' under the Act.²² Local government have seemingly missed an opportunity on limiting the scope and ability for litigation in relation to infrastructure contributions. As the amendments are yet to be debated in the NSW Parliament, further changes to these provisions could occur.

B.1.8. Conclusions

The NSW infrastructure contributions system will be guided by the outcomes following the recommendations of the NSW Productivity Commission's Report. With all recommendations accepted by the NSW Government,²³ the Report emphasised that the infrastructure contributions system needs to:

- create a principles-based approach to infrastructure contributions
- provide certainty to how a charge is calculated to developers

¹⁸ See: *Maitland City Council v Ananbah Homes Pty Ltd* (2005) 64 NSWLR 695 at [132]; [2005] NSWCA 455; *Fairfield City Council v N & S Olivieri Pty Ltd* [2003] NSWCA 41; and *Rose Consulting Group Pty Ltd v Baulkham Hills Shire Council* (2003) 58 NSWLR 159; [2003] NSWCA 266

¹⁹ <https://addisons.com/knowledge/insights/reasonableness-of-a-condition-requiring-development-contributions/>

²⁰ <https://www.planning.nsw.gov.au/infrastructure-contributions-reform>

²¹ <https://corrs.com.au/insights/new-infrastructure-contributions-framework-one-step-closer-for-nsw>

²² *Environmental Planning and Assessment Act 1979* – Subdivision 5 Miscellaneous (5.27)

²³ [NSW Government Response to NSW Productivity Commission's Review of Infrastructure Contributions in NSW - March 2021](#)

- compliment the contribution charges with simplicity and alleviate local government resources
- increase the charges on infrastructure contributions by 3% and allow for a review of capped charging.

The Productivity Commission found significant weaknesses within the NSW contributions system. These were focussed on the Contribution Plans where the Productivity Commission noted that the Plans:

- were not updated or had become irrelevant – (37% of councils were found to have plans at least ten years old)
- did not reflect the current development landscape NSW.

These plans are intended to demonstrate a link between local asset management and financial sustainability. Due to complexity in developing contribution plans, the lack of resources to review these plans, too many councils have not amended or reviewed these plans in some time. This has led to inefficiencies in applying contributions on development and has led to perceptions of lack of transparency and equity. Being outdated, they are open to significant appeal by developers who challenge the reasonableness of imposing contributions on development where the need and nexus has not been adequately established.

The reform process now seeks to address the Productivity Commission's recommendations through the NSW Government's roadmap.²⁴ The initial roadmap aims to address the process and mechanism for developing and updating Contribution Plans. In particular, making these accessible for local government to review, and to ensure that this process adequately involves improved communication with stakeholders (primarily developers). This process will take over twelve months and will be an important reference point for Tasmanian local government to observe.

B.2. Queensland – consistency and capped costs

Infrastructure charging is a well-established and accepted part of development in Queensland and embedded in planning legislation. The Queensland system today is the end outcome of a major review in 2010-11 by the independent Infrastructure Charges Taskforce²⁵, with some minor improvements in 2014 and 2017. A full chapter (Chapter 4 – Infrastructure) of the state's planning legislation is devoted to setting the framework for conditioning and charging development for infrastructure through planning permits and applies not only to local government, but to State infrastructure providers and distributor-retailer corporations. Chapter

²⁴ [Infrastructure Contributions Reform Roadmap - March 2021 \(nsw.gov.au\)](https://www.nsw.gov.au/infrastructure-contributions-reform-roadmap)

²⁵ See: <https://statements.qld.gov.au/statements/64895>

4, Part 2 of the *Planning Act 2016* (Qld)²⁶ sets out the Provisions for local governments, formally empowering councils:

1. to adopt charges for development infrastructure through council resolution
2. to levy those charges through development approvals
3. to apply conditions about infrastructure on development, such as the timing and terms of provision of infrastructure.

The infrastructure contributions regime in Queensland consists of the following key attributes:

1. Capped maximum charges.
2. Simple, common calculation methodology .
3. Charging for additional demand generated only .
4. Limitations on appeals.
5. Ability to apply discounts.
6. Local government infrastructure planning as the basis of charging.
7. Agreements for custom infrastructure solutions.

The Queensland framework defines development infrastructure generally as any land and/or works for water cycle management (including water supply, wastewater, and stormwater), transport, public open space and parks, as well as land for local community facilities, like community halls and centres, public recreation centres, and public libraries.

Development infrastructure is separated into trunk and non-trunk infrastructure, which are categorised less by definition and more by infrastructure planning specifically identifying which development infrastructure is considered trunk, resulting in non-identified infrastructure to be considered non-trunk infrastructure. Conceptually, trunk infrastructure is infrastructure that services a network or catchment, non-trunk infrastructure generally only services individual properties or connects individual properties to the network. By implication, trunk infrastructure tends to be provided centrally by an infrastructure authority (such as councils), whereas non-trunk infrastructure tends to be up to the developer to provide. Indicative examples to illustrate what is generally meant by trunk and non-trunk infrastructure are given in Schedule 6 of the Minister's Guidelines and Rules.

