



Central Hobart Precincts Plan - Development Contributions for shared infrastructure

City of Hobart

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1. Introduction

This section provides an introduction to the project by discussing the background, purpose, and report structure of this interim report.

1.1. Background

Greater Hobart is experiencing a consistent pattern of growth. House prices are rising rapidly, population is growing, and the city (meaning the wider Greater Hobart area) is expanding outward as growth is concentrating in Greenfield areas.

In the City of Hobart and the central precinct areas, land values are increasing as demand for housing, tertiary education (which now has an arguably less certain future) and other land uses is high. In Greater Hobart there is debate developing about the delivery of housing in the 'missing middle' segment, for example, medium density housing in well accessible places close to transport and services. Some of Hobart's central precincts could play a key role in the provisioning of these and other needs.

Due to the increasing pressure on development in Greater Hobart there is a notable shift and re-appreciation in strategic planning and sustainable development.

1.2. Purpose

SGS Economics and Planning has been commissioned by City of Hobart (CoH) to provide advice on financing options for public infrastructure needs. The future built form and use of the Central Precincts will drive demand for public infrastructure. The regulatory context in Tasmania is such, that development contributions are not used extensively. The key available mechanism is through Part 5 Agreements under the *Land Use Planning and Approvals Act 1993* (LUPAA).

1.3. Report structure

- Section 1 provides a review of the regulatory and planning framework in Tasmania and other jurisdictions for development contributions towards public infrastructure funding.
- Section 2 provides some preliminary recommendations for the interim.

2. Development contributions for public infrastructure

This section discusses the theory of development contributions for public infrastructure, how contributions are used in other jurisdictions, and the legislative context in Tasmania. It concludes with a discussion of options for funding mechanisms that could be applied to achieve the intended outcomes of the Central Hobart Precincts Plan.

2.1. Introduction

The practice for using development contributions to fund public infrastructure is well established. Development contributions and value capture mechanisms are used across many other Australian jurisdictions to capture value uplift and reinvest or co-fund public infrastructure. National conversations on development contributions highlight the role that this funding for infrastructure plays in ‘underpinning our quality of life, supporting our economy and enabling individuals to contribute to our collective prosperity’ (IA, 2016).

The following section introduces a theoretical framework for understand the different types of development contributions, each of which has separate justifications and cost appointment principles. This is followed by a discussion of the nature of requirements (mandatory, voluntary, or shared) and the foundational principles of funding public infrastructure.

Four frames of development contributions

Development contributions exacted through the planning system can be grouped into four mutually exclusive categories: user-pays charges; impact mitigation levies; value capture or value-sharing arrangements; and inclusionary requirements. An elaboration of the theory behind these four types is provided in Wellman and Spiller (2012)¹.

An understanding of the distinction between these four categories is fundamental to any review of existing practices, or proposals to develop new contributions regimes. The principles governing the fairness and applicability of any given type of contribution can vary considerably, with major implications for how such levies should be implemented and in turn, their acceptability to those responsible for payment.

Broadly speaking, the justification for mandatory development contributions resides in one of four ‘frames’. These are mutually exclusive and additive. That is, multiple contributions can be sought from the one proponent, invoking different justifications and their attendant cost apportionment principles.

The conceptual distinction between each type of development contribution is as follows:

¹ Wellman and Spiller (2012) *Urban Infrastructure Finance and Management* John Wiley & Sons.

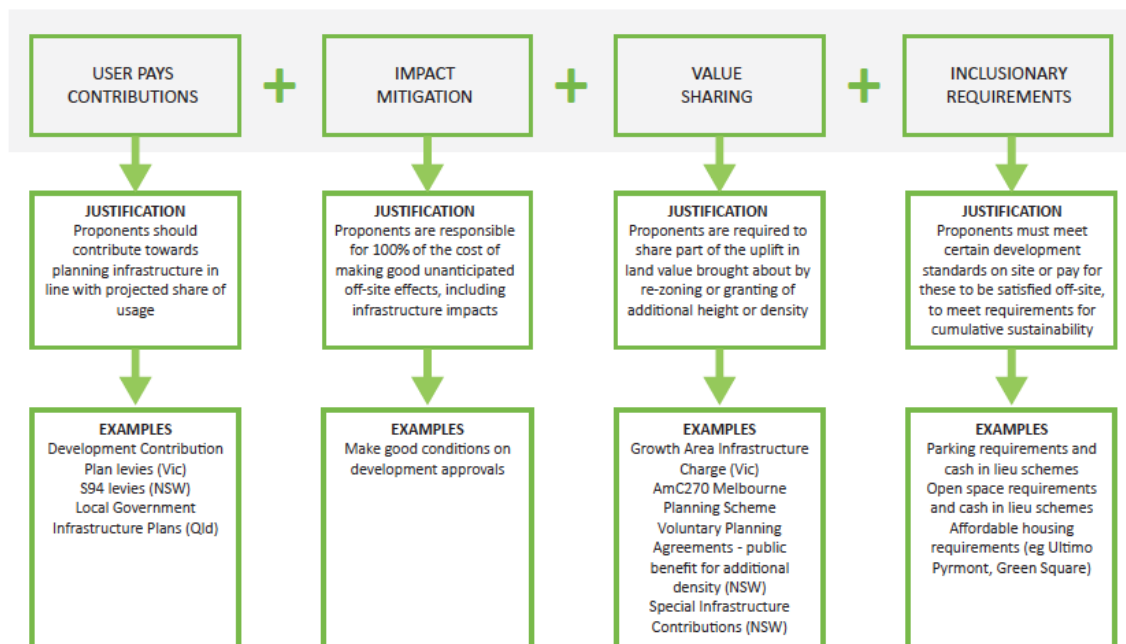
- **User charges:** These are payments required of developers to help fund planned shared infrastructure which will be used by the development in question. A key principle is that the developer should contribute in proportion to their expected share of the use of the infrastructure items in question.
- **Impact fees:**² Whereas user charges apply to planned infrastructure, impact fees apply when a development creates unanticipated demands on local infrastructure because of its design or timing. The underlying principle for cost apportionment is the ‘polluter or exacerbator pays’ principle, that is, those who cause the cost impact are full responsible for the costs of abatement or rectification. This would apply even if the unplanned additional investments in local infrastructure subsequently provide opportunities/ benefits for other developments. Unlike user charges, impact fees cannot, by definition, be predetermined. They must be worked out on a case-by-case basis.
- **Value sharing or value capture** arrangements (or betterment tax or development licensing fee): This mechanism captures part of the uplift in the unimproved land value that follows from an infrastructure investment, site rezoning or development approval which allows for a higher value or more intensive land use. The justification for this type of contribution is that land use regulations and planning decisions inevitably create windfall land value increases for particular landowners. This additional land value has been ‘created’ by government decisions rather than landowner effort or investment and therefore, in principle, the community is entitled to share in the uplift that exceeds the normal profit from development activity. The proportion of land value uplift that should be shared is a key area of debate. In Australian practice, a 50% to 75% share of value being shared with the community is common.³
- **Inclusionary requirements:** Inclusionary requirements are about ensuring that successive developments meet community expectations in relation to liveability, efficiency, and sustainability. In general, inclusionary requirements are satisfied through on-site provision of infrastructure (e.g., open space or off-street parking) or by satisfaction of specific design requirements (e.g., building setbacks, plot ratio, water, or energy efficiency measures, etc.). In the case of off-street parking and open space requirements, proponent may have to option of providing cash-in-lieu equivalents for off-site provisions (e.g., cash contribution to be used to fund consolidated local open space). All the costs of inclusionary requirements are typically met by development proponents.

