

Improving the review of local infrastructure contributions plans

Discussion Paper

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Executive summary

The Department of Planning, Industry and Environment (the Department) is committed to ensuring that the process of reviewing higher-rate local (s7.11) infrastructure contributions plans (the review process) remains efficient while serving its purpose to ensure transparency and accountability.

The review process is triggered when a local s7.11 development contributions plan exceeds the thresholds set out in the Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2012 (currently \$20,000 per lot/dwelling and \$30,000 per lot/dwelling in identified urban release/greenfield areas). Its purpose is to ensure contributions plans above the thresholds reflect reasonable costs of providing necessary local infrastructure to support development.

The review process is comprised of multiple steps undertaken by council, the Independent Pricing and Regulatory Tribunal (IPART), the Department and the Minister's nominee. Community consultation takes place at different stages of the process (refer to Appendix A for a full overview of the process stages). The review process is an important way to ensure that the system remains transparent and accountable.

The Department has identified a series of improvements to collectively make the review process more efficient.

Box 1: Summary of system improvements discussed in this paper

1. Increase the value thresholds that trigger the review process (refer to options in section 2.2).
2. Implement an annual indexation mechanism for the thresholds that trigger the review process, based on the CPI.
3. Review the IPART terms of reference.
4. Remove existing exemptions to the review process, known as grandfathered contributions plans.
5. Remove existing requirement for councils to re-exhibit an IPART reviewed contributions plan following the receipt of advice from the Minister's nominee. See also detailed paper on proposed amendments to the [EP&A Regulation](#).

These system improvements will collectively ensure the review process remains efficient and certain. They will reduce the time required to complete the review process while maintaining the transparency and accountability underpinning it.

1. Introduction

Section 7.11 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) allows councils to levy contributions towards the cost of providing local infrastructure. Councils levy contributions through local contributions plans which identify the infrastructure needed to support new development, how much it costs and how costs will be shared.

Councils that propose to levy s7.11 local infrastructure contributions above thresholds set out in the [*Environmental Planning and Assessment \(Local Infrastructure Contributions\) Direction 2012*](#) (the Ministerial Direction)¹ are required to go through a review process. The thresholds currently are:

- \$20,000 per lot/dwelling
- \$30,000 per lot/dwelling in identified urban release/greenfield areas.

The process of reviewing local (s7.11) infrastructure contributions plans (the review process) provides independent oversight to higher-rate local infrastructure contributions to ensure that they are reasonable (i.e. they fairly reflect the relationship between development and demand for public amenities and services) and align with the Department's essential works List (which can be found in the Local Infrastructure Contributions Practice Note 2019).² As part of the review process, IPART assesses the nexus (the connection between proposed development and the demand created), apportionment, cost estimates and delivery timeframes.

1.1 Purpose

The Department has identified a series of improvements to collectively make the review process more efficient, reducing its timeframes while maintaining the transparency and accountability underpinning the entire process.

These are:

1. Increase the value thresholds that trigger the review process.
2. Implement an indexation mechanism for the thresholds that trigger the review process based on the CPI.
3. Review the IPART terms of reference.
4. Remove existing exemptions to the review process, known as grandfathered contributions plans.
5. Remove existing requirement for councils to re-exhibit an IPART reviewed contributions plan following the receipt of advice from the Minister's nominee. See also detailed paper on proposed amendments to the [EP&A Regulation](#).

1.2 Working group

Councils and other stakeholders have expressed concerns about the time it takes to have a reviewed contributions plan in place to levy appropriate infrastructure contributions and the resulting lost revenue.

A working group of officers from the Department and Blacktown City Council was established to identify factors which contribute to the current timeframes and potential ways to collectively make the system more efficient and aligned with contemporary planning requirements and costs of delivering local infrastructure, whilst maintaining the transparency and accountability of the review process. Based on the working group's findings, the Department has developed a number of system improvements aimed at collectively streamlining the entire review process.