²⁶ See: <https://www.legislation.qld.gov.au/view/html/inforce/current/act-2016-025#ch.4-pt.2>

Table 4. Indicative trunk and non-trunk infrastructure in the Queensland system

Infrastructure network	Trunk infrastructure	Non-trunk infrastructure
Water supply	Land or works for— Water treatment facilities <ul style="list-style-type: none"> • Water storage facilities (e.g. Reservoirs) • Water mains • Pumping stations located on water mains • Chlorination equipment located on water mains • Meters, valves, control and monitoring systems located on water mains • Fire-fighting devices located on water mains. 	Development infrastructure internal to a development or to connect a development to the external infrastructure network
Sewerage	Land or works for— <ul style="list-style-type: none"> • Sewage treatment plant systems • Gravity sewers • Rising mains • Pumping stations • Emergency storage. 	Development infrastructure internal to a development or to connect a development to the external infrastructure network
Transport	Land or works for— <ul style="list-style-type: none"> • Collector and higher order roads including associated intersections, traffic lights, roundabouts, bridges and culverts • Standard items associated with the road profile of a local government road, including kerb and channelling, lighting, signage, foot and cycle paths and basic verge plantings • Pedestrian and cycle paths which perform a city wide or district function • Bus stops constructed as part of a local government road specified above. 	Development infrastructure internal to a development or to connect a development to the external infrastructure network
Public parks and land for community facilities	Land or works that ensure the land is suitable for public parks for— <ul style="list-style-type: none"> • local recreation park • district recreation park • metropolitan recreation park • district sporting park • metropolitan sporting park. Land, and works that ensure the land is suitable for development, for local community facilities such as community halls, public recreation centres and public libraries Embellishments, including footpath and cycle paths, necessary to make the land useable and safe for the intended purpose	Development infrastructure internal to a development or to connect a development to the external infrastructure network

Queensland councils have two main ways to levy infrastructure charges:

- For identified trunk infrastructure, by issuing an infrastructure charges notice that levies the charges set out by the council's adopted infrastructure charges resolution.
- For any other situation, by entering into an infrastructure agreement with the development applicant.

B.2.1. Principles

The original designing principles of the Queensland system proposed by the Infrastructure Charges Taskforce²⁷ are:

1. **Certainty:** infrastructure charges should be predictable with respect to the quantum and timing and in accordance with the declared regime.
2. **Transparency and accountability:** infrastructure charges should be transparent, understandable and defensible. Infrastructure charging regimes should be supported by publicly assessable information regarding the determination of the charges and the allocation of the funds generated.
3. **Equity and reasonableness:** infrastructure charges should be shared for the benefit of all Queenslanders with regard to the affordability for the community, industry, government and property owner.
4. **Simplicity and consistency:** infrastructure charges should be clearly defined in line with published methodologies and schedules. Infrastructure charges should be derived, collected, held and spent consistently across responsible authorities.
5. **Efficiency and economic impacts:** infrastructure charges should not unnecessarily inhibit allocative, administrative or transactional efficiency, so as to facilitate development.

B.2.2. Maximum charge rate and calculation

For trunk infrastructure, the Queensland system imposes maximum charge rates that are established in subordinate legislation, Schedule 16 of the *Planning Regulation 2017*²⁸. Councils across the state may not impose infrastructure charges that exceed the rates provided by the legislation, allowing for price adjustments²⁹.

The maximum rates use a simple calculation that scales with the intensity of the land use and its demand on infrastructure networks. For example, the maximum infrastructure charge for residential dwellings (including houses, apartments and similar) goes from \$21,590.50 per dwelling for two-bedroom dwellings to \$30,226.70 dwellings for three or more bedroom dwellings. The maximum charge rate for commercial and industrial uses is calculated on two components: a gross floor area (GFA) charge, plus an impervious area charge for stormwater infrastructure demand. For example, the maximum charge for a shop in Queensland is \$194.30

²⁷See:

https://www.cairns.qld.gov.au/_data/assets/pdf_file/0017/21419/separate_attachment_clause_4_infrastructure_taskforce_final_report_march2011.pdf

²⁸ See: <https://www.legislation.qld.gov.au/view/html/inforce/current/sl-2017-0078#sch.16>

²⁹ Adjustments are calculated using the Australian Bureau of Statistics produce price index for construction 6427.0 (PPI).

for each square metre of gross floor area plus \$10.80 for each square metre impervious to stormwater.

An extract of the Schedule 16 charge rates is shown in Table 5.