An overview of the frames and apportionment principle (justification) for each is shown in Figure 1. The justifications guide what contributions can be fairly sought under each frame.

² The term ‘impact fees’ is frequently used in the US context to refer to *user pays* development contributions rather than the form of impact fees that is described here.

³ It can be argued that *all* windfall land value uplift could be captured, provide a developer will still make a fair profit from undertaking the development and the land owners will sell land for redevelopment without receiving a windfall gain.

FIGURE 1: FOUR FRAMES OF DEVELOPMENT CONTRIBUTION



Source: SGS, 2017.

Mandatory vs voluntary contributions

Depending on the specific legislative context in the particular jurisdiction, in Australia there are mandatory, voluntary, and shared development contributions.

Where mandatory approaches are in place, both the proponents of development and approval authorities have a clear understanding of the financial (or other) obligations in advance of planning approval being sought or granted. There is therefore a strong case for a system of mandatory contributions, if indeed it can be implemented under a current or future policy framework and subject to appropriate design and calibration of the contributions required. As a general principle, transparency in markets – and in this case, land markets – improves both equity and efficiency. A regulated system of mandatory contributions for public realm improvements is, by its very nature, the most likely to provide a clear and transparent mechanism for all stakeholders. It is, however, prudent to examine how mandatory contributions for public infrastructure are justified in economic, social, and environmental terms.

Voluntary contributions to infrastructure provision are mutually agreed arrangements under which a proponent upgrades or otherwise invests in public assets which are, generally, off-site, but typically connected in some way with the project at hand. Provided these voluntary arrangements are not entered into ‘under duress’ (for example, as a means of bypassing or foreshortening an otherwise convoluted and protracted approval process), the outcome can be expected to be beneficial for all parties, including, most likely, the wider community. It is appropriate that such voluntary contributions are pursued in a statutory environment where there are limited or no powers to pursue mandatory contributions.

Voluntary contributions have the advantage of avoiding additional cost imposts on development. They will, however, be less transparent than a mandatory ‘rules based’ approach. In the process of negotiating voluntary contributions, there is significant potential for uncertainty (with respect to costs, timing and outcomes) for the proponent, approval authority and the broader community. If voluntary contributions

are pursued it is important that policies are in place to make the process of negotiating voluntary arrangements as transparent and as efficient as possible. It is notable that the success of voluntary agreements in securing benefit public infrastructure can be a function of the respective negotiating powers of public authorities and developers.

In the case of voluntary contributions, there is the potential to negotiate co-contributions (shared contributions) and/or to incentivise payments by committing matching contributions where this is mutually beneficial for the parties concerned.

In some cases, works-in-kind can be referred to as 'voluntary contributions'. However, if such works are undertaken to fulfil mandatory obligations, they are in fact mandatory contributions that are satisfied by the carrying out of works rather than cash payments.

2.2. Funding of public infrastructure

Built form and use mixes contribute to benefits for the community and the environment. In turn, quality urban environments drive development value. People will be willing to pay more for living or using a high-quality environment, resulting in higher property values.

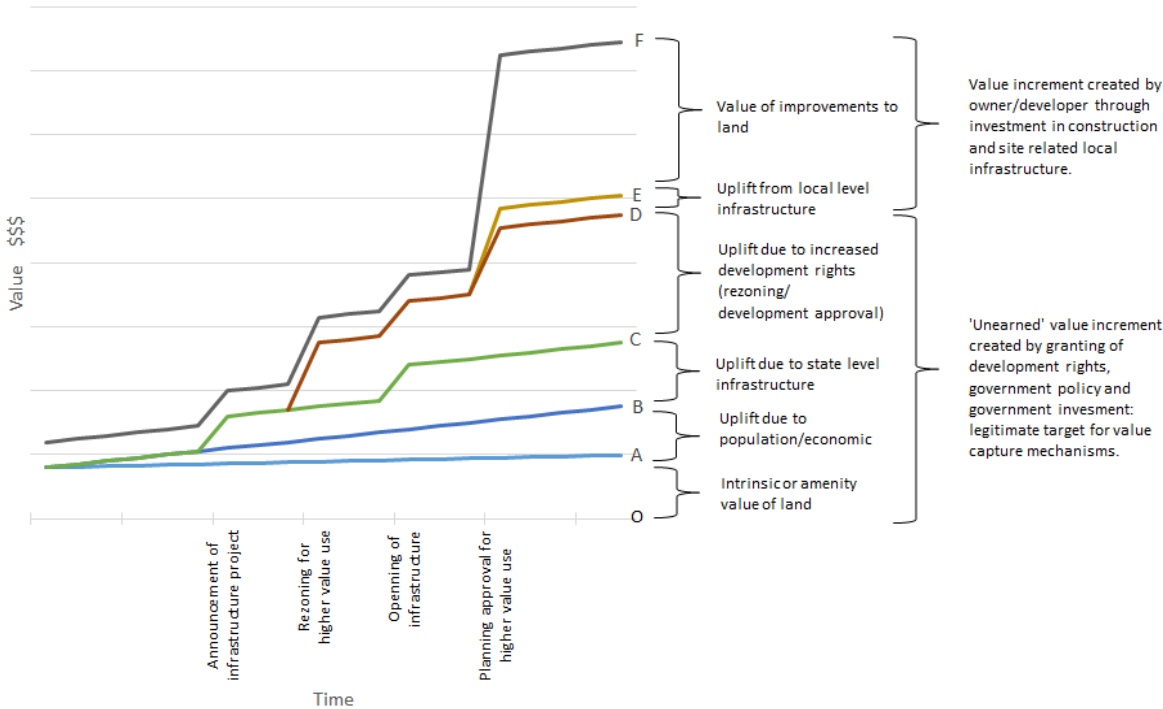
Based on previous work prepared by SGS for Infrastructure Australia, a property's gross value is a function of six key drivers (SGS, 2016):

1. Amenity values reflecting the site's locational and natural qualities, its proximity to regional open space and recreational opportunities, plus the quality of general 'urban upkeep', that is, the maintenance of historic infrastructure investment. This 'raw' amenity value component increases in an urban setting.
2. Population growth (as a proxy of economic growth) which in an urban context enhances the general scarcity and utility of the property.
3. State level infrastructure provision reflecting the property's direct access to beneficial or 'social' infrastructure such as public transport, major roads, schools and hospitals.
4. Granting of development rights to allow for realisation of latent value, effected through rezoning, an increase in development potential and/or development approvals.
5. Local level infrastructure provision reflecting the value of off-site development servicing infrastructure such as reticulated water and sewerage, stormwater drainage, distributor and collector roads.
6. On-site improvements undertaken by the landowner, including buildings, landscaping, and other facilities.

When a particular parcel of land has its development potential increased (such as through rezoning), the landowner is effectively granted additional development rights which are not available to all landowners. This represents a 'rationing' of development rights which the community allows and understands because it is part of appropriate planning, rather than a 'free for all' which would result if there were no restrictions on development rights.

