

PLANNING SYSTEM

Act and regulation changes

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Related	Supersedes PS 07-018

Review of infrastructure contributions

The purpose of this circular is to provide advice on the implementation of the recent reforms to infrastructure levies announced by the NSW Government. This circular focuses on the levies imposed on development under the *Environmental Planning and Assessment Act 1979*. Further information on changes to water infrastructure levies can be obtained from Sydney Water and Hunter Water. This circular supersedes PS 07-018.

Introduction

The 2008-09 Mini-Budget announced a review of State infrastructure contributions and water infrastructure levies that apply to the development of greenfield housing sites, infill development and employment lands (including industrial). The review also applied to local government levies charged under sections 94 and 94A of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The objective of the review was to ensure that infrastructure levies are consistent with the Government's plans to boost housing supply and affordability as well as support business and provide a stimulus to the construction industry.

On 17 December 2008, the Premier, the Hon. Nathan Rees MP, announced a package of reforms to infrastructure levies:

- A change to the way that State infrastructure contributions are calculated, by removing rail infrastructure and bus subsidies – leading to a reduction in the charges.
- Allowing for the deferral of the point at which developers pay the State infrastructure contribution to the point of sale of a new residential lot (to improve cash flow).
- Establishing a \$20,000 threshold for local government contributions applying to residential dwellings. Councils will only be able to charge above the threshold if they have the approval of the Minister for Planning.
- Requiring councils to provide existing contributions plans that would allow for contributions above the \$20,000 threshold to the Government for an evaluation of the plan.

- The immediate cessation of water infrastructure charges imposed by Sydney Water and Hunter Water.

The rationale for infrastructure contributions

The attractiveness of an area for development, and as a result its underlying land value, will increase when new infrastructure is provided. In NSW, the Government has taken a policy position that the beneficiaries of the provision of new infrastructure should make a contribution to that infrastructure.

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.

The imposition of levies can have an indirect impact on house prices. For example, if a developer is not able to sell a house for a price that is sufficient to cover development costs as well as providing an adequate return, they may elect not to develop. This would result in a reduction in the supply of houses, which can then translate into higher prices.

Review of levies

Given the current state of the development industry in NSW, along with the broader economic and financial climates, the Government has undertaken a review of infrastructure contributions in NSW. The objective of the review was to ensure

that the contribution framework was supporting the State's housing and employment targets.

NSW Treasury has led the review of infrastructure levies with assistance from the Departments of Planning and Local Government. The NSW Government also undertook targeted consultation with development industry associations, the Local Government and Shires Associations and council general managers.

Changes to State infrastructure contributions

The reforms to State infrastructure contributions have a number of components.

Infrastructure types covered by the contribution

The current State levy framework includes recovery of train, road, bus subsidies, land for education, health and emergency service facilities, conservation and planning delivery.

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.

The costs of the construction and operation of rail infrastructure, bus subsidies as well as social infrastructure facilities such as schools and TAFEs, hospitals and emergency services will be borne by the Government. It is the NSW Government's intention that there will be no reduction in the type, amount or delivery of infrastructure to be provided, only in how this will be funded.

The refined scope of infrastructure contributions will be applied to all State infrastructure contributions whether they are set under the State's special infrastructure contributions framework or are negotiated in a State developer agreement.

Increased State contributions

To generate a stimulus for the NSW development industry, it is proposed to increase the State's contribution towards infrastructure for a two-year period. Currently, 75 per cent of the cost of infrastructure is recovered through State levies. The remaining 25 per cent is funded by the Government.

Under the reforms the Government will increase its contribution to 50 per cent for all levies that are paid before 30 June 2011. This will apply to all direct State levies and State developer agreements.

Timing of payment

The payment of State infrastructure levies typically occurs before a developer generates any land/property sales (and hence receives any revenue). The development industry has advised that this has created significant cash flow concerns, particularly in light of the current tightening of credit.

As part of the reforms the timing of the payment of all State levies will be moved. The payments of the State levy will now typically need to occur before the transfer of title from the developer to the purchaser.

Introduction of credits for certain State infrastructure contributions

Developers have been able to negotiate with the Government for the provision of infrastructure as works in kind through developer agreements or as part of approvals given through the Precinct Acceleration Protocol (PAP).

The underlying principle of the PAP will remain unchanged. A developer will be required to construct the infrastructure needed to service a precinct at its own cost. Under the new arrangements the developer will receive an infrastructure levy credit as financial consideration for the works it provided. The credit will cover the State's contribution, as well as the excess capacity that was required under the PAP approval.

Similar arrangements will apply to developers providing works in kind.

The credit will be able to be used by developers to offset future contributions, or be traded to other developers. More detail on the operation of the proposed tradable credits scheme will be announced by the NSW Government in early 2009.

Changes to local government infrastructure contributions

The planning reforms contained in the *Environmental Planning and Assessment Amendment Act 2008* (Amending Act) include extensive changes to the way in which local councils will be able to levy new development for infrastructure.

