e-brief

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History of development contributions under the NSW planning system

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1 Introduction

The funding of local infrastructure in NSW is an important issue and the subject of intense public debate. This debate has occurred against a backdrop of the many reforms made over the last 5 years or so.

It has been government policy for some time that developers should contribute to the funding of local infrastructure. However, questions continue to be asked about the types of infrastructure to which contributions should apply, the appropriate level of such contributions and whether developer contributions impact on housing development.

This e-brief discusses the different types of development contributions currently available under the the *Environmental Planning and Assessment Act 1979* (EP&A Act) and documents the history of development contributions under the NSW planning system, including the recent reforms.

2 Types of development contributions

Development contributions are payments made by a developer to a consent authority to contribute to shared local infrastructure, facilities or services and certain types of State infrastructure. Development contributions may be in the form of money, land, buildings, or works in kind. Professor Brian Dollery of the University of New England identifies three key reasons why consent authorities collect development contributions:

1. To augment the funding of municipal infrastructure by taxing those who benefit directly from infrastructure improvement.
2. It is economically efficient for developer charges to be levied on those responsible for the development so that infrastructure costs are included in development decision-making
3. It is equitable to charge those individuals who benefit from public investment in infrastructure.[1]

The five main types of developer contributions in NSW are:

Section 94 contributions – often referred to as a local infrastructure contribution, these are paid to the local council.

Section 94A levies - a levy paid to the local council which is a percentage of

the proposed cost of carrying out development.

Planning agreements – negotiated between the developer and the planning authority outlining the agreed developer contribution. These are used as an alternative or adjunct to s94 contributions and s94A levies.

Provision of affordable housing – levy collected by the council in designated areas for development that reduces the availability of or creates a need for affordable housing.

Special infrastructure contribution – paid into an infrastructure fund established by the NSW Government for designated growth centres.

2.1 Section 94 contributions

Section 94 contributions can be defined as prospective or retrospective. By sections 94(1) and 94(2), contributions that are prospective in nature may be imposed if a consent authority is satisfied that development will or is likely to require the provision of, or increase the demand for, public amenities and public services within the area.

The consent authority may grant the development consent subject to a condition requiring the dedication of land free of cost, or the payment of a monetary contribution, or both (s94(1)). The contribution must be reasonable, and for the provision, extension or augmentation of public amenities and public services (s94(2)).[2]

By sections 94(3) and 94(4), contributions that are retrospective in nature may be imposed by a consent authority as a condition of development consent. The condition may require the payment of a monetary contribution towards the recoupment of the cost of providing the public amenities or public services (being the cost as indexed in accordance with clause 25I of the EP&A Regulation 2000).

Such a contribution may be collected where: (a) a consent authority has at any time provided public amenities or public services in preparation for, or to facilitate the carrying out of, development in the area; and (b) where the development will benefit from the provision of those public amenities or public services (s94(3)). Such a condition may only be imposed to require a reasonable contribution towards recoupment of the cost (s94(4)).

In respect to both ss 94(1) and (3), a consent authority must take into consideration any land, money or other material public benefit that the applicant has already provided or previously paid (s94(6)). A consent authority may only impose a condition under section 94 that is in accordance with a contributions plan (s94B(1)).

Section 94EA sets out the provisions for making contributions plans, while the particulars that must be contained in them are set out in the Regulations (cl 27). These include particulars of: the purpose of the plan; the formulas used to determine s94 contributions; and, where relevant, the percentage of a s94A levy.

The term 'public amenities and public services' is not defined in the Act. However, the Land and Environment Court NSW has held that the phrase is to be interpreted broadly, to reflect the changes in services and amenities provided by local government over time.[3] By section 93C, public amenities and public services do not include

water supply and sewerage services. Separate provision is made for these under s64 of the *Local Government Act 1993.*

2.2 Section 94A levies

By s94A(1), a consent authority may impose, as a condition of development consent, a requirement that the applicant pay a levy of the percentage (as authorised by a contributions plan) of the proposed cost of carrying out the development. Section 94A levies are an alternative to the provision of a monetary contribution or the dedication of land under s94. Section 94A levies are fixed levies. That is, an applicant may be required to pay a fixed percentage of the proposed cost of carrying out a development (s94A(1)).

