

FAQs – Ministerial Directions – Timing of payment

The following informs councils about a series of directions deferring the timing of infrastructure contributions payments. The directions have been made following changes to the *Environmental Planning and Assessment Act 1979* (EP&A Act) in response to the COVID-19 pandemic.

The Department has also prepared a planning circular on a new requirement under the *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation). Certifiers are now required to obtain a document from the local council or the Department of Planning, Industry and Environment (for special infrastructure contributions) confirming the payment of infrastructure contributions prior to the issuing of occupation certificates.

1. Timing of contributions payment

1.1 What changes have been made to the timing of contributions payment?

Recent changes to the EP&A Act allow the Minister to make directions on the timing of infrastructure contributions payment. The new *Environmental Planning and Assessment (Local Infrastructure Contributions – Timing of Payments) Direction 2020* (Direction) relates to local contributions or levies (sections 7.11 and 7.12). This temporarily requires councils to defer the payment of local infrastructure contributions and levies until at least the issuing of the first occupation certificate.

This Direction also applies to relevant development consents granted before the Direction took effect. Consents are modified to allow local contributions and levies to be paid before the issuing of the first occupation certificate.

Directions and determinations have also been prepared for the Western Sydney Growth Areas and Gosford City Centre special infrastructure contributions (SICs) plans. These also defer the payment until at least the issuing of the first occupation certificate. However, these directions do not apply to existing consents.

Please refer to the planning circular for further information on the operation of the directions.

1.2 What type of developments are subject to these directions?

The directions deferring infrastructure contributions payment are limited to large scale developments requiring an occupation certificate. The directions do not apply to:

- a) developments with an estimated construction cost of less than \$10 million
- b) developments involving subdivision of land, whether or not they also involve construction
- c) complying development.

1.3 Why are the changes being made?

These changes are part of a whole-of-government response to stimulate the economy during the COVID-19 pandemic. This ensures the planning system continues to support productivity, investment and community wellbeing across the state.

1.4 How long will the changes to the timing of contributions payment last?

The direction applies from the date of its publication in the Gazette until the COVID-19 prescribed period ends on 25 March 2021.

The deferral of payments will cease to be applicable to new developments after the period ends. The direction expires on the last day of the COVID-19 prescribed period but continues to have effect on relevant development consents granted before and during that period.

Conditions of consent (whether new or existing) that defer infrastructure contributions payments to before the first occupation certificate is issued do not expire with the direction.

However, the payment deferral arrangements cease to apply if a construction certificate has not been issued for the development by 25 September 2022.

After 25 September 2022, contributions must be paid before the issue of the first construction certificate. Consent authorities may also revert to earlier payment dates as identified in the pre-existing conditions of consent.

The direction does not prevent the entry into any deferred payment arrangements set out in contributions plans. However, it does prevent councils from requiring the developer to enter into a deferred payment arrangement, including the provision of a bank guarantee to secure payment at the occupation certificate stage.

1.5 Are contributions subject to the directions indexed?

Contribution payments subject to the directions can be indexed up to the relevant payment date, in line with the relevant contributions plan's indexation rules.

However, deferred contributions payments should not be subject to interest charges as payment has been deferred to at least the issuing of the first occupation certificate.

1.6 What happens when a development is subject to multiple occupation certificates or an interim occupation certificate is issued?

The payment of contributions or levies for developments subject to the direction must be made at least prior to issuing the first occupation certificate or interim occupation certificate (if applicable) for the development.

1.7 What is being done to ensure that payment of contributions is made before the issuing of an occupation certificate?

The EP&A Regulation has been amended to require certifiers to obtain evidence from a council or the Department that there are no outstanding infrastructure contributions before issuing an occupation certificate.

Under section 6.10 of the EP&A Act, an occupation certificate must not be issued for any part of a development unless any preconditions to the issue of the certificate specified in a development consent have been complied with. This means that an accredited certifier will be in breach of the EP&A Act if they issue an occupation certificate and a contribution or levy that was required to be paid has not been paid.

The Department is working with the Building Professionals Board and councils to ensure accredited certifiers do not issue an occupation certificate without having documented evidence that outstanding infrastructure contributions have been paid.

1.8 How long will the proof of payment last?

The EP&A Regulation amendment requiring proof of contributions payment will continue to operate beyond the COVID-19 pandemic prescribed period for applicable developments over \$10 million which require an occupation certificate. This will improve councils' ability to know what outstanding contribution payments are due and assist to prevent revenue loss.

These changes require councils and the Department to set up permanent processes and procedures to provide certifiers with written confirmation there are no outstanding infrastructure contributions or levies due on a development prior to the issuing of an occupation certificate.

Please refer to the planning circular for further information on the operation of the EP&A Regulation amendments.

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