Table 5. Example of Queensland maximum adopted charge rates for infrastructure

Land Use	Maximum charge rate
<i>Residential uses:</i> Dwelling house Dual occupancy Caretaker's accommodation Multiple dwelling	\$21,912.60 for each dwelling with 2 or less bedrooms \$30,677.65 for each dwelling with 3 or more bedrooms
<i>Accommodation (short-term):</i> Hotel Short-term accommodation Resort complex	\$10,956.25 for each suite with 2 or less bedrooms \$15,338.75 for each suite with 3 or more bedrooms \$10,956.25 for each bedroom that is not part of a suite
<i>Entertainment</i> Hotel Nightclub entertainment facility Theatre Resort complex	\$219.10 for each square metre of gross floor area, other than areas for providing accommodation \$10.95 for each square metre impervious to stormwater
<i>Commercial (retail)</i> Adult store Food and drink outlet Service industry Service station Shop Shopping centre	\$197.20 for each square metre of gross floor area \$10.95 for each square metre impervious to stormwater
<i>Commercial (office)</i> Office Sales office	\$153.40 for each square metre of gross floor area \$10.95 for each square metre impervious to stormwater
<i>High impact industry or special industry</i> High impact industry Special industry	\$76.75 for each square metre of gross floor area \$10.95 for each square metre impervious to stormwater
<i>Other industry</i> Low impact industry Medium impact industry Research and technology industry Rural industry Warehouse Marine industry	\$54.80 for each square metre of gross floor area \$10.95 for each square metre impervious to stormwater
<i>Educational facility</i> Childcare centre Community care centre Educational establishment	\$153.40 for each square metre of gross floor area \$10.95 for each square metre impervious to stormwater

Land Use	Maximum charge rate
<i>Places of assembly</i>	
Club	
Community use	\$76.75 for each square metre of gross floor area
Function facility	\$10.95 for each square metre impervious to stormwater
Funeral parlour	
Place of worship	

The simplicity of the calculation methodology means that developers can easily determine the maximum infrastructure demand cost of their proposal and adjust proposal design and intensity to suit budgets. Regardless of which council area in Queensland, a developer can know that their adopted infrastructure charge will not exceed that maximum for their proposal's trunk infrastructure demand.

B.2.3. Extra demand

Under the Queensland framework, councils can only levy charges on a development for the 'extra demand' it generates on trunk infrastructure networks. Any previous lawful land use carried out on the premises, either existing or discontinued, is assumed to have paid its infrastructure charges for the demand it generates, and its charge amount is subtracted from the charge due. Only the additional infrastructure demand (or capacity consumption) is charged. So, in the case of converting a house to a shop, the infrastructure charge of the existing house would be deducted from the total charge for the shop, so only the net increase in demand is charged for.

In this way, lawful uses attract an infrastructure charges credit that can be deducted from future development. This has the effect of incentivising development compliance with approvals and conditions, as they attract this credit for future development. In recognising existing development, this credit also facilitates infill developments relative to greenfield, as greenfield developments will typically have little or no infrastructure charges credit from existing uses.

Charging only for extra demand facilitates incremental accounting of infrastructure capacity consumption and provides a logical integration with development regulation based on land use change.

B.2.4. Discounts and local control

Queensland councils may provide discounts to the standard infrastructure charges. These are usually applied to not-for profit, charitable or community organisations³⁰ but can also be directed at specific land uses that the council has identified a need for or wants to encourage in

³⁰ For example, City of Gold Coast's Rate Donation, Infrastructure Charges and Development Application Fee Discount Policy: <https://www.goldcoast.qld.gov.au/rate-donation-policy-5129.html>

its municipality, which tend to be temporary and often require that the development is completed within a certain time. For example, Brisbane City Council has temporarily offered infrastructure reductions charges applying to aged care accommodation, student accommodation and four and five-star hotels³¹.

Discounts are implemented either through a council policy or are embedded in the council's adopted infrastructure charges resolution itself. Either way, the policy approach to discounts are transparent and accessible to the public. Discounting/charge reductions allow councils some finer-grained control over infrastructure charging without compromising the clarity that is delivered to developers by the state-wide maximum charge rates.

B.2.5. Local government infrastructure planning

Infrastructure planning is at the heart and forms the basis of infrastructure charging in Queensland. To take advantage of the legislation and levy infrastructure charges for trunk infrastructure, a council must have a local government infrastructure plan (LGIP). The process and requirements for making and adopting a LGIP are statutory, prescribed by the Minister's Guidelines and Rules (MGR)³². The process includes independent review, State Government review and public consultation, before formal adoption by the council.

A level of rigour is built into the infrastructure planning process by stipulating a number of requirements for the LGIP. For example, an LGIP requires the following:

1. **Planning assumptions** must be stated, including assumptions about population and employment growth, as well as assumptions about the nature, location and timing of development expected.
2. **Development projections** must be made using set data sources, considering development trends and the physical capacity of the local government area; LGIPs must project at least 15 years and up to 30 years from a selected base date.
3. **Infrastructure demand projections** for each type of infrastructure network must be prepared, based on the planning assumptions and development projections.
4. **Desired standards of service** for each type of infrastructure network must have a high level explanation.
5. **Establishment cost** of trunk infrastructure must be identified.

³¹ See: <https://www.brisbane.qld.gov.au/planning-and-building/applying-and-post-approval/infrastructure-charges>

³² Minister's Guidelines and Rules: <https://planning.dsdmip.qld.gov.au/planning/better-planning/ministers-guidelines-and-rules-mgr>

The Queensland Government provides a LGIP template to guide the preparation of a council's LGIP, which must be consistent with the template. These requirements build a consistent and transparent standard to the infrastructure planning process.