A consent authority cannot impose a condition under both s 94 and s 94A (s94A(2)). Nor can they impose a s94A contribution on a development within a special contributions area (growth centre) without the Minister's approval, or approval from a development corporation designated by the Minister for that purpose (s94A(2A)).

Subject to the relevant contributions plan, monetary contributions can be used for the provision, extension or augmentation of public amenities or services (or recouping costs) (s94A(3)).

Clause 25K of the EP&A Regulation 2000 sets the percentage of a s94A levy that can be imposed on a development. The levy is calculated according to the proposed cost of carrying out the development. The following restrictions apply to the application of s94A levies.

- A section 94A levy cannot be imposed for a development of $100,000 or less;
- A maximum rate of 0.5% exists for a development of $100,001 to $200,000; and
- A maximum rate of 1% exists for development which exceeds $200,000.

A contributions plan may adopt any figure that does not exceed the amount set by the regulations. Contributions imposed under s94A, and the maximum percentage of the levy, may be subject to ministerial direction (s94E(1)(d)).

2.3 Planning agreements

As another alternative to the imposition of conditions under s94 or s94A, contributions can be made under a voluntary planning agreement. Such an agreement is entered into by one or more planning authorities and a developer (s93F).

The agreement outlines the agreed developer contribution, which may be the dedication of land free of cost, a monetary contribution or the provision of any other material public benefit or any combination of them, to be used for or applied towards a public purpose (ss93F-L).

A consent authority cannot force a developer to enter into a planning agreement for development approval.[4]

2.4 Provision of affordable housing

Affordable housing levies can only be considered if a State Environmental Planning Policy (SEPP Affordable Rental Housing 2009) identifies that there is a need for affordable housing within the area to which the development application relates (s94F(1)).

The consent authority must consider whether the development will reduce

the availability of affordable housing or create a need for affordable housing in the area (s94F(1)). If either applies, or the proposed development is allowed only because of the initial zoning (or rezoning) of the site, the consent authority can impose a condition requiring the dedication of part of the land, or other land owned by the applicant, for the provision of affordable housing (s94F(2)).

2.5 Special Infrastructure contribution

The Special Infrastructure Contribution is a State Government levied financial contribution paid during the development process. Special infrastructure contributions help to fund regional infrastructure in Sydney's Growth Centres.

Special Infrastructure Contributions are set out in Part 4, Division 6, Subdivision 4 of the EP&A Act. The Minister can direct a consent authority, in relation to development or a class of development on land within Special contributions areas, to impose a condition on development consent in addition to a condition that the consent authority could impose under s94 or s94A. Special contribution areas are listed in Schedule 5A of the EP&A Act.

The Minister can determine the level and nature of development contributions to be imposed as conditions for the provision of infrastructure, as defined s94ED(1). In determining the level and nature of development contributions, the Minister must ensure the contribution is reasonable, having regard to the cost of the provision of infrastructure. If the cost of infrastructure exceeds $30 million the Minister is to consult with the Treasurer (s94EE (2(b)).

Monetary contributions and the proceeds from the sale of land dedicated under Subdivision 4 are held in the Special Contributions Areas Infrastructure Fund. Payments from this fund can only be used for provision of infrastructure by public authorities, to meet administrative expenses, or as authorised by the EP&A Act or regulations (s94EL).

The Department of Planning estimates that the fund helps to pay 75 percent of the roads, bus depots, open space, planning and delivery costs and land required for social infrastructure. The remaining 25 percent of costs are funded by Government. According to the Department of Planning, the rationale behind this split is that:

> …the cost of infrastructure is shared between the broader community and those who benefit financially from development, and will allow services which are an essential part of development – such as roads – to be delivered to service population growth.[5]

It should be noted that this cost split is currently subject to a temporary change announced in 2008 (see section 3.10 for further information).