¹ Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2012 <<https://www.planning.nsw.gov.au/-/media/Files/DPE/Directions/environmental-planning-and-assessment-direction-2012-act-s-94e-consolidated-2019-01-29.pdf?la=en>>

² Local Infrastructure Contributions Practice Note 2019 <www.planning.nsw.gov.au/-/media/Files/DPE/Practice-notes/practice-note-local-infrastructure-contributions-january-2019-01-21.pdf?la=en>

Box 2: The thresholds triggering the review process are no longer maximum caps on s7.11 contributions

It is important to note that the thresholds for review are no longer maximum caps on s7.11 local infrastructure contributions. Instead they are a trigger for when a s7.11 contributions plan is to go through the review process. Once councils have an IPART reviewed contributions plan, they can levy an amount above the threshold.

Although the \$20,000 and the \$30,000 per lot/dwelling thresholds were originally introduced as maximum amounts for contributions (or caps), above which councils were not able to levy s7.11 contributions, their role as maximum caps was removed in 2017 for most areas as part of the NSW Government Housing Affordability Strategy. The caps have remained in place in some areas eligible to apply for Local Infrastructure Growth Scheme (LIGS) funding.

1.3 Rationale for process improvements

The proposed improvements set out in this paper aim to collectively streamline the process of reviewing s7.11 contributions plans by making improvements at different stages of the process. Their aim is to ensure that the process remains efficient and fair.

The review process is taking longer

The review process comprises several steps managed by different agencies, which must be completed before a plan can be considered an IPART reviewed contributions plan. Analysis by the Department indicates that the entire process can take over 12-18 months to be completed and is becoming longer (refer to Table 1).

The current thresholds triggering the review process are outdated

The current \$20,000 and \$30,000 thresholds have not changed since their introduction in 2008 and 2010. This means that their value has continuously fallen in real terms for the past 10 years, while capital and land infrastructure costs have continued to increase. There is a risk that eventually, as costs continue to increase due to inflation and other factors, the value threshold will mean most s7.11 local infrastructure contribution plans will be required to go through the review process.

The improvements to the review process outlined in this paper are timely considering the thresholds have not changed since their introduction. Collectively they will ensure the process remains efficient, fair and certain for councils, developers and communities.

Table 1 - Overview of the current review process

	Step	Description	Current typical timeframes	
1	Council prepares and publicly exhibits a Draft Contributions Plan	In preparing a contributions plan, the council must publicly exhibit a contributions plan for a minimum period of 28 days and must consider any submissions received. Preparation of a plan may be concurrent with rezoning process.	6-12 months	
2	If the council wants to impose a levy above the relevant threshold amount, the plan is submitted to IPART for review	Council completes IPART application form and has pre-lodgement discussions with IPART.	2-4 weeks	
3	IPART receives formal application for review	IPART reviews the plan consistent with the Practice Note and Terms of Reference. IPART aims to complete this task within the 6-month review timeframe.	6 months	12-18 months
4	IPART publishes draft findings report and recommendations	Public consultation and consideration of submissions. IPART usually publicly exhibit the draft report for a period of 4 weeks, prior to releasing final recommendations.	6-8 weeks	
5	IPART provides final report and recommendations to the Department for issuing of advice by the Minister's nominee	Department reviews IPART recommendations and forwards to the Minister nominee to seek approval to issue advice to the council on implementing the IPART recommendations.	4-8 weeks	
6	Council receives Minister nominee's advice and amends the Contributions Plan	Council is currently required to re-exhibit the amended Contributions Plan for a period of 28 days and consider submissions received. The council must then consider submissions received prior to adopting the plan.	3-6 months	

Source: Department internal data

1.4 Appointment of a Minister's Nominee

The Minister has recently delegated the Minister's functions under clause 5(3) of the *Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2012* to the following nominees:

- The Secretary of the Department.
- Any Deputy Secretary in the Department in a role with responsibility for administering the *Environmental Planning and Assessment Act 1979*.

The appointment of a Minister's nominee shortens the time required to provide advice to councils as it reduces administrative processes. It does not alter the existing process of receiving and reviewing IPART recommendations by the Department and the issuing of advice to the council under delegation.

The appointment of a Minister's nominee is an important step in streamlining the process of reviewing s7.11 contributions plans. It complements the proposals outlined in this paper by reducing the time required to complete the review process while maintaining the transparency and accountability underpinning it.