The rationing of rights creates special development opportunities for particular landowners. The value of these special opportunities - so-called 'monopoly rents' - is reflected in the increased land value, as illustrated in Figure 2. This increase in land value is generated wholly independently of any investment by the landowner or developer (and is separate from the profit received by the developer on construction and other cost outlays).

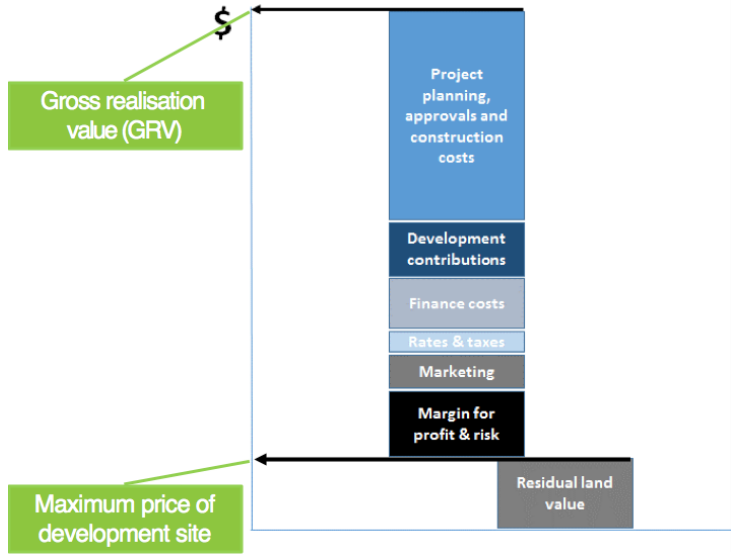
FIGURE 2: DRIVERS OF PROPERTY VALUE UPLIFT AND VALUE CAPTURE



Source: SGS, 2016.

A developer will value a property on a residual basis. As a price taking agent in the market, the developer will pay no more for a site than the residual land value (RLV) after all development costs and margins for profit and risk are deducted from their anticipated gross sales (or 'gross realisation') upon completion of the project (see Figure 3).

FIGURE 3: RESIDUAL LAND VALUE



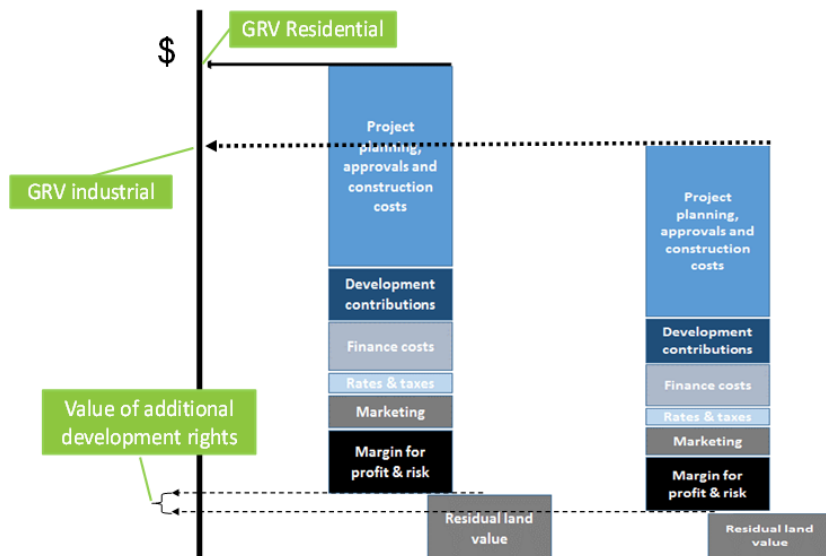
Source: SGS Economics and Planning, 2019

Note that the development proponent cannot simply pass costs forward to home buyers in higher prices for their product. These prices are set exogenously by the market. Thus, for example, if the proponent is confronted with a development contribution for public infrastructure, this would add to their development costs which, in turn, would necessitate a larger dollar amount for profit and risk. This additional cost will ultimately be reflected in a lower supportable bid price for the development site, that is, a lower RLV.

Meanwhile, any value sharing requirement would simply target a proportion of the uplift in land value brought about by the granting of additional development rights or development potential, as illustrated in Figure 4 which contemplates a rezoning from a lower value use (such as industrial) to a higher value use (such as residential). This is the uplift which remains after all other of development contribution, where applicable, have been met.

For Council therefore, there may be opportunities to capture some of the value uplift to reinvest in or co-fund public infrastructure.

FIGURE 4: CONCEPTUAL VALUATION OF ADDITIONAL DEVELOPMENT RIGHTS UPON REZONING



Source: SGS Economics and Planning, 2019

Contributions towards unearned value uplift

From a developer's and property owner's perspective, all other things remaining equal, the better the improvements in the urban environment, the better the returns on development and the higher the increase of the capital value of existing built form. For Council, there may be opportunities to capture some of the value uplift to fund public benefits, including to reinvest in or co-fund public infrastructure.

For 'unearned' value uplift, a case can be made to seek contributions to the funding of the infrastructure that generated the value uplift. This is particularly true if the infrastructure provided is over and beyond the level of services provided elsewhere in the municipality (with the 'common level of service' expected to be covered by income from rates).

Unearned value uplift will generally accrue to both existing and new built form. A fair and equitable system for contributions ensures that the costs are attributed proportionally:

- For new development, developer contributions can be used to ensure fair and equitable contributions are charged once-off upfront.
- Increased development rights would be uniquely allocated as a category of ‘unearned’ value uplift for new development.
- For existing built form, the rates system can be utilised to ensure fair and equitable contributions are charged on an annual basis.

2.3. Special rates and charges for public infrastructure

While the focus in this report is on development contributions, it is important to point out the broader spectrum of possible mechanisms to fund public infrastructure from land value uplift

Separate rates and charges can provide an equitable means of raising revenues to fund public infrastructure. For example, council may make a separate rate or separate charge within a part of its municipal area. Separate rates can be applied to all ratepayers who are deemed to receive benefit for a specific project or across a municipality. A council is generally not limited as to what it uses the funds raised by the special charge for.

The benefit of this system is that it enables councils to charge the beneficiaries of specific infrastructure and works, whilst limiting the financial impact on ratepayers that receive minimal benefit. Charges can be indexed according to the consumer price index. It is important to clearly determine the aim of the rate, the main beneficiaries, and the method of apportioning to prevent community opposition as they may be perceived as an increase in rates and charges.

2.4. Infrastructure funding in Tasmania

This section provides an overview of the existing legislative and policy context in Tasmania that allows for developer contributions towards infrastructure funding.

In the case of new subdivisions, new infrastructure is designed and provided by developers and handed over to the relevant authority. This approach applies to both local and headworks infrastructure and includes stormwater, sewerage, electricity, public roads, and public open space. In established areas, local government is generally responsible for *maintaining* shared stormwater infrastructure, public roads (although in some instances these are provided by State Growth) and public open space. New stormwater infrastructure (e.g., on-site detention) or new roads (if required) are provided by developers.

The current pathways for developer contributions are:

- **Council-specific infrastructure policies and charges** which are enforced via permit conditions under Section 51 of the *Land Use Planning and Approvals Act 1993*.
- **Part 5 Agreements** – these vary in its application, but can be used, for example, to provide infrastructure for a new subdivision in certain circumstances (Section 71 of the *Land Use Planning and Approvals Act 1993*).
- **Developer contributions for open space** in new subdivisions under Sections 116 and 117 of the *Local Government (Building and Miscellaneous Provisions) Act 1993*.
- **TasWater servicing infrastructure and headworks charges** provides an avenue for TasWater to impose developer charges and development assessment fees for new development approvals if they are the

referral authority on a planning application. Some Councils also impose headworks charges (e.g., Brighton).