3 History of development contributions in NSW

A complex history lies behind the development contributions system in NSW. It is a history characterised by numerous legislative reviews and subsequent reforms. Prior to the 1950s land subdivision was relatively inexpensive and NSW like other parts of Australia was extensively subdivided. Developers did not pay for infrastructure or for the services required for its development. Instead, such costs were met from the public purse, local or State.[6]

The fast pace of subdivision in the 1940s and 50s and the growing need for public infrastructure and services meant that public authorities were unable to adequately meet demand. The call arose for developers to contribute to the provision of infrastructure as a condition of subdivision approval.

However, development contributions were only legislated for in 1979 by section 94 of the *Environmental Planning and Assessment Act 1979*. But, as explained by Dollery, "due to various legislative complications these levies…have only been fully utilised since 1989."[7] Since then, the type of contributions "has expanded to include direct and indirect levies for local councils, levies for affordable housing as well as for State provided infrastructure".[8]

3.1 The 1989 review

According to Dollery and McNeill, the application of s94 developer contributions proved controversial from the outset.[9] By the late 1980s concern was growing about the accountability of local government for monies collected through development charges. There was also concern regarding the application and administration of the contributions system, which led to the Simpson Inquiry.[10]

In 1989, Commissioner Simpson conducted a major public inquiry into s94 of the EP&A Act.[11] Dollery and McNeill further explain that the inquiry "laid the basis for much contemporary practice in NSW and elsewhere."[12]

Ruming, Gurran and Randolph explain that the Simpson Inquiry was generally supportive of levying infrastructure contributions. However, it recommended that councils prepare development contributions plans to make the process more transparent.[13]

3.2 The 1992 reforms

In accordance with a recommendation of the Simpson Inquiry, the first major change to the development contributions system took place in 1992. The *EP&A Amendment (Contributions Plans) Act 1991* required councils to prepare and exhibit a contributions plan in order to be able to levy s94 charges.[14]

As formulated by the Simpson inquiry, contribution plans were a means of "identifying local needs and containing an implementation program for contributions and a fiscal strategy to enable proper administration."[15] With the commencement of this amendment in 1992, the imposition of development contributions became more widespread.

3.3 The 2000 reform

The introduction of the *EP&A Amendment (Affordable Housing) Act 2000* provided legal validation for the existing practice of imposing an affordable housing levy in NSW. The amendment provided that, in certain circumstances, an affordable housing levy could be imposed in designated areas to require a developer to dedicate land for or make a financial contribution towards affordable housing in the area (s94F-G).

3.4 The 2003 review

Published in 2000 was a report of a review committee titled *Review of the Developer Contributions System 2000*.[16] This was followed in September 2003, when the then Minister for Infrastructure and Planning, Craig Knowles, established the Section 94 Contributions and Development Levies Taskforce.[17] The

Taskforce reviewed the process and procedures for levying developer contributions in NSW and considered possible improvements to the way contributions were levied for local infrastructure and facilities.[18] The Taskforce's 2004 final public report, made 21 recommendations and noted the following findings:

- The original policy basis for levying developer contributions at the local level (Section 94) generally remains legitimate and sound and that the current system should be maintained.
- Developer agreements and flat rate percentage levies should be introduced as alternative approaches in certain circumstances.
- Improvements can be made to the operation and accountability of the current system by allowing for cross boundary levying; through consistency in the format of contributions plans; regular review of contributions plans; better accounting practices and the publication of data relating to the collection and expenditure of Section 94 funds.
- A system should be developed to allow councils to borrow funds for the upfront acquisition of land identified in contributions plans.[19]

3.5 The 2005 reforms

Reforms were introduced in 2005 which implemented some of the recommendations outlined in the 2003 Taskforce report. Two important changes involved the introduction of voluntary planning agreements and s94A fixed levies.