The review of levies recognised that the implementation of the contribution provisions in the Amending Act is likely to achieve a reduction in levies, particularly in response to the key considerations for contributions and the specification that councils levy only for key community infrastructure. However, as councils may not be required to implement the changes until March 2010 it was considered that a review of existing levies which exceed an affordability threshold needed to be brought forward.

Identification of an affordability threshold for local contributions

As part of the review a \$20,000 threshold per residential dwelling has been identified as the point above which a local contribution may be unaffordable.

It has been recognised that the number of councils that have levies greater than \$20,000 for a typical residential dwelling or lot are quite limited. It has also been recognised that there

may, in some cases, be legitimate reasons for a levy that may exceed this amount.

Under the reforms councils will be limited to charging a maximum of \$20,000 for a typical residential dwelling unless they have received the approval of the Minister for Planning following a detailed evaluation of the contribution and council's broader infrastructure and asset management strategy.

Implementation of the \$20,000 threshold

In January 2009 it is intended that a direction will be issued to councils under the EP&A Act to limit the conditions of development consent they may impose requiring contributions under new and/or existing local contributions plans. The direction will be accompanied by a planning circular to fully explain the effect of the direction.

The introduction of the threshold for new plans will be effective from the date of the direction.

In the case of existing contributions plans, councils will be required to provide any contributions plans to Department of Planning by 1 February 2009 that allow for a contribution for a residential dwelling that is more than the \$20,000 threshold. This includes plans which, when applied in conjunction with other applicable contribution plans, would result in a contribution of greater than \$20,000 per dwelling.

These plans will be evaluated by a review panel to determine whether the contribution, if imposed, would be reasonable and affordable. The review Panel will be required to report to the Minister for Planning by 30 April 2009. The Minister will then give councils directions on whether their plan(s), and consequently the contribution, needs to be amended.

The evaluation of council plans will have regard to the 'key considerations for contributions' (see section 116D of the Part 5B to the EP&A Act, which will come into effect on commencement of the relevant provisions of the Amending Act) to focus on the infrastructure needs of new development, how the infrastructure fits within an overall asset management strategy for the council, the cost estimates for the infrastructure and implications for affordability of development.

If a council does not provide its existing plan to the Department for evaluation, it will be limited to charging the \$20,000 per residential dwelling from 30 April 2009 onwards.

Introduction of the new 'Part 5B' of the EP&A Act

The Department of Planning will continue to work on the introduction of the new Part 5B of the EP&A Act in the first quarter of 2009. Under the new Part 5B the important concepts of nexus and apportionment of infrastructure contributions to development are strengthened by a clearer identification of key community infrastructure and

greater reporting and accountability in the use of levies to fund infrastructure.

As part of the implementation work for the new Part 5B the Department is preparing a new contributions manual, as well as working with the Department of Local Government on new reporting arrangements tied to the Local Performance Monitor. Further advice on the introduction of the new Part 5B will be provided in the first quarter of 2009.

Water infrastructure levies

Reforms to water infrastructure levies are also part of the Government's levies review. The reforms will see a reduction in developer charges, which will now be recouped through user charges, except for recycled water levies. It should also be noted that the changes to water infrastructure levies only apply to Sydney Water and Hunter Water charges, and not where councils are the water supply authority. Further information on these elements of the reforms can be obtained from Sydney Water or Hunter Water.

Implementation timeframes

Implementation of the reforms to levies announced by the Government on 17 December will occur progressively in January and February 2009.

New direction for local councils

A direction will be issued to local councils in early 2009 that ensures all new contributions plans will only authorise contributions below the \$20,000 threshold unless approval is granted by the Minister for Planning. The direction will also limit the value of contributions under existing plans to \$20,000 from 30 April 2009 onwards unless they are approved by the Minister for Planning.

Review of State infrastructure contributions

State infrastructure contributions are currently applicable in a number of locations (growth centres of Sydney, Interim Transport Levy areas and Warnervale Town Centre/Wyong Employment Zone). In January these levies will be reviewed consistent with the reforms announced by the Government. The new levy requirements are likely to take effect by 1 February 2009. A further circular will be issued to explain these changes.

State infrastructure contributions currently being developed/negotiated

Any further State infrastructure contributions, either through a State infrastructure Contributions plan or the negotiation of a developer agreement, will be revised in line with the Government's reforms announced on 17 December 2008 and outlined in this circular.

Revision of the Precinct Acceleration Protocol

The PAP that applies to the growth centres will be revised to allow for the provision of infrastructure credits.

Transitional arrangements

Appropriate transitional arrangements for each of the new measures will be developed. Included in these arrangements will be the ability to re-negotiate existing State developer agreements to encourage the expedited release of land from existing development sites.

Further information

Accompanying this circular is a more detailed question and answer sheet.

Additional information on the changes to infrastructure contributions under the EP&A Act can be obtained from the Department of Planning.

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

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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