The Queensland Government makes two important statements about local government financial sustainability when undertaking infrastructure planning for a LGIP. Firstly, the MGR states that councils must be able to fund their LGIP's identified infrastructure (i.e. trunk infrastructure) from a combination of sources, including both infrastructure charges and rates revenue. This indicates that a compromise is being made here, the Queensland system is not aiming for 100 per cent cost recovery (and therefore 0 per cent subsidisation from general revenue) with infrastructure provision completely funded by infrastructure charges. This means the complexity of perfect demand calculation per development is not required and clarity and simplicity of an equitable and generalised charge calculation is being favoured.

Secondly, the MGR requires that local governments must improve the alignment between its infrastructure planning, its asset management planning and long-term financial planning, as expressed in its corporate planning documents, such as the LGIP, asset management plans and long-term financial plans. There are no details or stipulations around how this should be achieved, but the statement sets a financial sustainability objective for councils who want to take advantage of the Queensland infrastructure charging system.

Interestingly, the MGR explicitly requires that a LGIP must not include any definitions for trunk infrastructure. Instead, trunk infrastructure of a LGIP is not to be determined by general definition or terminology, but by specific identification and inclusion within the LGIP. This may be for two reasons relating to financial sustainability and process efficiency:

1. To ensure the LGIP has specific focus on funding only the infrastructure that is identified and to prevent any infrastructure meeting the definition to be easily included later and undermine the investment objectives of the LGIP.
2. To reduce the potential for costly and counterproductive disputes and appeals in raising new arguments around which infrastructure is or is not intended to be funded.

Essentially, this unusual provision appears to close a potential loophole that could impact efficiency in the framework. Instead, the legislation allows a limited ability for an applicant to apply for non-trunk infrastructure to be converted to trunk infrastructure.

B.2.6. Appeals

There are limitations on what can be appealed in infrastructure charges in Queensland, outlined in Schedule 1 of the *Planning Act 2016*³³. Generally, if you are issued an infrastructure charges

³³ See Table 1, item 4: <https://www.legislation.qld.gov.au/view/html/inforce/current/act-2016-025#sch.1>

notice, you can appeal errors in the notice around how the charge was applied, but you cannot appeal an infrastructure charges resolution or its charges, or the cost of infrastructure as presented in a charges resolution or a supporting local government infrastructure plan³⁴. This has the effect of limiting the number and complexity of appeals by narrowing their scope toward more correcting clerical and interpretation errors in applying set charges and eliminating lengthy court battles questioning the fundamentals of applying charges.

Because councils are required to undertake the robust infrastructure planning process, complete with public consultation and both independent and State Government review steps, before they can levy trunk infrastructure charges, the scope of appeals can be fairly restricted without adversely impact procedural justice or rights of proponents. Issues are dealt with early during public consultation so that later stage conflicts can be avoided and planning outcomes can be delivered efficiently. Limiting appeals allows proponents to get on with developments and councils to get on with the job of providing infrastructure that facilitates that development.

B.2.7. Infrastructure agreements

Another mechanism that Queensland councils can use are infrastructure agreements, given authority under Chapter 4, Part 4 of the *Planning Act 2016*. Agreements are used as a type of catch-all mechanism that can be applied in a variety of situations to enable bespoke outcomes on infrastructure matters and facilitate approved development. Infrastructure agreements can be used by councils that do not have a LGIP and so cannot levy infrastructure charges. They can also be used to facilitate developments that result in additional, unplanned for, or extreme demand on trunk infrastructure, or where a custom infrastructure solution is preferable, or where the applicant seeks to provide infrastructure that is not identified in a LGIP (i.e. non-trunk infrastructure), or to achieve infrastructure outcomes not appropriately resolved through approval conditions. Infrastructure agreements can be used instead of, or in addition to, infrastructure charges.

Infrastructure agreements can be proposed by public sector entities to another entity or vice versa. Once a formal proposal is made, there is a legal obligation for the parties to negotiate in good faith. Once ratified, the infrastructure agreement binds successors in title.

Quarries are a good example of where an infrastructure agreement may be the appropriate mechanism. The heavy vehicle haulage associated with quarries often places an extreme impact on the local roads, well beyond what would commonly be planned for, so an infrastructure agreement might stipulate road upgrades and/or a maintenance regime for the applicant, or

³⁴ See also: <https://www.qld.gov.au/housing/building-home/building-complaints/appealing-development-tribunals/what-you-can-appeal/infrastructure-charges-appeals>

additional payments to facilitate the local government to undertake or commission the work required.

B.3. Victoria – contributions integrated into statewide planning schemes

The Victorian infrastructure contributions framework is set out under a legislative framework within Part 3AB of the *Planning and Environment Act 1987*.³⁵ The Victorian infrastructure contributions system is made up of the following mechanisms:

- Infrastructure Contribution Plans (ICP).
- Development Contribution Plans (DCP).
- Growth Areas Infrastructure Contributions (GAIC).
- Voluntary agreements/section 173 agreements.