Prior to 2005, negotiation and agreement between developers and consent authorities to collect development contributions was common, but mostly unregulated. Similarly, the imposition of development consent requiring works-in-kind regularly involved negotiation between consent authorities and developers.[20]

The 2003 Taskforce report observed:

> Developer agreements and works-in-kind agreements are an appropriate model for funding local infrastructure where the negotiation effort is efficient and effective, typically in high growth areas with one or few owners.[21]

The *EP&A Amendment (Development Contributions) Act 2005* reflected the 2003 review findings in relation to developer agreements. The amendment made provision for two new methods of collecting contributions:

- Voluntary planning agreements (s93F)
- Fixed development consent levies (s94A)

These alternatives to s94 contributions allow consent authorities to choose the method, or combination of methods, that best suits their area.[22] As stated in the Second Reading speech, "The changes proposed recognise that the pattern of development is changing and that a differential approach to the levying of development contributions is needed."

Section 93F(1) provides that a planning agreement is a voluntary agreement or other arrangement between one (or more) planning authority and a developer under which the developer agrees to make development contributions towards a public purpose. The Department of Infrastructure Planning and Natural Resources considered voluntary planning agreements to be useful for:

> Large scale developments that have longer time frames, are likely to be developed in stages, and in situations where the developer has a key interest in delivering public infrastructure.[23]

Development contributions under a planning agreement can take the form of money, the dedication of land free of cost, any other material public benefit, or a combination of these, to be used for or applied towards a public purpose (s93F(2)). Section 93F(3)(a-g) sets out the necessary inclusions in a planning agreement.

Fixed development consent levies are calculated as a percentage of the cost of the development (s94A(1)). This was initially set at a maximum rate of one percent. The relevant Second Reading speech explained that the maximum rate set was based on the City of Sydney Council's flat rate levy system. At the time, this system had been in place for several years and made provision for a maximum rate of one percent.[24]

3.6 The 2006 reforms

Further reforms were introduced in 2006, as one component in a much broader "program of planning reforms" for the State.[25] The changes introduced are discussed below.

Change 1: Introduction of special infrastructure contributions

The Second Reading speech for the *Environmental Planning and Assessment Amendment Bill 2006* stated that its planning objective was to:

> Strengthen the Government's ability to deliver infrastructure, amenities and services in new land release areas and other areas where there will be coordinated growth and development.[26]

The speech added that in new land release areas, and other areas experiencing similar growth and development:

> …developers may undertake intensive, simultaneous development. This creates a need for councils and the State to concentrate funds to ensure that infrastructure and amenities are available to complement such development.[27]

To meet this need, a new s94EF was inserted by the *EP&A Amendment Act 2006*. By this provision, the State Government can impose a development contribution, known as a "special infrastructure contribution". These contributions are only collected in "special contributions areas" listed in Schedule 5A of the EP&A Act.

As of June 2006, developers were required to pay a special infrastructure contribution (discussed in more detail in subsection 2.5) to help finance infrastructure such as public amenities and services, affordable housing, transport and other infrastructure, or environmental conservation.[28]

The Amendment Act 2006 also made provision for special infrastructure contributions to help fund infrastructure outside a special contributions area. For example, contributions could be used to fund regional public transport infrastructure, which extended outside a special contributions area, but only if the infrastructure provided benefits to the development.

A Special Contributions Areas Infrastructure Fund was established to receive and distribute the special infrastructure contributions (s94EJ).

The Second Reading speech noted that the pooling of contributions in the Fund would enable the Government to take advantage of economies of scale in providing infrastructure.[29]

Whilst councils can still require local infrastructure contributions under s94 of the EP&A Act, they are prevented from requiring contributions for the same infrastructure that is being levied by the State Government under the special infrastructure contribution. Furthermore, s94A(2)(a) provides that a consent authority cannot impose a fixed development consent levy under s94A within a special contributions area unless the Minister or the relevant development corporation agrees.