Each pathway is enforced via a condition on the planning permit, enabled through the general provisions granted in the *Land Use Planning and Approvals Act 1993*.

The suite of mechanisms for developer contributions in the Tasmanian planning system demonstrate a lack of a sophisticated state-wide development contributions scheme to guide all councils. Legislative change is required to enable a state-wide approach to developer contributions, where they can be implemented consistently across all council areas. It appears that Councils have developed individual policies and charges to fund infrastructure requirements in response to the lack of state-wide guidance, and the limited scope or efficacy and strategic capability of Part 5 Agreements, developer contributions for open space and TasWater servicing infrastructure and headworks charges.

Further details of each pathway are outlined below.

Council-specific infrastructure policies and charges imposed via permit conditions – *Land Use Planning & Approvals Act 1993* (LUPAA)

Councils across Tasmania have different approaches to funding infrastructure, with some councils developing individual policies or guidelines for infrastructure charges. The conditioning of the required charge on the planning permit is the key mechanism for enforcement.⁴

Table 1 provides some examples of different Tasmanian council policies relating to developer contributions for funding infrastructure. These policies are similar in their objectives, where they have calculated specific charges for different types of infrastructure that apply when an applicant seeks planning approval for development that will increase demand for infrastructure. The charge is imposed as a condition on the permit. The council policies may vary in scope of infrastructure covered, the calculation method or the extent of areas that the policy applies.

These policies are not the only way of implementing developer contributions – it can occur through a voluntary negotiation process between council and the developer, on a case-by-case basis. However, there is limited flexibility for negotiating the terms of these agreements, and developers can provide cash in lieu of infrastructure and planning policy requirements.

⁴ It is noted, however, that these policies are only a relevant consideration for a planning application when expressly called up by a provision of the planning scheme. Conditions can only be imposed where they (i) have a planning purpose, (ii) fairly and reasonably relate to the proposal, and (iii) where they are reasonable.

TABLE 1: TASMANIAN COUNCIL POLICIES ON DEVELOPER CONTRIBUTIONS

Council	Policy	Summary
Brighton Council	Policy No. 1.7 Key Infrastructure Investment and Defined Infrastructure Charges Policy (2018)	- Imposes a charge on the creation of new lots (subdivision) or the intensification of land that benefits from infrastructure investments. - Applies to designated areas. - Instigated by the removal of TasWater's ability to impose headworks charges for sewerage and water infrastructure, meaning in residential rezoning and subdivisions, the first to develop must incur major costs that then benefit all subsequent developers in the area. - Strategic infrastructure investments may include water, sewerage, road and other transport, public open space infrastructure, stormwater drainage, or car parking. - Council acts as an intermediary for investment in infrastructure costs. - The calculation of each Charge is to be based on the recovery of the total amount of Council's investment as a proportion to the number of additional tenements that can be serviced by that piece of infrastructure (where applicable). - Charges for infrastructure contributions are imposed as a condition on a permit.
Clarence City Council	Headworks Levy Policy (2008)	- Applies to all development within the city boundaries that requires a planning permit and increases the demand on infrastructure services. - Works considered as headworks include water, sewerage, road and transport, public open space, stormwater drainage and car parking infrastructure. - The works identified for cost recovery are listed in the Headworks Plan, with a timeline not exceeding 20 years. - Charges are calculated by service catchment, zone, suburb or the like as appropriate for each infrastructure group. - Council may agree to accept a security or bond to secure payment of relevant contributions in lieu of payment at the required time. - For payment of headworks charges, where necessary, Part 5 agreements or similar provisions will be implemented to secure the obligation of the applicant and subsequent landowners to Council.
Huon Valley Council	Community Infrastructure Contribution Policy (2016) (Reviewed 2020)	- Levying headworks charges on developers. Includes roads, stormwater removal, halls, walking tracks, recreational facilities and the like which are for the benefit of the community. - Imposed as a condition of approval for development applications that may connect to or use community infrastructure. - Council maintains a Capital Works Program that details all projects including Community Infrastructure projects. - Council may enter into an agreement with a developer to vary the requirements of the contribution, for example to undertake works in lieu.
Derwent Valley Council	Community Infrastructure Contribution Policy (2020)	- Levying headworks charges on developers. Includes roads, stormwater removal, halls, walking tracks, recreational facilities and the like which are for the benefit of the community. - Imposed as a condition of approval for development applications that may connect to or use community infrastructure. - The Community Infrastructure Contribution will be set annually by Council as part of its fees and charges under Section 205 of the Local Government Act 1993.

The application of conditions on a permit is governed by case law. Section 51 'Permits' of LUPAA includes the general provisions relating to the granting of a planning permit.

It is noted that permit conditions are also used as a mechanism in implementing Part 5 Agreements, public open space contributions, and servicing infrastructure and headworks charges imposed by TasWater.

Part 5 Agreements – *Land Use Planning & Approvals Act 1993 (LUPAA)*

Part 5 Agreements are legal agreements between the planning authority and landowner. They are a mechanism with broad application and limited use in the context of infrastructure provision, and generally lacks enforcement. On the ground, they tend to apply in circumstances where development needs to be restricted or where there are ongoing maintenance requirements, and in circumstances where there is an unusual arrangement or need.

Part 5 Agreements may be enforced through the Supreme Court of Tasmania, unlike other planning matters which are through the Resource Management and Planning Appeal Tribunal. A planning application cannot be refused based on a Part 5 Agreement that applies to the land, and an applicant may apply to have the Agreement removed. This limited their effectiveness to impose an obligation to provide developer contributions.

In terms of developer contributions, Part 5 Agreements can be used, for example, where council grants permission for the landowner to build a structure over or adjacent to an easement / council asset, or for providing infrastructure in the context of a new subdivision.

Other more common examples of its use include to apply a Bushfire Management Plan to the land, or to establish conservation zones to protect biodiversity or other environmental values on private land in perpetuity (such as through weed control or rehabilitation works).

A permit may require a Part 5 Agreement to be entered under Section 71 – if so, the permit cannot take effect until all required parts of the Part 5 Agreement have been satisfied. Part 5 Agreements are attached to property titles to enable the enforcement of specific requirements. Where the agreement is made with an owner of land, the agreement is registered and takes effect as if it were a covenant to which Section 102(2) of the *Land Titles Act 1980* applies.

Under Part 5 Agreements, Section 71 of LUPAA allows planning authorities to enter into agreements. It states:

71. Planning authority may enter into agreements

- (1) A planning authority may enter into an agreement with an owner of land in the area covered by a planning scheme.*
- (2) A planning authority may enter into the agreement on its own behalf or jointly with any other person.*
- (3) A planning authority may enter into an agreement under subsection (1) with a person in anticipation of that person becoming the owner of the land.*
- (4) The planning authority is not entitled to apply to have the agreement referred to in subsection (3) registered under section 78 until the person becomes the owner of the land but the agreement is binding on the parties.*

(5) An agreement is binding on the parties to the agreement on the day on which it is executed.