The ICP system forms the centre of the infrastructure contributions framework in the state, where it is incrementally replacing the DCP.

Combined, these mechanisms serve as the primary instruments for levying charges by state and local government on developments. The contributions framework filters through a series of principles which defines how they interface with developers, communities, and government.

B.3.1. Principles

The Victorian infrastructure contributions system is guided by principles which aim to provide direction on the development and implementation of the system. The principles of the Victorian infrastructure contributions system stem from the following:

- Infrastructure is an essential and basic need.
- That infrastructure is delivered in a timely and orderly way.
- Need and nexus - the need of infrastructure correlates with the proposed development of land.
- Equity – developers, local government and state agencies have a shared responsibility.
- Certainty – confidence about the contributions imposed.
- Accountability and transparency – for governments, developers, and residents.³⁶

³⁵ *Planning and Environment Act 1987*, see: <https://content.legislation.vic.gov.au/sites/default/files/2021-03/87-45aa147%20authorised.pdf>

³⁶ For further information on principles, see: *Infrastructure Contributions Plan Guidelines*, Department of Environment, Land, Water and Planning (2019) p.9 - https://www.planning.vic.gov.au/data/assets/pdf_file/0025/433834/ICP-Guidelines.pdf

These principles were developed through the Victorian Government's 2015 review and are intended to be filtered throughout the infrastructure contributions system. These principles are intended to guide the implementation and application of the ICPs, DCPs and GAICs.

B.3.2. Victoria's Infrastructure Contribution Plans (ICPs)

The Victorian infrastructure contributions framework is composed of payments and of in-kind works from developers, and in some cases, landowners. The Victorian government oversees and regulates mechanisms to inform how infrastructure contributions can be applied and regulated in different settings.

The ICPs were developed to simplify the system and address systemic issues of weakness within the DCP system. An ICP is a statutory document and fundamentally integrated into the planning scheme and applies to high-growth development areas. Once funds have been levied and collected, infrastructure works, services and facilities are developed to support communities.

The ICP system has several key aspects which may be of interest to local and State government in Tasmania. Elements that support strategic planning, flexibility, accountability and transparency are important to consider in creating a robust and effective system. These features could include:

- flexibility to enable alterations to contribution plans (without the need for lengthy reform), such as through a Ministerial direction
- outline of contributions which are imposed through an approved Infrastructure Contributions Plan – this intends to increase accountability and provide clarity on what infrastructure was planned
- a reporting mechanism for the contributions – aims to provide transparency as agencies and local government report what outcomes were achieved.

As ICPs are gradually being implemented across Victoria, with high-growth areas prioritised. The ICPs are attempting to balance the often-competing needs of different development settings – metropolitan growth areas, regional greenfield growth areas (regional ICP) and strategic development areas.

B.3.3. Preparing an Infrastructure Contribution Plan

In preparation of an ICP, councils are required to identify several broad concepts:

- The infrastructure being funded.
- The levy rates payable from the development.
- The indicative stage at which the infrastructure must be delivered.
- The estimated cost of infrastructure to be funded by a supplementary levy.

- The bodies responsible for delivering the infrastructure.
- The requirement for the collection, expenditure, and administration of the levies.³⁷

The Department of Environment, Land, Water and Planning (DELWP) have developed a framework for assisting councils prepare an ICP. This is broken down into seven broad steps:

- **Strategic Justification:** identify the broad strategic framework for the ICP and document the strategic justification
- **Identify development setting:** that applies to the land development
- **Define infrastructure:** refine the scope and standard of infrastructure required
- **Set levies:** identify the relevant standard levy rate(s) for the classes of development being levied
- **Draft ICP:** prepare the ICP using the relevant ICP template
- **Prepare ICP Amendment:** determine the appropriate pathway for processing the planning scheme amendment to include the ICP in the planning scheme
- **Approval:** incorporate the ICP into the planning scheme; commence administration and implementation of the ICP.

Plan preparation costs are considered reasonable costs and expenses incurred from the planning authority by a planning authority in preparing an ICP or strategic plan.³⁸ According to a Ministerial Direction, planning authorities cannot claim more than 1 per cent of the standard levy to fund preparation costs. Plan preparation costs do not include the costs and expenses incurred by a planning authority in preparing an amendment or undertaking steps in the amendment process for an ICP.

B.3.4. Auditor-General Report 2020

The Victorian Auditor-General's Office published a report in 2020 on the current management of development contributions in the state. The Report built on the reporting requirements established after the 2015 Review which instituted goals for reassessing the performance and outcomes of infrastructure contributions in the state. The key outcome of the 2015 Review was the introduction of the ICP system – an attempt to address complexity, inefficiencies, transparency, and equity issues posed from the previous DCP system.