Change 2: Contributions plans

The 2006 Amending Act enabled the Minister to direct a council to make, amend or repeal a contributions plan within a certain time period (94EAA(2)). Councils must submit a copy of each contributions plan to the Minister so that it can be determined whether Ministerial intervention in a plan is necessary (s94B(3)). The Second Reading speech noted that the changes would help to:

- Ensure that contributions plans are in place to complement the timing of development.
- Coordinate infrastructure provision between neighbouring councils and with development corporations.
- Maximise efficiencies in the use of contributions by enabling funds to be pooled and applied progressively to different purposes.
- Prevent contributions being used for inappropriate purposes.
- Ensure a reasonable total of local and State contributions.[30]

Non-statutory changes

As noted, in 2005 s94A levies were set at a maximum rate of one percent. On 10 November 2006 the Minister for Planning issued a direction introducing changes to the application of s94A. This was followed by a Departmental planning circular (PS 06-020) providing advice on these changes. The direction introduced a restriction to the imposition of the maximum rate of s94A contributions so that a consent authority:

- Cannot impose a s94A levy where the proposed cost of carrying out the development is $100,000 or less.
- May impose a maximum rate of 0.5 percent where the proposed cost of carrying out the development is between $100,001 and $200,000.
- A consent authority may impose the maximum rate of 1 percent where the proposed cost of carrying out development exceeds $200,000.

The Ministerial direction also restricted the types of development that a s94A levy may be imposed on irrespective of the proposed cost of carrying out the development.

3.7 The 2007 reforms

Set out in a planning circular dated 6 November 2007 were a package of non-statutory reforms, described by the Department of Planning as:

> …a comprehensive overhaul to the way that contributions from development in NSW are administered for State and local infrastructure.[31]

The key to the reforms was the aim of reducing housing costs by limiting development levies on new housing.

The Department noted that these non-statutory reforms:

> …ensure a more consistent approach to setting infrastructure contributions across NSW, and…improve certainty and transparency in the release of land for development.[32]

The two main changes introduced in 2007 are discussed below.

Change 1: Infrastructure funded by State infrastructure contributions

Previously State infrastructure contributions (also known as special infrastructure contributions) covered 100 percent of the State infrastructure costs for greenfield areas identified in Regional or Subregional Strategies, the Metropolitan Development Program, or in an approved local strategy. As part of the 2007 reforms, developers were to cover 75 percent of the State infrastructure costs, with the remaining 25 percent to be covered by the State. It also limited the types of infrastructure that could be funded by State contributions, to the 'attributable' infrastructure items identified below. These changes reduced the per lot levy in growth centres areas from $33,000 to $23,000.[33]

State infrastructure costs[34]

Infrastructure item	Previous approach	New approach
Roads	√	√
Rail	√	√
Bus	√	√
Emergency, justice	√	Land only
Health	√	Land only
Education	√	Land only
Regional openspace	√	Land only
Planning & delivery	√	√

Attributable infrastructure items are those where the need for that infrastructure arises from the development of land, as opposed to infrastructure requirements driven by general population growth.[35]

The intention behind this change was to establish "a unique levy for each precinct or region that reflects underlying attributable infrastructure costs". The costs of the construction and operation of social infrastructure facilities such as schools and TAFEs, hospitals and emergency services were to be borne by the State Government.[36]

Change 2: Reforms to local infrastructure funded by sections 94 and 94A

Under the 2007 reforms, the types of local infrastructure able to be funded from s94 and s94A contributions were clarified. A range of infrastructure types such as facilities benefiting existing communities could no longer be funded from s94 and s94A contributions. The reforms further clarified that only infrastructure directly related to a development site or a development precinct could be funded.[37] The types of 'attributable' local infrastructure types allowed to be funded from s94 and s94A levies include:

- Local roads.
- Local bus infrastructure.
- Local parks that service a development site or precinct.
- Drainage and water management expenses land and facilities for local community.
- Infrastructure that services a development site or precinct.
- Land for other community infrastructure and recreation facilities.[38]

3.8.1 Stakeholder responses

The Property Council of Australia responded to the reforms by publishing

a media release in December 2007, in which it stated:

> Development levies add to the cost of new housing, they are unfair and inefficient and councils are too slow to spend the money they collect. Rather than cry poor over levies, local councils should get behind driving serious reform to the NSW rate system. We urge the NSW Government to keep reforms that force council to spend levy revenue and look to end rate pegging to enable councils to be financially sustainable.