The agreements that can be established include bonds and guarantees, conditions that require the owner to deposit a sum of money with the planning authority (Section 73), and payments and contributions for infrastructure (Section 73A), as follows:

73A. Payments and contributions for infrastructure

(1) An agreement may include a provision for a payment or other contribution for infrastructure to be made by any party to the agreement.

(2) Without limiting subsection (1), an agreement may make provision –

(a) for a payment or other contribution for infrastructure to be made in stages; or

(b) for works or other development to be undertaken by the owner on behalf of the planning authority or any other party to the agreement.

(3) The matters provided for under section 86 of the Local Government (Building and Miscellaneous Provisions) Act 1993 may be dealt with in whole or in part under an agreement required –

(a) as a condition of a permit; or

(b) under the provisions of a planning scheme.

Infrastructure is defined under section 70 as including “services, facilities, works and other uses and developments which provide the basis for meeting economic, social and environmental needs”.

Developer contributions for open space – Local Government (Building and Miscellaneous Provisions) Act, 1993 (LGBMP)

The LGBMP includes a mechanism for developer contributions towards public open space in new subdivision applications. This process is formalised in the Hobart Interim Planning Scheme 2015, where the zones specify performance criteria under the Development Standards for Subdivision, as follows: “Public Open Space must be provided as land or cash in lieu, in accordance with the relevant Council policy.”

The City of Hobart has a *Public Open Space Contributions Policy* (City of Hobart 2019) that provides guidelines for enforcing the above policy. The document states that the maximum land or cash contribution would comprise ‘five per cent of the unimproved value of the land not including the balance lot, or five percent of the subdivision land area, for all subdivisions that could result in an increase in demand for public open space’ (City of Hobart 2019).

Part 3 ‘Subdivisions’, Division 8 ‘Public open space’, Sections 116 and 117 includes provisions that enable councils to acquire land or cash in lieu for open space as follows:

116. Limitation on requirement for public open space:

(1) If the council –

(a) requires an owner to increase the area for public open space so that the value of the total area approved for open space in the final plan exceeds the value of the area provided for open space in the plan of subdivision; or

(b) having failed to approve a plan for subdivision on a ground that the layout should be altered to include or omit public open space, subsequently approves a fresh plan in which the value of the total area of land reserved for public open space exceeds the value of all such land in the original plan –and the value of the area reserved for open space in the plan also exceeds the value of one-twentieth of the whole area comprised in the plan of subdivision, the council must purchase the excess as provided in this section.

This mechanism only applies to land subdivision and thus does not come into effect for strata subdivision. As a result, there is no mechanism under the Strata Titles Act or the planning scheme which permits contributions for public open space (or cash in lieu) for multi-dwelling development even though higher density development and generate demand for additional community infrastructure.

TasWater Price & Service Plan – Land Development Policies

The *Price & Service Plan – Land Development Policies* (TasWater 2018) incorporates several policies required by the *Water and Sewerage Industry Act 2008*, and the *Water and Sewerage Industry (Pricing and Related Matters) Regulations 2011*. It applies for the period 1 July 2018 to 30 June 2021; however, the next review has been extended to 30 June 2022.

TasWater has the power to impose developer charges and development assessment fees for new developments and land uses that require approval by the relevant planning authority, to fund water and sewerage infrastructure needs. Despite this power, it has been suggested that TasWater generally do not impose headworks charges for 'political reasons'.

Any development requiring new sewer or water connections (such as multi-unit developments, commercial developments, and subdivisions) must be referred to TasWater who may impose conditions of approval relating to servicing infrastructure and headworks charges, which the relevant planning authority is then obliged to impose.

These charges mainly apply to development located outside serviced land – the developer is required to pay the cost of extending the existing system, including connection to that system. They can also apply where there is insufficient capacity within an existing system. For isolated developments, all costs are paid by the developer.

TasNetworks has a system whereby the developer can recoup some of the cost where additional capacity has been built.

Other provisions

Section 100 (Division 5 – Separate rates and charges) – Local Government Act 1993

Section 100 (Division 5 – Separate rates and charges) of the *Local Government Act 1993* sets out the provisions for separate rates or charges in respect of land, or a class of land, within a part of its municipal area, in addition to any other rates or charges. This policy makes a distinction between varying general rates, service rates and charges and separate rates and charges (although the actual distinction is not clear from the Act).

This mechanism enables Councils to make a separate charge for any land in the municipality if it is deemed that there is a need to plan or carry out works that improve the area and create a benefit for local landowners and businesses. The rates can be implemented for specific services and projects and can be

limited to several ratepayers. These are often established through local government decisions under state government legislation.

Section 106A indicates council may vary the amount payable according to the use or predominant use of the land or class of land, the non-use of the land, the locality of the land, class of land or any other prescribed factor. The requirements of public consultation and a maximum period of 5 years will provide the community with the opportunity to have their say. Section 106 states that Council is to refund any revenues from these rates if it does not undertake the intended works or if there is an excess of funds over the amount required.

It is noted that Councils have been reluctant to use this separate rates mechanism, which may hinder its use as a means of addressing infrastructure funding shortfalls.

Hobart Interim Planning Scheme 2015

Interim planning schemes were introduced in Tasmania in 2013-2015. Policy relating to infrastructure provision is incorporated in the Hobart Interim Planning Scheme 2015 as follows:

- Clause 3.0.1 aims to achieve integrated infrastructure planning by *“Facilitating developer charges for off-site infrastructure provision which send the correct price signals to ensure the most efficient use of infrastructure overall.”*
- The local policy states that new physical infrastructure can be provided by Council or other utility or service providers, and it should be installed and managed as a public asset.
- Clause 8.11 enables conditions and restrictions to be attached to a permit.
- The zones comprise Development Standards for Subdivision, which requires lots to be connected to infrastructure, including reticulated potable water supply, reticulated sewerage system, stormwater system and road infrastructure. The Water and Sewer Corporation governs specific details.
- The Stormwater Management Code at Clause E7.0 and E15 prescribes specifications for stormwater drainage systems and inundation.
- The Development Standards for Subdivision under the zones also stipulate that *“Public Open Space must be provided as land or cash in lieu, in accordance with the relevant Council policy.”* The public open space contributions apply to subdivisions only (any zoning) but do not apply to strata development, which limits the application to inner city development.

It is noted that the LUPAA was amended on 14 July 2021 because of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme Modification) Bill 2021*. This amendment will assist the implementation of the single state-wide planning scheme (the Tasmanian Planning Scheme); therefore, the Hobart Interim Planning Scheme 2015 is expected to be updated soon when the new provisions are rolled out across the State. The Planning Scheme for each council area will feature a new Local Provisions Schedule approved by the independent Commission. It is not expected to introduce any new planning policy in relation to developer contributions.

Overall, a desktop review of the Hobart Interim Planning Scheme 2015 demonstrates that where policy relates to infrastructure provision, it is mainly focused on greenfield areas where land may not be connected to services. The only type of infrastructure provisions that apply to all developments is stormwater infrastructure, however, the Stormwater Code is not replicated in the new Tasmanian Planning Scheme. Therefore, when the new schemes come into effect for Hobart, the ability to regulate stormwater and condition stormwater requirements on a planning permit may be compromised. However, councils can use other mechanisms such as the *Urban Drainage Act 2013*, which is Tasmania's primary legislation

governing the provision of urban stormwater drainage services by local councils. It enables each council to develop their own stormwater system management plan for the municipality.