Despite being introduced in 2015, the ICP system has not seen widespread implementation, with DCPs still in majority usage. The Report found that overwhelmingly, the contributions system in

³⁷ [Infrastructure Contributions Plan Guidelines](#), p. 27

³⁸ [Victorian Planning - ICP Guidelines](#), p. 22

Victoria is not delivering the necessary infrastructure. Some of the key findings pointed to:

- **a lack of overarching strategy and coordination:** there is now a patchwork of tools used to capture contributions, these are often overlapping and operate in isolation
- **lack of program-specific goals and evaluation:** individual contribution programs lack overarching goals and evaluation (neither the GAIC nor DCP programs have clear measures of success)
- **GAIC funding is not strategic:** funding is allocated based on ad hoc decision-making and not based on long-term strategic planning by a Victorian Government Planning Committee
- **DCP barriers and risks to council participation:** due to complexity of the DCP system, only 24 of Victoria's 79 councils have developed a plan to levy contributions on development.

B.3.5. Pricing calculation

ICPs consist of two components in Victoria – a monetary component, and a land component. The monetary component is levied on developments to fund, plan, prepare, and provide services of facilities identified in an ICP plan. The levies on development may consist of a standard levy, a supplementary levy, or both. A supplementary levy may be charged by a council as a permit condition if the impact of a development is considerable. The levy must be paid prior to lodging a planning application in a metropolitan council area for a development valued over the threshold.

The focus to-date of the ICPs system has been in greenfield growth areas, where the program has been used to demonstrate the efficacy of the ICPs as these developments make up the most significant portion of developments. The ICP calculation model for contributions is a standardised rate which is indexed each year. The calculation methodology is simplistic in approach and predictable in aspiration where contributions are calculated on a flat-rate basis and indexed each year.

For example, in the 2020-21 Financial Year, the standard levy rates were calculated on a per net developable hectare - specified as the following:

Class of development	Community and Recreation Construction	Transport Construction	Total Standard Levy Rate
Residential development	\$91,050	\$126,713	\$217,763
Commercial and industrial development	\$0	\$126,713	\$126,713

Furthermore, developers can contribute towards the ICP through a land contribution rather than a monetary contribution. This land contribution is allocated to councils under the ICP to be used for public purposes, such as the placement of roads, parks, and community facilities. Referred within the ICP plan area as 'inner public purpose land', this land component provides a flexible mechanism where developers can opt to provide a 'land equalisation amount'. The intention of the land equalisation amount is to ensure that where a developer cannot provide a contribution of land under the ICP area, they can provide equalisation credits which may be used in other ICPs areas.

An example arrangement (see figure 1) indicates the typical arrangement organisation of land contributions from developers. This is the case where land contributions have been organised into inner public purpose land, rather than a land equalisation.

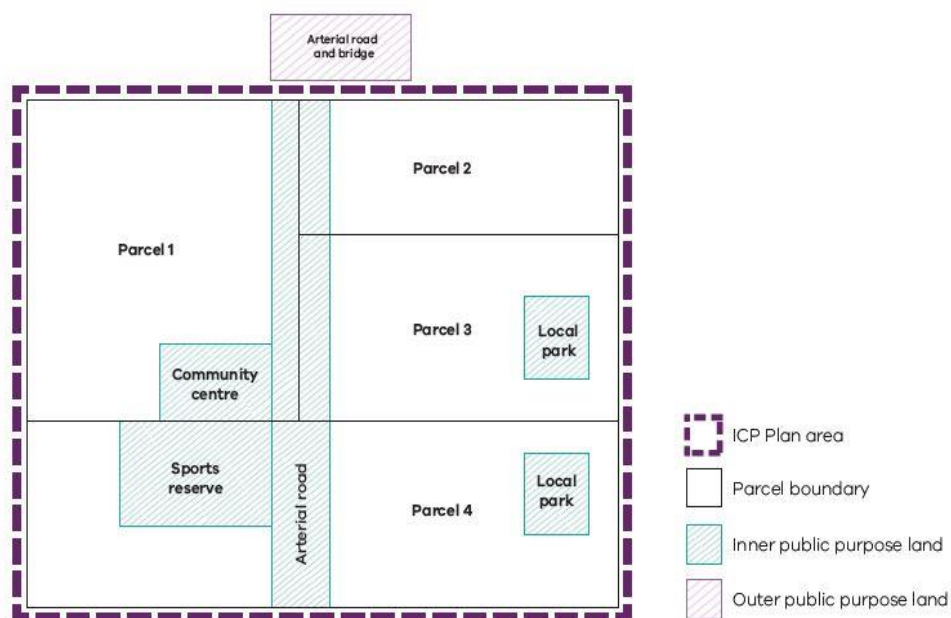


Figure 2 Example arrangement of ICP Plan Area Land Contribution – Plan Guidelines (2019) p. 23

B.3.6. Appeals

Appeals are set out in the *Planning and Environment Act 1987* where ICP disputes are primarily litigated through the Office of Planning Panels Victoria. However, the Victorian Civil and Administrative Tribunal (VCAT) does play a role in mediating broader planning disputes.

While infrastructure contributions are well established in Victoria the VAGO latest report on infrastructure contributions has cited the systemic issue of disputes between developers and

councils regarding ICPs.³⁹ This was correlated by a report from the Planning Panels Victoria in *Mitchell and Whittlesea [2019]*⁴⁰ which highlights common issues arising from ICP disputes.