The Property Council of Australia further said:

> We recognise that many councils are cash strapped, but the never ending increase of levies on new housing is not the answer. Councils have to recognise their housing affordability responsibilities….We don't have a problem with section 94 levies per se, but the fact is that things have got way out of hand in NSW. Since 2000, local government levies on new housing in Sydney have grown by up to 17%, adding over $56,000 onto the cost of a new home.[39]

From a different perspective, many councils expressed concern about the 2007 reforms, particularly the reduced level of developer contributions available for collection.[40] It was also said that the new provisions would narrow the range of local infrastructure to which development contributions could be applied. The LGSA argued that councils with large population growth and urban expansion would be hardest hit by the reforms.[41] The LGSA prepared case studies to highlight the impact of the changes on different categories of councils.[42] The study's findings are shown in the table below.

Anticipated loss of funding from the 2007 EP&A section 94 changes[43]

Type of Councils	Average levy	Loss of funds under 2007 s94 plan
Rural	6,000/lot	$4.5 million
Coastal growth	4,500-8,500/lot	$8.2 million
Urban fringe	20,000/lot or 5,000/unit	$76 million
Inner city	8,000-19,000/lot or 11,000/lot	$55.5 million
TOTAL		$144.2 million

In response to the Government's proposed 2007 reforms, the LGSA in consultation with councils, submitted its concerns to the Government, highlighting the following perceived "key problems" with the proposed revised development contributions framework:

- The revised framework will not make housing more affordable.
- There will be a significant loss of future revenue to provide for local infrastructure.
- The current understanding of nexus between the proposed development and population growth has been compromised.
- Types of facilities that can be funded are unnecessarily restricted
- Development contributions funds will be taken out of council's control.
- The limitation of seven years to spend s94 funds is unnecessarily restrictive.
- Some council's have committed to facilities that will be jeopardized by the changes.
- The application of the new State levy will crowd out local levies.[44]

3.8 The 2008 review

Responding to the "financial climate" at the time, the Government undertook a review of infrastructure contributions in 2008.[45] The objective of the review was to "ensure that the contribution

framework was supporting the State's housing and employment targets".[46]

Contributing to the review, the LGSA prepared a submission (December 2008) in which it stated:

> The NSW Government policy direction in relation to development contributions appears to be driven by issues specific to the unique housing market in Sydney's fringe-metropolitan regions where the quantum of development contributions is relatively higher mainly due to the cost of land acquisitions required in large greenfield development areas… Also, it does not allow for consideration of different circumstances across the State and within the greater Sydney area and specific local issues that impact the cost of development and require expensive infrastructure solutions.[47]

3.9 The 2008 reforms

In response to the 2008 review, further reforms to the development contributions system were enacted. As yet, these 2008 amendments are not in force. If proclaimed to commence, the *EP&A Amendment Act 2008* will result in a significant rewriting of the development contributions system in NSW, with the introduction of Part 5B – Provision of Local Infrastructure. In 2009 draft guidelines were released by the Department of Planning.

An example of a proposed reform is that Ministerial approval could be granted for a fixed development consent levy higher than one percent. This would apply where a council demonstrates that the requirement for the extra contribution is reasonable, through the provision of a business plan and independent assessment of the proposed infrastructure.

Non statutory changes

In addition to the EP*&A Amendment Act 2008*, in a planning circular dated 23 December 2008, a series of non statutory reforms to the development contributions system were outlined.[48]

In a media release dated 17 December 2008, the then Premier Nathan Rees announced that the reforms were aimed at stimulating the State's housing industry and improving housing affordability. The reforms were to achieve these aims by reducing State and local government levies charged to new development by up to $64,000 per lot.