1.5 Improving the infrastructure contributions system

The above proposals are part of a wider suite of system improvements intended to fix the uncertainty in the infrastructure contributions system. More information on other current proposals can be found on: planning.nsw.gov.au/infrastructure-contribution-reforms

2. Update the thresholds that trigger the review process

Proposal:

- Increase the value thresholds that trigger the review process (refer to options in section 2.2).
- Implement an indexation mechanism for thresholds triggering the review process, based on CPI.

2.1 Why should the thresholds increase?

Infrastructure costs continue to increase

Since the thresholds were established, both capital and land infrastructure costs have increased significantly while the thresholds have remained the same. The absence of indexation means that their real value has been gradually falling relative to infrastructure construction costs.

The Australian Bureau of Statistics (ABS) Road and Bridge Construction Costs Index is a good indicator of the escalating construction costs of local infrastructure. ABS data shows that over the past 10 years Road and Bridge Construction Costs Index has persistently increased faster than inflation.³ Figure 2 illustrates the growing gap between the value of the fixed contributions thresholds and the costs of delivering infrastructure, adjusted for inflation using the Consumer Price Index (CPI).

Land costs associated with delivering local infrastructure also continue to significantly increase. For instance, data shows that between 2010 and 2018, Sydney residential land

values have increased by 101%.⁴ An audit of contributions plans by the Department in 2014 showed land costs represent about 30% of the value of plans in metropolitan Sydney.

The thresholds that trigger the review process do not currently reflect increasing infrastructure delivery costs and land values over the past 10 years.

Infrastructure contributions rates are already indexed

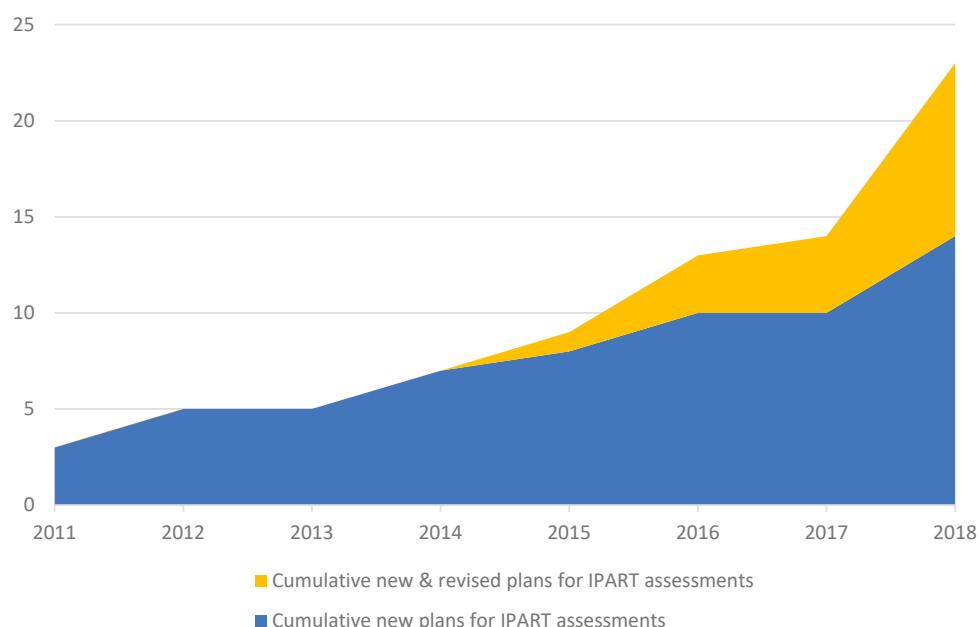
Unlike the review process thresholds, contributions rates set by councils are usually indexed to a readily accessible index (such as the Consumer Price Index) in accordance with cl32(3) and Division 1B, Part 4 of *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation).

This means that the rates in contributions plans continue to increase, while the review thresholds have remained static. Unless the review thresholds are adjusted and indexed, over time all s7.11 contributions plans will exceed the existing thresholds triggering the review process triggers, even if there are no changes to the infrastructure being funded, as demonstrated by [Figure 1](#).