Residential Land Rebate program

The Department of State Growth recently introduced the Residential Land Rebate program with \$15 million worth of funding, which will commence from 7 September 2021 and close on 30 June 2023 (or once program funds have been exhausted). The purpose of this initiative is to boost the availability of residential land by providing rebates of up to \$10,000 per lot on residential zoned land for developers to cover the cost of providing power, water and sewerage infrastructure. Rebates can be claimed for a maximum of 40 lots per developer. Applications for the rebate program can be made by the owner of the land online, and applications will be assessed by State Growth within 21 days.

The program appears to only apply to new land subdivisions and not to multi-dwelling development although these form so development would also benefit from infrastructure costs subsidies.

Proposed reform in Tasmania

The funding and financing of infrastructure provision has been considered in the *Our Infrastructure Future, 30-Year Infrastructure Strategy Consultation Draft* (Infrastructure Tasmania, 2019). It outlines different approaches to infrastructure funding, including direct user charges of infrastructure, indirect user charges through taxes, public-private partnerships, value capture and asset recycling (through the redeployment of proceeds from existing assets / leases).

The paper proposes to adopt a systems approach to infrastructure provisions to account for the interdependencies of multiple sectors. The aim of the strategy is to inform the broad requirements for infrastructure across the state, to form a unified strategy with targeted portfolios. Integrated land use and infrastructure planning is identified as the cornerstone for understanding infrastructure requirements.

The paper identifies ‘a need for more focused and robust integration of service and infrastructure planning in priority locations, including growth areas and planned precincts’ (p.27) There is currently no integrated, staged planning of land use and infrastructure provision. Although regional land use strategies contain settlement strategies, they do not provide the means to appropriately sequence development and are inefficient in planning for the delivery of supporting services and infrastructure.

2.5. Other jurisdictions

This section considers the legislative arrangements in other jurisdictions, with a focus on New South Wales and Victoria.

New South Wales

The *Environmental Planning and Assessment Act 1979* provides the legislative framework for infrastructure contributions in New South Wales. The *Environmental Planning and Assessment Regulation 2000* provides further requirements relating to the making, amending and revocation of contributions plans, giving public notice and other procedural arrangements. It was amended to improve transparency and accountability in how infrastructure contributions are received and spent in NSW. The new reporting requirements will commence on 1 July 2022.

- The main mechanisms of infrastructure contributions in NSW are local infrastructure contributions administered via Section 7.11 (where a contributions plan applies); Section 7.12 (where levies are charged as a percentage of the development cost); Special Infrastructure Contributions (SICs); and planning agreements.
- **Local infrastructure contributions**, also known as developer contributions, are administered under Section 7.11 of the *Environmental Planning and Assessment Act 1979* and Section 64 of the *Local Government Act 1993* to enable councils to levy development charges through development contribution plans. They are charged by councils when new development occurs, as a condition of consent, to provide infrastructure to support development including open space, parks, community facilities, local roads, footpaths, stormwater drainage and traffic management.
- As an alternative to Section 7.11 contributions, Section 7.12 contributions required a flat levy that is a percentage of proposed cost of development. This is current in order of 1 to 3 per cent of costs. Councils can utilise both s7.11 or a s7.12 infrastructure contributions plan but only one can apply to a specific development. These contributions operate as follows:
 - **Section 7.11 contributions** are charged where there is a demonstrated link between the development and the infrastructure to be funded. They can include both cash or land contributions. Councils can only charge s7.11 contributions if a contributions plan is prepared for an area, outlining infrastructure needs and costs and thereby the contribution rate (usually charged per dwelling or per square metre). Councils that want to charge a contributions rate above the threshold set by the Minister must submit their plans to IPART for independent review. Section 7.11 was previously known as Section 94.
 - **Section 7.12 levies** are an alternative to s7.11 contributions, charged as a percentage of the estimated cost of the development. It is in essence a development license fee. The maximum percentage that can be charged in most areas is 1%, although there are a small number of areas that charge a higher percentage. Section 7.12 was previously known as Section 94A.
 - **Special Infrastructure Contributions (SICs)** are covered under sections 7.23, 7.24 and 7.25 of the *Environmental Planning and Assessment Act 1979*, and are paid in addition to local infrastructure contributions for specific areas. The program is a state-wide initiative that seeks to recover some of the cost of infrastructure through developer contributions. A SIC is paid by the developer in Special Contributions Areas (which are typically designated growth centres or areas) and only on new development such as residential subdivisions and industrial estates, through cash contributions or works-in-kind.
 - SICs support growing communities by funding a range of infrastructure including State and regional roads, public transport infrastructure, pedestrian and cycling paths, health facilities, emergency services, schools and open space improvements. SICs also fund biodiversity offsets in Western Sydney.

Planning agreements are described in section 7.4 of the *Environmental Planning and Assessment Act 1979* and can be entered in addition or as an alternative to s7.11 and s7.12 contributions and apply to development applications or planning proposals such as rezoning. They are a tool that allows planning authorities and developers to work together to deliver innovative infrastructure outcomes. Planning agreements can be negotiated at both the local and State government level (where they are known as State Voluntary Planning Agreements). They are a legal agreement between a developer and a planning authority and are usually negotiated when a developer is submitting a development application or a planning proposal.

State Voluntary Planning Agreements (VPAs) are used in the absence of formal mechanisms available to local government. VPAs with development proponents are increasingly used to make provision for development contributions based on value capture and are used in NSW as a means of capturing the increase in land value created by the granting or promise of additional development rights (SGS, 2017).

It is noted that water (including recycled water) and sewerage treatment infrastructure charges can be levied separately under Section 73 of the *Sydney Water Act 1994* for Sydney Water's area of operations and the provisions of the *Water Management Act 2000* for other water supply authorities.

Reforms to the NSW system

The NSW Government has undertaken a review of the infrastructure contributions system by the NSW Productivity Commissioner to investigate how infrastructure is funded in NSW. It builds on previous planning systems and governance reviews such as the Kaldas Review⁵.

Overall, the current review seeks opportunities for greater simplicity and certainty when delivering public infrastructure to support development, through flat-rate charges, and integration with the Integrated Planning and Reporting (IP&R) framework under the *NSW Local Government Act*.

All 29 recommendations of the review have been accepted by the NSW Government. The department has now requested feedback on five proposed system improvements:

- A new practice note to provide greater transparency in the planning agreement process which reinforces planning arrangements should be used to fund innovative infrastructure solutions to meet community needs.
- Section 7.12 fixed development consent levies practice note including criteria to guide councils on where higher than the standard maximum 1% percentage section 7.12 levy may be appropriate.
- The Environmental Planning and Assessment Regulation 2000 has been amended to improve transparency and accountability in the way infrastructure contributions are received and spent in NSW.
- Proposed reforms for section 7.11 contributions aimed at improving how this mechanism works to deliver the local infrastructure communities need.
- Draft Special Infrastructure Contributions (SIC) guidelines - guidelines to improve transparency around the purpose and function of SICs.

The major initiatives of the reforms include funding local and state infrastructure and facilities; the introduction of value capture mechanisms when land is rezoned; and pursuing greater simplicity by using flat-rate charges. A flat-rate charge would be applied to each identified Region, and Regional Contributions developed (including for the Greater Sydney Region). The changes also aim to achieve better integration of the *Environmental Planning and Assessment Act 1979* development contributions system with local council IP&R frameworks under the *Local Government Act*.