These changes had the effect of cutting State infrastructure charges in the South-West and North-West growth centres from $23,000 to around $11,000 per lot until June 2011.[49] With these changes in place, contributions in the growth centres were adjusted as shown below.

2008 reforms contribution adjustments in growth centres[50]

2008	Feb 2009 – Jun 2011	July 2011 onwards
$23,000 per lot (approx)	$11,000 per lot (approx)	$17,000 per lot (approx)

Change 1: Infrastructure types covered by State contributions

Prior to the 2008 reforms, the State contributions framework included the recovery of train, road, bus subsidies, land for education, health and emergency service facilities, conservation, planning and delivery (refer to table in section 3.8). As part of the 2008 reform package, removed from the State contribution framework, was any infrastructure type that was considered to provide a benefit to the community at large. Planning Circular PS 08-017 explains that:

> As rail infrastructure and bus subsidies provide a benefit to the broader community the Government will remove these types of infrastructure from the State levy framework.[51]

Change 2: Change to percentage of infrastructure costs recovered through State contributions

As discussed in section 3.8, under the 2007 reforms, the percentage of infrastructure costs recovered through State contributions was reduced from 100 percent to 75 percent. This meant that the State was left to fund the remaining 25 percent.

To stimulate housing construction in NSW, the 2008 reforms introduced a temporary change to the above infrastructure cost ratio. Under the 2008 reforms, the Government reduced the developer's share of the contribution from 75 percent to 50 percent for all levies paid before 30 June 2011.[52]

Change 3: Cap on local contributions

As part of the 2008 review, the Department of Planning stated:

> Infrastructure levies can be a significant cost of providing serviced vacant blocks of land for development in NSW. For example, in the growth centres of Sydney, infrastructure levies can amount to $66,000 or about 30% of the sale price for a single vacant block of land that is zoned for residential development.[53]

Also as part of the 2008 review, a $20,000 threshold per residential dwelling was identified as "the point above which a local contribution may be unaffordable".[54]

Under the 2008 reforms, infrastructure contributions payable to local councils were capped at $20,000 per residential lot. All contributions exceeding $20,000 required approval from the Minister for Planning.[55] The introduction of the threshold was effective as of 30 April 2009, as provided for in the Minister's direction under s94E of the EP&A Act, dated 13 January 2009.[56]

Change 4: Water infrastructure levies

The 2008 reforms also introduced a reduction in developer charges through the abolition of infrastructure levies payable to Sydney Water Corporation and Hunter Water, saving up to $15,000 per lot.[57]

3.10 The 2010 reforms

A number of reforms to development contributions were introduced between June and November 2010.

On 4 June 2010, the Keneally Government announced another revised approach for setting local development contributions and local council rates. The Government said that the changes aimed:

> …to increase housing supply by lowering development charges for infrastructure to stimulate housing construction.[58]

Two changes were announced:

- The Ministerial Direction issued under s94E in January 2009, which introduced the $20,000 cap on local development contributions was revoked. The 2010 reforms retain the $20,000 cap. Now, however, no exemption from the cap is permitted.

- In respect to council rates, council's may apply for special rate variations for legitimate council costs arising from development.[59] This means that with approval from IPART, Councils can use special rate variations to help fund shortfalls in infrastructure costs.

The Government announced additional measures on 16 September 2010 to "accelerate housing and keep downward pressure on prices."[60] The Direction issued by the Minister for Planning under section 94E of the *EP&A Act,* revoked the previous Direction, dated 4 June 2010. Planning Circular PS 10-022 explained:

- The $20,000 per dwelling or per residential lot in existing areas would 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 percent of the expected dwelling yield under existing contributions plans have been lodged are exempted from the cap.
- An essential works list now applies when councils are seeking priority infrastructure funding or a special rate variation.
- Establishment of a $50 million Priority Infrastructure Fund for projects on the essential works list above the cap.[61]

The September 2010 Direction did not apply to:

- section 94 contribution conditions imposed prior to the Direction coming into effect,
- voluntary planning agreements,
- monetary contributions required under s94A (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)).