³ ABS6427.0, Table 17.

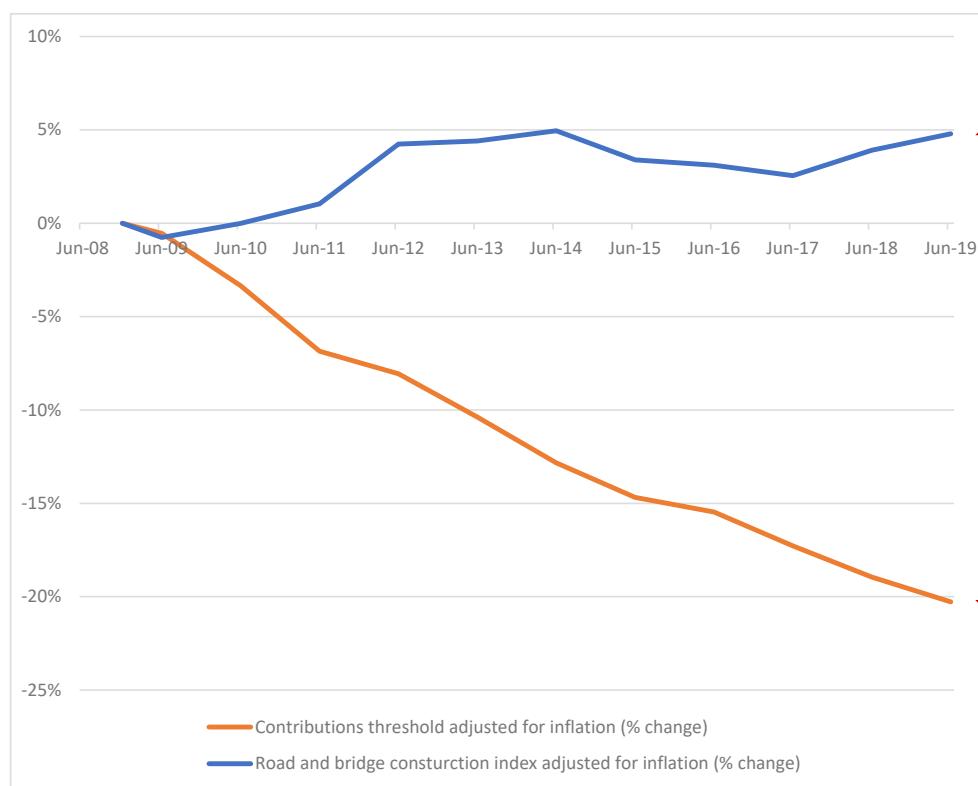
⁴ NSW Valuer General, https://www.valuergeneral.nsw.gov.au/land_value_summaries/historical_values.php

Figure 1 – Cumulative increase in local contributions plans requiring review



Source: Department analysis

Figure 2 - Percentage change in Road and Bridge Construction cost compared to the fixed contributions thresholds (adjusted for CPI - All Groups, Sydney)



Source: DPIE internal analysis, ABS 6401.0 Table 5; and ABS 6427.0 Table 17

2.2 What thresholds are proposed?

Options:

1. Index the existing \$20,000 and \$30,000 per lot/dwelling thresholds by the ABS Consumer Price Index - All Groups Sydney (CPI) from June 2010 to the latest available quarter.
2. Increase the thresholds to \$35,000 per lot/dwelling and \$45,000 per lot/dwelling in greenfield (urban release areas).
3. Implement one single threshold of \$45,000 for all IPART reviewed contributions plans.

Councils are able to levy contributions that are higher than the specified thresholds, but only once their plan is an IPART reviewed contributions plan. All s7.11 contributions plans, regardless of the review process, are required to demonstrate nexus between development and the infrastructure to be funded through the s7.11 contributions plans.

Note, the thresholds do not represent maximum caps on s7.11 local infrastructure contributions. Instead, they act as thresholds which trigger the review process.

The Department has considered multiple indices to develop the options for increasing the threshold, as shown on Table 2.