These were primarily concerned with:

- the appropriateness of benchmark costs for ICPs
- the significance of what is considered ‘basic and essential’ in an ICP
- whether the clause 17 criteria are pre-conditions for applying a supplementary levy
- the meaning of the phrase ‘wholly or partially funded from the standard levy’ used in the Ministerial Direction
- whether funds collected for a particular project can only be spent on that project
- whether development agencies are obliged to deliver infrastructure identified in an ICP if there are insufficient funds to enable it to do so
- shortfalls in the capped community and recreation standard levy.

The outcome of this case highlights the ad hoc solutions which are emerging from these disputes. The Panel attempted to resolve these issues related to the ICP through posed from amendments to the council ICP. The Panel recommended changes to planning notes, layouts and designs. For the council, whilst they could eventually justify the reasonableness and appropriateness of ‘basic and essential’ infrastructure, the proposed changes from the Panel on the council’s ICP involved significant resourcing efforts to address.

Victorian councils are facing significant risk to challenge, and even if successful in contesting these appeals, face additional work to align the ICPs with the Planning Panels of Victoria’s directions.

B.3.7. Conclusions

The Victorian infrastructure contributions system is characterised by its complexity and attempts to review and reform. Previous stages of review and reform have carried forward the system yet have delivered out of step processes, development contributions and infrastructure contribution plans. Consequently, the Victorian system is now a patchwork of differing and overlapping tools. With competing tools, local and state government lack overarching strategy which raises systemic issues through the variability of application, uncertainty to stakeholders

The key outcome of the review was to gradually bring out the ICP system across high-growth areas where it can be implemented to meet the needs of governments, developers and the

³⁹ Victorian Auditor-General’s Office Report ‘Managing Development Contributions’ (2020), p. 58

⁴⁰ [Mitchell and Whittlesea GC102 \(PSA\) \[2019\] PPV 66 \(9 December 2019\)](#)

community. This system is encapsulated and filters through a set of principles intended to guide the infrastructure contributions framework.

However, the Auditor-General's 2020 report on the status of the infrastructure contributions system in Victoria shows a different narrative. Whilst the ICPs were implemented to provide elements of certainty and flexibility to developers, they have not been widely adopted and DCPs are still widely used, adding further complexity as different tools are applying levies. With criticisms that the Victorian system is now a patchwork of overlapping tools, combined with weaknesses in overarching strategy, variability in application, and uncertainty in meeting communities' infrastructure needs the Victorian system faces significant challenges to address these issues.

B.4. TasWater – cost-recovery for future growth

TasWater is reviewing its approach to developer charging as part of the fourth Price and Service Plan (PSP4). The timing of this review comes as stakeholder and community feedback have cited the need for further investment into TasWater's network. This has become particularly evident in higher growth areas of Tasmania where sewerage systems are at capacity. While some developers have paid the full cost of small capacity upgrades, TasWater have typically absorbed the cost of upgrading larger capacity systems. As a result, existing customers are subsidising new development.

Currently, TasWater do not have a funding stream to retrieve funding from development to support growth across its water and sewerage systems. TasWater have cited that due to pricing caps currently in place until the 2024 financial year, this may result in a lack of funds to address the infrastructure needs for Tasmania. This is evident in higher growth areas as housing financial stimulus is encouraging further growth through the 'HomeBuilder' grants.⁴¹ Without a dedicated funding stream, growth-related upgrades must compete for priority with other infrastructure investment, for example, renewal of existing infrastructure.

TasWater commissioned the development of an options paper⁴² which assessed different approaches used around Australia against a criterion and considered the requirements under the *Water and Sewerage Industry Act 2008*. The Options Paper provided three arrangements, the current arrangement and two alternatives: shared external costs and enhanced status quo.

⁴¹ 2021-21 Budget Paper 1 – Tasmanian Economy -

<https://www.treasury.tas.gov.au/BudgetPapersHTML/Budget2020/BP1/2020-21-BP1-2-Tasmanian-Economy-2020-21-Budget.htm>

⁴² TasWater: Developer Charges – An Assessment of Options (2020), Marsden Jacob Associates –

<https://www.economicregulator.tas.gov.au/Documents/20%201622%20%20Marsden%20Jacob%20for%20TasWater%20-%20Developer%20Charges%20-%20Final%20draft%20options%20paper%20-%2010%20March%202020.pdf>

After a period of stakeholder and community consultation, TasWater are moving towards the enhanced status quo option. The proposed approach would have the following advantages:

- builds upon TasWater's current funding approach and is consistent with the Tasmanian Economic Regulator
- allows for increases to cost recovery and will provide the necessary funds to support future growth
- developer contributions are uniform between first movers and future developers who connect to the system
- reflects the views expressed by stakeholders who are in favour of 'headworks' charges.

This change in charging model aligns with the views of the Water Services Association of Australia⁴³ which consider that:

- developers need to pay their share to support the costs of servicing new development
- without developer charges, existing customers are paying for new customers.