On 23 November 2010, Planning Circular PS 10-025 set out the role to be played by IPART in the development and review of contributions plans, specifically for the purpose of bringing "greater transparency and accountability to the system".[62] The following contributions plans require review by IPART:

- New s94 contributions plans which propose a contribution level above the relevant cap.
- Existing development contributions plans which propose a contribution level above the relevant cap for those councils that are seeking priority infrastructure funding.
- Existing development contributions plans which propose a contribution level above the relevant cap for those councils that are seeking a special variation.
- As otherwise determined by the Minister for Planning.[63]

3.11 The January 2011 reforms

On 24 January 2011, the Keneally Government announced further changes to the development contributions system. Specifically, the changes related to the Special Infrastructure Contribution – Western Sydney Growth Areas.

As discussed in section 2.5, the special infrastructure contribution has been in place in Sydney's Growth Centres since January 2007. The 2011 changes were made to:

- Include land formerly within the interim transport levy areas in the special contributions area for the Growth Centres (now Western Sydney Growth Areas Special Contributions Area).
- Simplify the system of indexing which is used to account for changes in economic conditions between the time consent is granted and when contributions are made.
- Introduce arrangements to allow for deferred payment of a monetary contribution before the end of three years (with the Minister's approval). This provision was included to help stimulate housing supply.[64]

4 Alternatives to development contributions

According to Professor Dollery, development contributions are "not sufficient to address infrastructure shortfalls" in all municipalities and "thus must be greatly supplanted by other sources of funding."[65]

Development contributions are not the only mechanisms available for financing infrastructure under the planning system in NSW. Alternatives include:

- General rates.
- Special rate levies.
- Borrowing/loans.
- Grant and subsidies from State or federal government agencies.
- User charges (i.e. entry fees).
- Some combination of these that might be coupled with contributions system funds.[66]

In 2005, DIPNR emphasised that the use of a combination of financing mechanisms "reduces the risks associated with the reliance on external funding for facility provision."[67] The Department encouraged councils to pursue more innovative approaches to provide public facilities such as:

- Co-location of private and public facilities, community use of schools and other publicly funded facilities.
- Multi-use facilities.
- Leasing buildings for public purposes rather than outright purchase.
- Offering incentives for private sector provision.
- Examining the actual capacity of existing facilities as well as investigating alternative approaches to providing the facility through s94.
- Using opportunities which may arise when clubs, schools and other groups propose to build new premises or undertake alterations and additions to existing facilities.[68]

5 Conclusion

Development contributions are a method of financing State and local infrastructure in NSW. The history of the development contribution system is complex. The legislative requirements have been the subject of a number of reviews and changes. Public and stakeholder debate on some amendments has been intense.

Are development contributions needed? If so, how high should they be? What impact, if any, have they had in this State on housing development and affordability?

The general case for development contributions was made in the 2006, final report of the independent inquiry into the financial sustainability of NSW Local Government, which stated:

> The principle of developer contributions is a sound one. Developer contributions are efficient and equitable. They are efficient because they set charges that should reflect the real costs of local

> public infrastructure needed to support a private development and so ensure that such a development does not occur when its total costs exceed its total benefits in both a private and public sense. Also, they provide a mechanism for financing development. They are equitable because the contributions are borne by the beneficiary of the works.

As for the level at which developer contributions should be set, a development industry perspective is found in the 2010 report of the Urban Taskforce. It argued that NSW has the highest development levies in Australia and further stated:

> A sharp rise in development charges has also raised the cost structure for medium and high density housing development, in a similar fashion to the jump in costs for broadhectare development.

For its part, the LGSA maintains that development contributions have a marginal impact on housing affordability and development and, as a consequence, decreases in these contributions are unlikely to stimulate development activity.[69] The debate, on these and other issues, is likely to continue into the future.

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