Table 2 - Escalations of thresholds from June 2010 to June 2019 quarter using various indices

Current Thresholds	Adjusted thresholds using various indices				
	CPI (All groups, Sydney) ⁵	CPI (New dwelling purchase by owner-occupiers, Sydney) ⁶	Bridge & Road Index (NSW) ⁷	Residential Property Price Index (Sydney) ⁸	Land value (Sydney) ⁹
\$20,000	\$ 24,247	\$ 27,942	\$ 25,409	\$ 30,276	\$ 40,183
\$30,000	\$ 36,370	\$ 41,913	\$ 38,114	\$ 45,414	\$ 60,275

Source: DPIE internal analysis based on published data

⁵ ABS6401.0, Table 5. Indexed to June 2019 quarter.

⁶ ABS6401.0, Table 9. Indexed to June 2019 quarter.

⁷ ABS6427.0, Table 17. Indexed to June 2019 quarter.

⁸ ABS6416.0, Table 1. Indexed to June 2019 quarter.

⁹ NSW Valuer General, https://www.valuergeneral.nsw.gov.au/land_value_summaries/historical_values.php. Indexed to June 2018 only.

Option 1:

This option involves indexing the existing \$20,000 and \$30,000 per lot/dwelling thresholds by the ABS Consumer Price Index - All Groups Sydney (CPI) from June 2010 to the latest available quarter. The CPI is a well-understood, accessible and widely used index and it is updated quarterly.

Many local contributions plans already use the CPI as an indexing mechanism for local contributions, making the proposed changes consistent with existing approaches to the indexation of local contributions plans. However, this index does not fully reflect the actual increase in infrastructure delivery and land costs as it is based on increase in prices of general household expenditure.

Option 2:

This option involves increasing the thresholds to \$35,000 per lot/dwelling and \$45,000 per lot/dwelling in greenfield (urban release areas). This is more in line with increasing infrastructure delivery costs and land costs associated with building local infrastructure since 2010, as shown on Table 2. This option is also consistent with the levels of development contributions in transitional areas as prescribed in the EP&A (Local Infrastructure Contributions) Amendment Direction 2017 applicable on 30 June 2020. This will provide certainty and continuity for the development industry in these transitional areas.

Option 3:

A third option is to simplify the system by applying a single threshold where all s7.11 contribution plans would be subject to an IPART review. This would remove the existing split between greenfield (urban release areas) and all other areas with the additional benefit of removing the administrative requirements associated with including areas in the list of urban release areas in Schedule 2 of the Ministerial Direction.

It is suggested that a single threshold of \$45,000 per lot or dwelling could be applied and any council that proposed to levy above this amount would first need to have their plan reviewed by IPART.

This option would remove Schedule 2 of the Ministerial Direction, and the Ministerial Direction would be updated to clarify that one single threshold applies across NSW.

Box 3: The Department welcomes your feedback on the proposed options and any other ideas to simplify and improve the Ministerial Direction

Adjusting the thresholds will require an update to the Ministerial Direction to replace the existing thresholds triggering the review process.

The Department welcomes your feedback and ideas on other ways to simplify and improve the operation of thresholds and the Ministerial Direction.

2.3 How should the thresholds be indexed?

Proposal:

- Implement an annual adjustment of the review thresholds, based on the Australian Bureau of Statistics Consumer Price Index -All Groups, Sydney (the CPI).

To ensure the thresholds triggering the review process keep pace with cost increases, it is necessary to implement an indexing mechanism that adjusts the thresholds to inflation.

The EP&A Regulation already allows councils to make annual or quarterly amendments to existing s7.11 contributions plans to reflect variations to index figures adopted by the plan. The EP&A Regulation includes the CPI as a common index for this purpose.

Since the CPI is a well-understood and widely used index, the Department proposes to implement an annual adjustment of the thresholds, using the CPI published figures for the March quarter. A similar methodology is already used to reflect annual variations to Special Infrastructure Contributions (SICs). A common methodology provides consistency within the system and simplicity to ensure the adjustment is well-understood.

2.4 What will happen to local contributions plans below the relevant threshold?

All s7.11 local development contributions plans need to reflect reasonable costs of providing necessary local infrastructure to support development. They are based on demand for infrastructure created by the development (called nexus) and the share of the total demand that the developer must pay (called apportionment).