The reform will also impose restrictions on the types of infrastructure and facilities that feature on the 'essential works' list (to be reviewed by IPART). There are some concerns that this will in turn limit the use of development contributions. The flat-rate application may allow for simplicity but risks leading to a less equitable application than the percent-rate application on the value of development approach (SGS, 2021).

Victoria

Part 3B of the *Planning and Environment Act 1987*, amended by the Planning and Environment (Development Contributions) Act 1995 and the *Planning and Environment (Development Contributions) Act*

⁵ For more information see: <https://www.planning.nsw.gov.au/Policy-and-Legislation/Infrastructure/Infrastructure-Funding/Improving-the-infrastructure-contributions-system>

2004, provides councils with powers to use the following mechanisms for administering development contributions through the planning system: development contribution plans (DCPs), infrastructure contributions (ICPs), Growth Areas Infrastructure Contribution (GAIC) and voluntary agreements.

DCPs are a form of user-pays development contribution plan that are used to fund various items of shared infrastructure including roads, stormwater, community infrastructure, and so on. DCPs must be incorporated into a planning scheme before infrastructure levies can be collected from new development. The Development Contributions Plan Overlay (DCPO) in the Victoria Planning Provisions (VPPs) gives effect to the DCP. The council is responsible for the collection and management of levies through a DCP, as per section 46Q of the *Planning and Environment Act 1987*.

In the planning permit process, a condition on the planning permit would state the requirement to pay a development infrastructure levy in accordance with a DCP. In the case where a planning permit is not required, the collection of development infrastructure levies can be administered via an alternative method in the approved DCP, such as through the building permit process.

ICPs are another form of user-pays development contribution plan, however, they are intended to simplify the process of designing the contributions plan utilised pre-set contribution rates rather than case-by-case cost estimates. ICPs can only be applied to land in a development setting specified in a Ministerial Direction and cannot be applied to land where a DCP applies. Like a DCP, an ICP can only commence once it is incorporated into a planning scheme and the Infrastructure Contributions Overlay is applied to the ICP plan area. The granting of planning permits gives effect to an ICP. The contribution may consist of either or both a monetary component (pre-determined monetary rate) and land component. A supplementary levy may apply for non-standard infrastructure or costs, based on the development context. The *Building Act 1993* and the *Subdivision Act 1988* also include provisions for the implementation and administration of the ICPs.

The GAIC is designed to fund essential State infrastructure in Melbourne's growth areas. It is set at a fixed rate per hectare of land (and varies for different types of land) and is only imposed on land located in a designated contribution area. This area is targeted to municipalities located within the urban growth boundary. The GAIC is administered under Part 9B of the *Planning and Environment Act 1987* and the *Taxation Administration Act 1997* (Vic).

Works-in-Kind (WIK) agreements, outlined under section 46GX of the *Planning and Environment Act 1987*, provide applicants with another option for infrastructure contribution in lieu of cash payments. A collecting agency may accept the provision of infrastructure by an applicant in part or full satisfaction of the monetary component of an infrastructure contribution under the DCP, ICP and GAIC. WIK provides developers with an opportunity to fast-track critical infrastructure that would otherwise be provided or funded by the State.

Voluntary agreements allow landowners, the council and other parties to freely negotiate agreements for the provision of infrastructure, at the time a development proposal is considered. The agreement can be used to place an obligation on the parties to provide infrastructure and/or pay for infrastructure. It can be formalised via Section 173 of the *Planning and Environment Act 1987*.

Queensland

The *Integrated Planning Act 1997* and *Sustainable Planning Act 2009* (overlapping operation during 2009-10) enable councils to require development contributions based on Priority Infrastructure Plans which identify infrastructure charges for eligible contributions and outline anticipated infrastructure needs for the community.

Western Australia

The *Planning and Development Act 2005* allows government to require contributions for onsite physical infrastructure and the ceding of land for primary schools and open space. The scope of contributions is guided by the Western Australian Planning Commission State Planning Policy 3.6: Development Contributions for Infrastructure.

South Australia

Development contributions in South Australia are dictated by the *Development Act 1993*, *Local Government Act 1999*, *South Australian Water Works Act 1932* and the *Sewerage Act 1929*. The *Development Act 1993* allows councils to require basic subdivision infrastructure (access roads, hydraulic connections) and the dedication of open space (Section 50A). Section 146 of the *Local Government Act 1999* allows the levying of separate rates, service rates and service charges which can be used as indirect development charges. Capital contributions for water and sewerage infrastructure are provided for in the regulations under the *Water Works Act 1932* and *Sewerage Act 1929*.

Summary

Table 2 provides an overview of the developer contributions in other states and territories.

Overall, when compared to other states, Victoria and New South Wales have much more defined development contribution mechanisms that are legislated in the *Planning and Environment Act 1987* and *Environmental Planning and Assessment Act 1979*, respectively. It is noted that the New South Wales system is currently undergoing reform to create a more sophisticated and streamlined arrangement of development contributions. Both states have mandatory contributions as the main mechanisms, with a combination of user pays contributions and value sharing arrangements.

It is noted that the examples from other states include development contribution charges that occur in rapidly growing communities and are mostly applied to fund roads, parks, community infrastructure, water and sewerage infrastructure and other necessary components. They have been applied to new residential, commercial, and retail developments.

The system in South Australia is distinguished through its legislation of different types of infrastructure contributions across multiple Acts, as is appropriate in their legislative context. However, their system is not as robust. Queensland and Western Australia have systems like Victoria and New South Wales through their user charges mechanisms.

TABLE 2: INTERSTATE COMPARISON OF DEVELOPER CONTRIBUTIONS

State	Development contribution mechanism	Contribution type				Commentary
		User pays	Impact mitigation	Value sharing	Inclusionary requirement	
Tasmania	Local infrastructure charges		✓	✓		Some councils have developed infrastructure charges for the municipality.
	Voluntary contributions for the provision of infrastructure e.g., Part 5 Agreements, TasWater Price & Service Plan		✓	✓		The lack of sophisticated funding mechanisms (recurring charges) for infrastructure provision means the onus is on the proponent to provide the infrastructure where it is necessitated as an upfront cost.
	Mandatory contributions for open space <i>Sections 116 and 117, Local Government (Building and Miscellaneous Provisions) Act 1993</i>				✓	In proposals for the subdivision of land, the proponent must provide land or cash in lieu to meet demand for public open space resulting from the proposed development.
	Separate Rates and Charges for improvement works <i>Section 100, Local Government Act 1993</i>			✓	✓	The proponent must pay a recurring charge (special rates / charges), which will contribute to works that benefit a broader spectrum of possible beneficiaries.
Victoria	(Mandatory) Development contribution plans (DCPs) and Infrastructure contribution plans (ICPs) <i>Part 3B, Planning and Environment Act 1987</i>	✓				Proponents must pay according to share of usage of planned infrastructure when seeking development approval.
	(Mandatory) Growth Areas Infrastructure Contribution (GAIC) <i>Part 9B, PE Act and the Taxation Administration Act 1997</i>			✓		Proponents are required to share part of the uplift in land value occasioned by re-zoning or granting of a development approval, when seeking to develop land in growth areas.
	Voluntary agreements for infrastructure provision <i>Section 173, Planning and Environment Act 1987</i>	✓	✓	✓		Where additional infrastructure is necessitated, the proponent can be responsible for its delivery.