TasWater undertook extensive engagement on developer charges considering issues such as:

- how proposed charging would resolve the first mover problem
- how TasWater's growth and capacity plans would align with the proposed charging
- transparency around how the funds raised would be spent across TasWater's infrastructure networks
- how proposed charging compares with that in other jurisdictions.

TasWater then refined and selected a proposed developer charges approach and related policy - the proposed approach included:

- a standard developer charge per ET that would apply across Tasmania to all developments included in TasWater's Growth and Capacity Plans and which would apply even if the existing network had sufficient capacity to accommodate the proposed development
- a negotiated developer charge that would apply to all developments that are materially different to TasWater's GCPs in terms of size, cost and/or timing
- in each case, the charge is proposed to be determined using a net incremental cost approach which considers the net incremental capital and operating costs driven by new customers, minus the net incremental revenue from new customers.

⁴³ WSAA Submission (2019) "*Kickstarting the productivity conversations*" to the NSW Productivity Commission
<https://www.wsaa.asn.au/sites/default/files/publication/download/WSAA%20submission%20Dec%202019.pdf>

TasWater's proposed Developer Charges Policy can be found within its Draft Price and Service Plan 4 which has been submitted to the Tasmanian Economic Regulator for review and assessment.⁴⁴ The PSP4 is expected to be introduced in July 2022.

⁴⁴ See Appendix 7 – Land Development Policies: <https://www.economicregulator.tas.gov.au/water/pricing/price-determination-investigations/2022-water-and-sewerage-price-determination-investigation>

Appendix C. Further Reading

New South Wales

Environmental Planning and Assessment Act 1979 (No. 203), Chapter 7 – Infrastructure contributions and finance:

- <https://legislation.nsw.gov.au/view/html/inforce/current/act-1979-203#pt.7>

NSW Productivity Commission – Infrastructure Contributions Review:

- <https://www.productivity.nsw.gov.au/infrastructure-contributions-review>

NSW Government – Improving the infrastructure contributions system:

- <https://www.planning.nsw.gov.au/Policy-and-Legislation/Infrastructure/Infrastructure-Funding/Improving-the-infrastructure-contributions-system>

NSW Government – Local infrastructure contributions policy:

- <https://www.planning.nsw.gov.au/Policy-and-Legislation/Infrastructure/Infrastructure-Funding/Local-infrastructure-contributions-policy>

Independent Pricing and Regulatory Tribunal NSW – Local Infrastructure Contributions Plans:

- <https://www.ipart.nsw.gov.au/Home/Industries/Local-Government/Local-Infrastructure-Contributions-Plans>

Queensland

Planning Act 2016 (18 June 2021), Chapter 4 – Infrastructure:

- <https://www.legislation.qld.gov.au/view/html/inforce/current/act-2016-025#ch.4>

Queensland Minister’s Guidelines and Rules:

- <https://planning.statedevelopment.qld.gov.au/planning-framework/plan-making/state-planning/ministers-guidelines-and-rules>

Queensland Infrastructure Charges Taskforce Report March 2011:

- https://www.cairns.qld.gov.au/_data/assets/pdf_file/0017/21419/separate_attachment_clause_4_infrastructure_taskforce_final_report_march2011.pdf

Tasmania

Land Use Planning and Approvals Act 1993:

- <https://www.legislation.tas.gov.au/view/html/inforce/current/act-1993-070#HP4@HD2@EN>

Local Government (Building and Miscellaneous Provisions) Act 1993, Division 8 – Public open space:

- <https://www.legislation.tas.gov.au/view/html/inforce/current/act-1993-096#HP3@HD8@EN>

Local Government Act 1993, Division 7 – Fees and charges:

- <https://www.legislation.tas.gov.au/view/html/inforce/current/act-1993-095#HP12@HD7@EN>

Urban Drainage Act 2013, Part 4 – Connections:

- <https://www.legislation.tas.gov.au/view/html/inforce/current/act-2013-071#HP4@EN>

Office of the Tasmanian Economic Regulator:

- <https://www.economicregulator.tas.gov.au/water/pricing/price-determination-investigations/2022-water-and-sewerage-price-determination-investigation>

TasWater Price and Service Plan 4 (PSP4):

- <https://www.taswater.com.au/accounts-billing/fees-charges/price-service-plan/price-and-service-plan-4-psp4>

City of Hobart Council, Central Hobart Precincts Plan, Development contributions for shared infrastructure:

- <https://yoursay.hobartcity.com.au/53448/widgets/277518/documents/217983>

Victoria

Planning and Environment Act 1987 (v 149), Part 3AB – Infrastructure contributions

- <https://www.legislation.vic.gov.au/in-force/acts/planning-and-environment-act-1987/149>

Victorian Planning Authority – Infrastructure Contributions Plans:

- <https://vpa.vic.gov.au/greenfield/infrastructure-contributions-plans/>

Victorian Government, Department of Environment, Land, Water and Planning – Infrastructure contributions:

- <https://www.planning.vic.gov.au/policy-and-strategy/infrastructure-contributions>

Victorian Auditor-General's Office – Managing Development Contributions:

- <https://www.audit.vic.gov.au/report/managing-development-contributions>