In preparing a contributions plan, all councils (whether or not they are required to go through the review process) must publicly exhibit a contributions plan for a minimum period of 28 days and must consider any submissions received.

The increase in the thresholds will mean that contributions plans below the threshold will not be required to go through the review process and will not be limited to the essential works list. They will however still need to reflect reasonable costs of providing necessary local infrastructure to support development, be exhibited and be in line with statutory requirements and practice notes.

2.5 Consequential amendments to the Ministerial Direction

To give effect to the proposed updates to the thresholds, the existing *Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2012* (Ministerial Direction) would need to be amended to reflect the new thresholds and annual indexation. The updated Ministerial Direction would ensure the review thresholds remain up-to-date, clear and accessible to all stakeholders.

3. Review of the IPART terms of reference

Proposal:

- Review the IPART terms of reference.

3.1 Issues with the current terms of reference

The IPART terms of reference was established at the same time as the maximum caps on infrastructure contribution rates and subsequently updated in 2018. With the replacement of maximum caps for thresholds triggering the review process, the context and purpose of the review process has changed. It is timely that the IPART terms of reference are reviewed.

The existing terms of reference are broadly worded and therefore unclear on the scope of certain aspects of the review. The open-ended wording on some of the review requirements has resulted in IPART being required to:

- Consult widely throughout each iteration of the review rather than being able to tailor the consultation scope to the specific requirements of each review.
- Undertake detailed analysis of every aspect of the plan notwithstanding the level of impact.

Additionally, the current terms of reference includes duplications with the practice note in relation to assessment criteria and services. Having detailed guidance in two separate documents reduces transparency and adds complexity to the system. There is a need to ensure that the IPART terms of reference remain up-to-date, transparent and respond to the changing role and scope of the review.

3.2 Intent of proposed updates to the terms of reference

It is proposed to review the existing terms of references to:

- Clarify the purpose of the terms of reference and removing duplications with the practice note to ensure the practice note remains the source of detailed guidance on the review process.
- Consider introducing a targeted review of additional information to facilitate quicker review in situations where a plan has already been reviewed, allowing a targeted review rather than requiring IPART to review the whole plan when additional information is supplied.
- Simplify consultation requirements so that IPART is only required to consult with the relevant council. While IPART may still consult with other parties as appropriate on a case by case basis and as detailed in the practice note, the updated terms of reference would not make this a requirement.
- Modernise and clarify wording, references and definitions.

The review will allow IPART to focus on the aspects which have the most impact in ensuring that s7.11 contributions plans are reasonable. This will contribute to streamlining aspects of the review without affecting the rigour and transparency of the process, especially for plans which are proposing rates only marginally above the threshold.

The IPART Terms of Reference are issued and signed by the NSW Premier. The Department will work closely with the Department of Premier and Cabinet (DPC) and IPART in considering submissions received and finalising the proposed Terms of Reference for signature by the Premier.

4. Remove existing exemptions from the review process

Proposal:

- Remove the list of grandfathered contributions plans from Schedule 1 of *Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2012*.
-

Currently the review process and the essential works list do not apply to land identified in [Schedule 1](#) of the Ministerial Direction. The grandfathering of contribution plans through Schedule 1 was introduced when the \$20,000 and the \$30,000 per lot/dwelling thresholds were established as maximum amounts above which councils were not able to levy s7.11 contributions (caps).

Since the maximum caps have been removed and the thresholds now operate as triggers for the review process, it is no longer appropriate to exempt these contribution plans from the review process.

There are several benefits associated with removing these existing exemptions from the IPART review process to:

- Support IPART's role in ensuring that the contributions system remains transparent and accountable by encouraging councils to review outdated contributions plans.
- Remove references to outdated and superseded contributions plans from Schedule 1 of the Ministerial Direction.
- Simplify the operation of the Ministerial Direction to clarify that the review process applies to all contribution plans that meet the review triggers.

The removal of grandfathering will provide additional certainty about the operation of the review process. It complements other system improvements proposed in this paper, such as increasing the thresholds that trigger the review and updating IPART's terms of reference.