State	Development contribution mechanism	Contribution type				Commentary
		User pays	Impact mitigation	Value sharing	Inclusionary requirement	
						(Can also be used as a mechanism for alternative delivery of DCP requirements or value sharing where approval is given to rezone land.)
New South Wales	(Mandatory) local infrastructure contributions <i>Section 7.11 and 7.12, Environmental Planning and Assessment Act 1979</i>	✓				Proponents must pay according to share of usage of planned infrastructure when seeking development approval.
	(Mandatory) Special Infrastructure Contributions (SICs) <i>Sections 7.23, 7.24 and 7.25, Environmental Planning and Assessment Act 1979</i>			✓		Proponents are required to share part of the uplift in land value occasioned by re-zoning or granting of a development approval, when seeking to develop land in specific growth centres. There has been some critique of the SIC which is sometimes based on the total infrastructure costs divided by the number of dwellings (a basic user pays system) and sometimes it is based on a % of the development costs (which is basic value capture approach). A key critique of the SIC is that it is not clearly user pays or value capture but a blend of the two.
	Voluntary planning agreements <i>Section 7.4, Environmental Planning and Assessment Act 1979</i>	✓	✓	✓		Proponent must share the benefit of additional density through negotiations in new development applications or planning proposals such as rezoning. (Can also be used as a mechanism for alternative delivery of 7.11 requirements, or impact mitigation measures, or value sharing where approval is given to rezone land.)

2.6. Discussion

When compared with other states, Tasmania obviously lacks an integrated development contributions system designed with the specific intention of facilitating efficient planning and funding of shared infrastructure in greenfield and infill contexts. The current system presents ambiguity about who should pay for infrastructure, and it is not clear what the split is between who pays on the ground.

Some councils have developed individual policies and guidelines to catalogue infrastructure requirements for the municipality and impose charges. Where councils lack this type of policy, the onus is often on the developer to provide and pay for all infrastructure requirements. This system may create disincentives for developers to develop land where new infrastructure must be provided. This is particularly problematic for the growth of undeveloped areas, where those who are first to develop in the area are disadvantaged. The State Government has recognized and responded to the lack of support for covering infrastructure costs by implementing the Residential Land Rebate program, which will run from 2021 to 2023. However, this and other existing infrastructure funding mechanisms, such as Part 5 Agreements and developer contributions for open space, lack a strategic approach to infrastructure provision, at a municipal and state level.

In both New South Wales and Victoria, the planning funding for shared infrastructure is supported by specific sections of those state's planning legislation, government guideline documents and decades of practical experience. Councils routinely prepared 'development contribution plans' that identify infrastructure needs, costs apportionment principles, and set out pre-notified 'user pays' development contributions amounts on a per dwelling or per square meter of development basis. In these jurisdictions, the shared infrastructure that is funded can include both development infrastructure (roads, sewer, stormwater, etc.) and community infrastructure (libraries, sporting facilities, community hubs, etc.). User pays contributions are a mandatory requirement for development within an area that is subject to development contributions plan. In some circumstance proponents may negotiate to provide works-in-kind in-lieu of cash contribution, but the total value of the contribution is non-negotiable.

In Victoria, open space contributions are sought via a separate mechanism, that is part of the Subdivision Act, that required a percentage of developed (or redeveloped) land to be dedicated to open space, with the option of an equivalent cash contribution. These requirements apply to both land subdivision and strata subdivision ensuring infill developments also contribute to open space infrastructure funding in established urban area.

In addition to a 'base' of user-pays shared infrastructure plans and open space funding via inclusionary requirements, impact mitigation requirements are routinely address through permit conditions for development that produces unforeseen impacts that can only be addressed on a case-by-case basis. And finally, where additional development rights are awarded to developments through 'spot rezonings' or other similar planning changes, value capture arrangements are routinely negotiated provide a further source of funds for public infrastructure.

The current framework for development contributions in Tasmania might be described as rudimentary at best. The provisions under Section 73A of the LUPAA are largely geared towards greenfield development and voluntary in nature. There are no examples of councils routinely collecting funds through this method to apportion infrastructure delivery. It means the onus for delivering lead infrastructure falls on one developer, rather than the costs being apportioned to all beneficiaries (an example of 'first mover disadvantage'). The lack of development contribution systems for trunk or headworks infrastructure is likely to delay development, increase risk and uncertainty, and may, ultimately, act as a deterrent to

development in Tasmania. Moreover, the provisions under Division 8 – Public open space of the *Local Government (Building and Miscellaneous Provisions) Act 1993* are limited to open space contributions.

The absence of a more mature development contribution system in Tasmania has several important consequences for planning and urban development:

- The requirements for, and costs of, new infrastructure are not clearly known
- There are no price signals to identify locations that are more efficient to develop based on existing and future infrastructure requirements
- Considerable time and effort are spent by council staff and developers identify infrastructure requirements and negotiating how these might be met on an ad hoc basis
- Shortfalls in infrastructure will need to be met by the broader community and future generations through higher rates, reductions in other services, or both
- Landowners and developers may be extracting 'super profits' through land development that could be directed towards the provision of public infrastructure.
- Current requirements to address infrastructure needs on-site (e.g., stormwater detention) may be suboptimal when compared to planned, shared infrastructure solutions.

3. Recommendations

Based on analysis of Tasmania's existing development contributions mechanisms, and a review of approaches used in other jurisdictions, it is evident that a more comprehensive and streamlined development contributions system, with appropriate apportionment mechanisms, is required.

Our recommendations to HCC are to:

- Advocate for legislative change supporting the introduction of a more comprehensive development contributions system that would allow council to undertake shared infrastructure planning and set appropriate contribution rates based on the principles of 'user pays' and 'fair' apportionment of costs. Shared infrastructure planning might initially focus on development infrastructure (e.g., power, water supply, stormwater and road infrastructure) in both greenfield development areas and established areas.
- Alternatively, working within the bounds of the existing system, and noting that the development of new planning legislation will be a long-term process, Council may wish to consider developing its own local infrastructure funding policy, with appropriate 'hooks' in the planning scheme that apportion infrastructure costs and clearly identifies developer charges. Importantly, this municipal-level approach may help distinguish between greenfield and urban infill infrastructure requirements unique to Hobart, including public realm improvements.
- Further to the above, prepare a Central City public infrastructure plan that demonstrates existing public infrastructure, future infrastructure needs, costings and apportionments for all development planned for the area (all who benefit from the provisioning). This would make transparent the real costs that differentiate between different land uses and who the beneficiaries are.
- Advocate to extend the scope of developer contributions for open space under the LGBMP to permit open space contributions for strata subdivisions, with a transparent cash-in-lieu mechanism and the ability for councils to pool open space funds.
- Consider special rates and charges as an equitable alternative mechanism for funding infrastructure needs. This option may be more appropriate in areas such as the central city where new development represents a smaller share of the built environment.
- Advocate to State government to include in the definition of infrastructure, under section 70 of LUPAA, public realm improvements that benefit higher density urban areas.
- It is noted that LGAT are releasing a paper on developer contributions in Tasmania soon – this paper should be reviewed upon its release.

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