

Circular	PS 10-014
Issued	4 June 2010
Related	supersedes PS09-001 supersedes "only that part of PS08-017 which is inconsistent with PS10 -014"

Local Development Contributions

The purpose of this circular is to advise councils and the public of changes relating to local development contributions as a result of a revised mechanism for setting these contributions and council rates.

Introduction

On 4 June 2010, the Premier, the Hon. Kristina Keneally MP, announced a revised approach for setting local development contributions and local council rates. It includes:

- a \$20,000 per residential lot or dwelling limit on local development contributions
- allowing councils to apply for special rate variations for legitimate council costs arising from development.

These changes aim to increase housing supply by lowering development charges for infrastructure to stimulate housing construction.

This forms part of a comprehensive strategy to improve housing supply across NSW.

\$20,000 limit to local development contributions

Section 94E Direction

Attached to this circular is a Direction issued by the Minister for Planning under section 94E of the *Environmental Planning and Assessment Act 1979* (the EP&A Act).

The Direction applies to monetary contributions required by conditions of development consent imposed by councils under section 94 of the EP&A Act.

Effect of the Direction

The Direction provides that a council must not impose a condition requiring a development contribution under section 94 of the EP&A Act that requires the payment of a monetary contribution of more than \$20,000 for each residential dwelling or for the purposes of residential subdivision, no more than \$20,000 for each lot.

This Direction also revokes:

- the previous Direction under section 94E, dated 13 January 2009
- the previous Directions (dated 31 May 2009 and 10 July 2009) to individual councils

Development to which the Direction applies

The Direction applies to consents granted, and applications for complying development determined on or after 7 June 2010.

The Direction does not apply to:

- section 94 contribution conditions imposed before 7 June 2010
- voluntary planning agreements
- monetary contributions required under section 94A (fixed percentage levies) of the EP&A Act
- section 94F (affordable housing contributions) of the EP&A Act
- conditions requiring the dedication of land free of cost (section 94(1)(a)).

This Direction does not affect the ability of councils to accept the dedication of land or provision of material public benefits in lieu of monetary contributions (section 94(5)).

Complying Development

As a result of changes to the EP&A Act that took effect on 17 July 2009 accredited certifiers will now need to take into account directions issued by the Minister for Planning.

Implementation of Part 5B of the EP&A Act

The Department of Planning is finalising the introduction of the new Part 5B of the EP&A Act. It is expected that this will commence on 1 July 2010.

The changes outlined in this circular will be continued under the Part 5B provisions.

Guidelines

In the coming months, the Government will release guidelines to assist councils in preparing development contributions plans under the new provisions.

Reporting requirements

Commencing in the 2010/11 financial year, councils will be asked to report on development contribution activity to the Department of Planning. A template will be prepared and distributed to councils by 30 June 2010.

More formal reporting arrangements will be investigated for implementation from July 2011.

Further information

If you have queries about the Direction and this Planning Circular please contact the Department's Information Centre 02 9228 6333 or email information@planning.nsw.gov.au

If you have queries about changes to council rates contact NSW Treasury.

Note: This and other Department of Planning circulars are published on the web at www.planning.nsw.gov.au/circulars

Authorised by:

Sam Haddad
Director-General
NSW Department of Planning

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.

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Direction Section 94E

under the
Environmental Planning and Assessment Act 1979

I, the Minister for Planning, in pursuance of section 94E of the *Environmental Planning and Assessment Act 1979* (the Act) direct councils as consent authorities to comply with the requirements set out in this Direction.

This Direction revokes the previous Directions issued under section 94E of the Act as set out in the Schedule to this Direction.

 - 4 JUN 2010

TONY KELLY, M.L.C.,
Minister for Planning

Requirements of this Direction

- (1) A council as a consent authority must not impose a condition of development consent under section 94(1) or 94(3) of the Act requiring the payment of a monetary contribution exceeding \$20,000 for each dwelling authorised by the consent or in the case of a development consent that authorises the subdivision of land into residential lots, exceeding \$20,000 for each lot authorised by the consent.

Date this Direction takes effect

- (2) This Direction takes effect on and from 7 June 2010.

Definitions

- (3) Words and expressions in this Direction have the same meaning as they have in the Act unless otherwise defined.
- (4) In this Direction:
 - (a) **Dwelling** means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile,
 - (b) **Residential lot** means a lot created by the subdivision of land (as defined in section 4B of the Act) for the purpose of a dwelling not being a lot, which in the opinion of the council, is to be further subdivided for the purpose of creating lots to be used for dwellings.
- (5) Notes do not form part of this Direction.

Notes

Section 94EC(1A) of the Act provides as follows:

The imposition of a condition by an accredited certifier as authorised by a contributions plan is subject to compliance with any directions given under section 94E(1)(a), (b) or (d) with which a council would be required to comply if issuing the complying development certificate concerned.

Schedule

(1) The following directions are revoked by this Direction:

- (a) The Direction, dated 13 January 2009, to councils exercising functions as a consent authority,
- (b) The Directions, dated 31 May 2009, to Blacktown City Council, Camden Council, City of Sydney Council, Ku-ring-gai Council, Lake Macquarie City Council, Liverpool City Council, Maitland City Council, Penrith City Council and Wyong Shire Council,
- (c) The Directions, dated 10 July 2009, to Campbelltown City Council, Holroyd City Council, Leichhardt Municipal Council, Palerang Council, Pittwater Council, Shoalhaven City Council, The Hills Shire Council, Tweed Shire Council, Wollondilly Shire Council and Yass Valley Council.