

PLANNING SYSTEM

Development Contributions

Circular	PS 10-022
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Related	supersedes PS10-014 FACT SHEET – Reforms to Local Development Contributions

Reforms to Local Development Contributions

The purpose of this circular is to advise councils, accredited certifiers and the public of recent changes relating to local development contributions.

Background

On 4 June 2010, the NSW Government announced a revised approach for setting local development contributions and local council rates, including:

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

Following this announcement, further extensive consultation with stakeholders has been undertaken. As a result, a number of new measures will be introduced to accelerate housing and keep downward pressure on prices.

- the \$20,000 cap per dwelling or per residential lot in existing areas will be retained
- the cap will be \$30,000 per dwelling or per residential lot in greenfield areas to recognise the higher costs of creating well-planned communities in these areas
- areas where development applications for more than 25 per cent of the expected dwelling yield under existing contributions plans have been lodged will be exempted from the cap
- an essential works list will apply when councils are seeking priority infrastructure funding or a special rate variation
- the establishment of a \$50 million Priority Infrastructure Fund for projects on the essential works list above the cap

Monetary 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 councils as consent authorities when they impose conditions of development consent requiring a monetary contribution under section 94 of the EP&A Act.

Specifically, the Direction provides for:

- a cap of \$20,000 for established areas,
- a cap of \$30,000 for greenfield areas,
- an exemption to areas where development applications have been lodged (including determined applications) and remain valid, as of 31 August 2010, for more than 25% of the expected yield from the development area or contributions plan.
- the Minister to consider, on the application of a council and request of a developer, approving a higher contribution amount.

The Direction also revokes the previous Direction under section 94E, dated 4 June 2010.

It is important to note that the Direction applies to conditions imposed on development consents. A contributions plan may still contain contribution rates that exceed the relevant cap, but the cap will limit the contribution amount that can be levied.

Development to which the Direction applies

The Direction applies to consents granted, and applications for complying development determined

on or after the date to which the Direction comes into effect.

The Direction does not apply to:

- section 94 contribution conditions imposed prior to the Direction coming into effect,
- 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, or
- conditions requiring the dedication of land free of cost (section 94(1)(a)).

The 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 need to take into account directions issued by the Minister for Planning.

Essential Works List

The essential works list will be used if a council wishes to seek:

- funding from the Priority Infrastructure Fund, which will be administered by the Department of Planning, with the Independent Pricing and Regulatory Tribunal (IPART) assessing the contributions plan against the essential works list to determine the 'true levy'; or
- a special rate variation, which will be assessed through IPART.

Guidelines, to be prepared with IPART, will explain this essential works list in more detail:

Description	Component	Essential works
Open Space	Land*	✓
	Facilities	X
Community services	Land	✓
	Facilities	X
Emergency services	Land	X
	Facilities	X
Transport E.g. Road works, traffic management, pedestrian & cycle facilities	Land	✓
	Facilities	✓
Car parks	Land	X
	Facilities	X
Stormwater	Land	✓
	Facilities	✓

* Land for open space can include base level embellishment

Future greenfield release areas

Draft contributions plans and/or future greenfield areas have not been included in this direction.

However, the intention is that councils can apply for these to be considered for inclusion in the schedules to the Direction when an area is rezoned or a contributions plan is made, if councils can demonstrate that the area is a greenfield release area.

Preparing new Contributions Plans

Before a draft contributions plans is publicly notified a council must seek approval from the Department to publicly exhibit the draft plan.

What if a developer agrees to make a contribution over the cap?

Where an applicant wishes to pay a contribution, identified in a contributions plan, that exceeds the determined cap the Minister may, on the application of a council and support of the developer, approve a higher contribution amount than is authorised under the Direction.

A council will need to make an application to the Minister.

This application is to:

- be accompanied a by letter from the applicant agreeing to pay more than the maximum amount and that this is agreed to voluntarily
- provide the following detail:
 - the relevant Development Application (DA) or area, and what the DA will authorise
 - the number of dwelling/or lots and the land to which the application relates
 - the maximum contribution under the cap
 - the name of the relevant contributions plan
 - the rate per/dwelling or per lot under the contributions plan
 - the public amenities and public services that are being levied for (compared against the essential works list)
 - the details of any security
- provide justification for an increase above the cap
- identify the total value of the contribution payable.

Local contributions review process

Councils that took part in the Local Contributions Review process will need to address any recommendations made by the Review Panel with regard to contributions plans upon the next review of these plans.

The role of IPART

Under the new regime, the Independent Pricing and Regulatory Tribunal (IPART) will be involved for the

first time in the implementation of the development contributions system.

IPART's role will include reviewing:

- new contributions plans above the relevant cap
- development contributions plans above the relevant cap for those councils that are seeking priority infrastructure funding, and
- development contributions plans above the relevant cap for those councils that are seeking a special rate variation.

In addition, IPART will be responsible for developing and calculating annually a Local Government Cost Index and a productivity factor for council rates and reviewing councils' applications for special variations under the *Local Government Act 1993*.

Local Development Contributions Guidelines

Detailed guidelines for the development and implementation of local contributions plans, including the new procedures relating to the review of plans by IPART, will be issued shortly.

Assistance to councils

A number of initiatives have been introduced to assist councils in implementing the reforms.

Priority Infrastructure Fund

The introduction of a \$50M Priority Infrastructure Fund for projects on the essential works list in areas above the relevant cap.

Detailed information, including the application process and assessment criteria for the Priority Infrastructure Fund will be made available to councils shortly.

Local Contributions Facilitation Fund

As announced in the 2010/11 Budget, a \$5 million fund was established to assist councils in the preparation of contributions plans that comply with Part 5B.

Detailed information, including the application process and assessment criteria for the local contributions facilitation fund will be made available to councils.

How will these changes affect Section 94A contributions plans?

The changes relating to the application of the caps and essential works list will not apply to section 94A contributions plans at this stage.

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 separately provided to councils.

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

Related information

Fact Sheet – Reforms to Local Development Contributions issued by the Department in September 2010 contains related information.

Further Information

For further enquiries about the Direction and this Planning Circular please contact the Department's Information Centre 02 9228 6333 or email information@planning.nsw.gov.au

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Authorised by:

Sam Haddad
Director-General
NSW Department of Planning

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