5. Remove re-exhibition requirements for councils

Proposal:

- Streamline the process following IPART's review by removing the existing requirement in the EP&A Regulation for councils to re-exhibit a contributions plan for a minimum period of 28 days following the receipt of advice from the Minister or Minister's nominee. 3.1 Issues with the current terms of reference

The Department proposes to amend the EP&A Regulation to allow for contributions plans to be amended to give effect to the advice of the Minister or Minister's nominee in relation to implementing IPART recommendations without requiring a further 28-day exhibition following IPART's review.

Appendix A illustrates the current process and the proposed improvements.

Effect of the changes

In preparing a contributions plan, councils must publicly exhibit a contributions plan for a minimum of 28 days and consider any submissions received. Where contribution plans go to IPART for review, IPART also have a practice of publicly exhibiting the draft report for a period of 4 weeks, prior to releasing final recommendations.

Currently, councils are required to re-exhibit the contributions plan for a further 28 days following the issuing of advice to council by the Minister or Minister's nominee on amendments required to the contributions plan. Council must then consider submissions received. During the re-exhibition of a contributions plan councils are constrained in their ability to make any further changes as a result of any submissions received.

This amendment will therefore remove the requirement for councils to re-exhibit their IPART reviewed contributions plan. This does not reduce the community's ability to contribute to the review process. The community is able to provide upfront input during council's exhibition of draft plan and during the exhibition of IPART's draft findings report and recommendations.

To facilitate public review of final approved contributions plans, the Department is also proposing to amend the Regulation to require councils to publish contributions plans on their websites or on the NSW Planning Portal. See also detailed paper on proposed amendments to the [EP&A Regulation](#).

6. Have your say

The Department welcomes your feedback on the proposals in this paper. Your feedback will help us better understand the views of the community and will assist us to finalise the proposals.

Submissions can be made via the Department's website:

www.planningportal.nsw.gov.au/exhibition

You may also post your submission to:

Executive Director

Planning Policy

Department of Planning, Industry and Environment

Locked Bag 5022, Parramatta NSW 2124

All submissions will be made public in line with our objective to promote an open and transparent planning system. If you do not want your name published, please state this clearly at the top of your submission. The Department will publish all individual submissions and an assessment report on all submissions shortly after the exhibition period has ended.

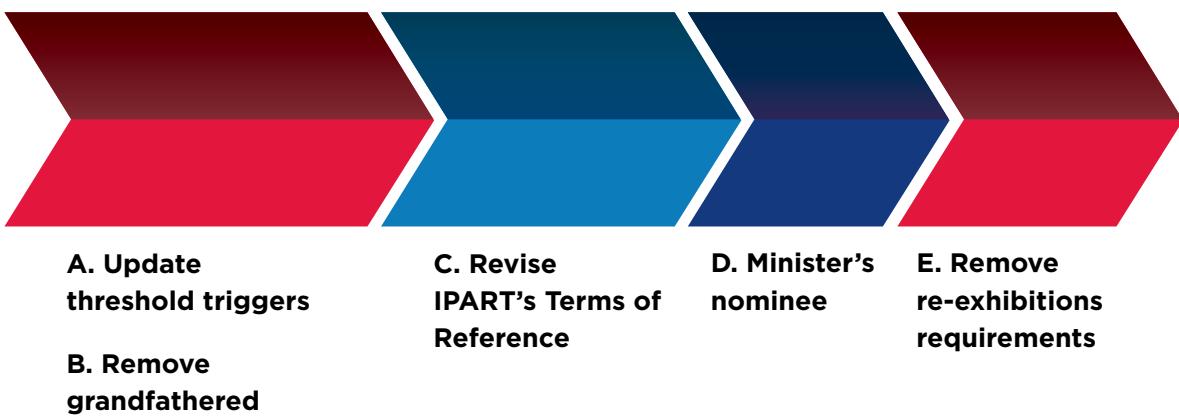
Appendix A

Overview of the review process and proposed improvements

Current



Improvements



-  Department
-  IPART
-  Council

dpie.nsw.gov.au