

Circular	PS 19-002
Issued	25 January 2019
Related	PS18-002

Contributions Plans for Growth Areas

This circular is to advise consent authorities must not determine development applications on land that is subject to a precinct plan under *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* (**Growth Centres SEPP**) unless there is a section 7.11 contributions plan under section 7.18 of the *Environmental Planning and Assessment Act 1979* (the Act) in effect.

Overview of the amendments

The purpose of this circular is to advise consent authorities of amendments to the *Environmental Planning and Assessment Regulation 2000* (the Regulation) to prevent development applications from being determined until a section 7.11 contributions plan under section 7.18 of the *Environmental Planning and Assessment Act 1979* (the Act) is in effect for land that is subject to a precinct plan under *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* (the Growth Centres SEPP).

The Regulation has been amended (by the *Environmental Planning and Assessment Amendment (Contributions Plans) Regulation 2019*) to include a provision (clause 270A) that relates to land where there is a precinct plan in place under the Growth Centres SEPP, being land that has been rezoned for urban development purposes.

Greenfield development often requires significant investment in local infrastructure to support the development including local roads, drainage and open space. Councils prepare a contributions plan in accordance with the provisions of the Act and Regulation. Development contributions are currently capped by the *Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2012* (as amended) (the Direction).

Where a council seeks to impose a contribution at a rate that is higher than that specified in the Direction, the plan must (with some limited exceptions) be referred to the Independent Pricing and Regulatory Tribunal (IPART) and be an IPART Reviewed Plan.

The Ministerial Direction provides a definition of an IPART Reviewed Plan, which generally means that it has been:

- reviewed by IPART, and
- the Minister has considered the recommendations of IPART and advised the council to make amendments, and
- the council has made those amendments (which depending on scope, could require a public exhibition), and
- the council has adopted the contributions plan.

The definition of an IPART Reviewed Plan is included in the Ministerial Direction and the process is described in the *Local Infrastructure Contributions Practice Note*.

In some circumstances, land is rezoned for urban purposes through a precinct plan set out in the Growth Centres SEPP before the council has an IPART Reviewed Plan in force. Consent authorities are not able to impose conditions of development consent requiring local infrastructure contributions unless there is a contributions plan under section 7.18 of the Act in force. As a result, there is a risk of development being approved without provision for the local infrastructure needed to support the development.

The Regulation amendment prevents a consent authority from determining a development application unless there is a section 7.11 contributions plan under section 7.18 of the Act in force. This is intended to be a contributions plan that was prepared specifically to support the urban development of the precinct as provided for in the Growth Centres SEPP.

To assist in preventing delay to development, a consent authority can determine a development application where there is no contributions plan under section 7.18 of the Act, if the applicant has entered into a planning agreement that addresses the matters that would be addressed by the contributions plan.

The changes are intended to:

- Apply to development that is for an urban purpose that is generally consistent with the precinct plan made under the Growth Centres SEPP.
- Prevent development applications from being determined until there is a contributions plan under section 7.18 of the Act in force (usually this will be an IPART Reviewed Plan).
- Extend to development applications that have been made but not yet determined on the date that the Regulation amendment came into force.
- Allow development applications to be determined where a planning agreement has been made relating to the provision of local infrastructure.
- Allow minor and/or non-urban development applications in Growth Centre precincts to be determined without the need for a contributions plan under section 7.18 of the Act to be in force.

Background

The 2005 Practice Notes set out requirements for preparing, making and administering contributions plans.

When a contributions plan proposes rates exceeding the threshold of \$20,000 per lot/dwelling or \$30,000 for urban release areas, the Local Infrastructure Contributions Practice Note also applies. It provides guidance to councils and IPART on the process for assessing contributions plans with rates above the relevant threshold amount.

The process for council to have an IPART Reviewed Plan in place can take some time and development applications may be lodged for urban development following the rezoning of land under the Growth Centres SEPP. However, this may be before a council is able to have a contributions plan in place to provide for the local infrastructure needed to support urban development.

To assist in preventing delay to development, a development application can be determined if the applicant has entered into a planning agreement that addresses the matters that would be dealt with in the contributions plan.

Where it is proposed to enter into a planning agreement, it is suggested that the draft contributions plan (if available) is used as a basis for preparing a planning agreement.

Councils are encouraged to have a Planning Agreements Policy to guide the negotiation, preparation and administration of planning agreements.

Further Information

For further information please contact Service NSW on 13 77 18.

Department of Planning and Environment circulars are available at:

planning.nsw.gov.au/circulars

Authorised by:

**Alison Frame
A/Secretary**

Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

© State of New South Wales through the Department of Planning and Environment planning.nsw.gov.au

Disclaimer: While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agencies and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document.