

Strategic planning and infrastructure funding

The purpose of this draft circular is to provide advice to councils, industry and the community on ensuring strategic land use and infrastructure planning considers fair and reasonable mechanisms for funding infrastructure and other public benefits.

Introduction

This draft circular provides advice to councils, industry and the community on:

- The importance of strategic infrastructure planning to inform planning decisions;
- The appropriate use of voluntary planning agreements (VPAs) in association with planning proposals and development applications.
- Ensuring the full range of contributions mechanisms are considered by councils in determining the best way to fund infrastructure and other public benefits.

Background

VPAs are used widely in the planning system as a tool for delivering innovative or complex infrastructure and public benefit outcomes in connection with planning proposals or development applications.

VPAs authorise development contributions for a variety of public purposes, some of which extend beyond the scope of section 94 or 94A of the Environmental Planning and Assessment Act (EP&A Act).

A developer may offer to enter into a VPA with a planning authority such as a council. The planning authority may then choose whether to accept the offer and to agree on the public benefits that it will deliver, including public amenities and services, affordable housing, infrastructure, or the conservation or enhancement of the natural environment.

Strategic land use and infrastructure funding

The planning process enables planning authorities to work with stakeholders and the community to identify the infrastructure need associated with growth.

Infrastructure and public benefit is likely to be planned and delivered in a more comprehensive way if linked to broad strategic planning, rather than determining planning impacts and potential public benefits on a site-by-site basis.

Strategic planning for precinct or local government areas should be the preferred approach for planning authorities. However, where site specific proposals arise, proper consideration of infrastructure needs must still be undertaken by the planning authority.

Planning proposals and infrastructure

A planning proposal must be assessed by a planning authority on its merit having regard to, among other things, the adequacy of public infrastructure to support the development. As part of the planning proposal process, it is appropriate to consider the needs and opportunities for infrastructure.

Negotiating VPAs associated with a planning proposal

VPAs are suited to large development sites with limited ownership where a rezoning may generate need for public benefits, and where there are clear benefits in the managed delivery of public benefits in association with development.

For other situations, mechanisms such as section 94 or section 94A local infrastructure contributions at the development assessment stage may provide for a more efficient and reasonable distribution of the costs of infrastructure associated with growth.

The procedures for negotiating and entering into planning agreements should be identified by the planning authority and made clear to a developer.

It is not acceptable for planning authorities to refuse to consider or refuse to forward a planning proposal for

gateway determination because, regardless of its merit, a VPA related to land value uplift has not been entered or offered to be entered into.

VPAs associated with a planning proposal need to provide a public benefit that has a clear link to the development and should not be wholly unrelated (concept of *de minimis*).

Consideration of a planning proposal should not be premised on the financial outcome achievable through a VPA. This may undermine the fair consideration of relevant planning matters in assessing the impact of development arising from a rezoning or changes to planning controls

Planning authorities should also identify when money paid under different planning agreements is to be pooled and progressively applied towards the provision of public benefits to which the different agreements relate. To support transparency, in these situations it is appropriate for these infrastructure objectives to be set out in an adopted plan or policy.

Important note: This draft 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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