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21 February 2008

To all Mayors

MINISTER SARTOR'S LETTER ON DEVELOPMENT LEVIES - 19 FEBRUARY 2008

We wish to clarify claims made in a letter to all councils from the Minister for Planning, Frank Sartor, dated 19 February relating to development levies.

The letter suggests councils have made a number of incorrect statements about the Government's proposed changes, and it coincides with a press release from the State Treasurer claiming most communities would not be affected by the changes.

This is merely an attempt to water down the significant impacts of the proposed changes, blur the issue, and diminish trust in Local Government.

Let us be clear. There is no confirmed change to the Government's original position.

As was stated in a Department of Planning Circular dated 6 November last year (attached), the new framework will apply to **all councils across the state**. This will mean the amount of funds many councils can levy will be reduced, and cannot be used to build new district-wide community or recreational facilities, or to expand existing facilities to meet the infrastructure requirements of new residents.

With regard to the collection of funds, the same circular states that: "The NSW Government may consider collecting and holding section 94 and section 94A contributions for greenfield development outside the growth centres on a case-by-case basis. In particular, this is likely to occur for other large scale greenfield release areas."

Minister Sartor's correspondence does not deny this position.

The Associations have presented their submission on development contributions to the Office of the Coordinator General this week. It is crucial your council keeps up the pressure locally on this issue and calls on the Government to delay implementation of the changes.

We will continue to keep you updated and urge you to contact Kristie Down, our Media and Communications Officer on 0427 109 592 or our Senior Planning Policy Officer Judy Birrell on 9242 4093 if you require clarification or further information.

Yours sincerely

Cr Genia McCaffery
President
Local Government Association of NSW

Cr Bruce Miller
President
Shires Association of NSW



PLANNING SYSTEM

Development contributions

Circular	PS 07-018
Issued	6 November 2007
Related	

Infrastructure contributions

This circular is to provide early advice to local councils, relevant State agencies, the development industry and the community of recent changes to the setting and collection of infrastructure contributions in NSW. Further advice will follow as these changes are implemented. The Department will be issuing guidelines and update circulars to facilitate implementation.

Introduction

On 12 October 2007, the Premier announced a comprehensive overhaul to the way that contributions from development in NSW are administered for State and local infrastructure.

State and local infrastructure contributions will now only fund attributable infrastructure and land requirements to support developed land rather than infrastructure requirements driven by general population growth. This means that for both State government agencies and local councils, it will only be possible to levy for a range of infrastructure items where the need for that infrastructure arises from the development of land.

The changes will ensure a more consistent approach to setting infrastructure contributions across NSW, and will improve certainty and transparency in the release of land for development.

Changes to the infrastructure funded by State infrastructure contributions

State contributions applying to greenfield areas identified in Regional or Subregional Strategies, the Metropolitan Development Program or in an approved local strategy will fund 75% of the following attributable State infrastructure costs:

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Infrastructure item	Previous approach	New approach
Roads	✓	✓
Rail	✓	✓
Bus	✓	✓
Emergency and justice	✓	Land only
Health	✓	Land only
Education	✓	Land only
Regional open space	✓	Land only
Planning and delivery	✓	✓

In the case of the growth centres, this will result in a reduction of the per lot levy from \$33,000 to \$23,000.

These principles will apply immediately to greenfield development sites across the State where rezonings or levies have not yet been finalised. This will result in 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 will be borne by the State 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 State Government is implementing other changes to its infrastructure planning so there are clear alignments between the State Infrastructure Strategy and long term land use strategies.

The new contribution arrangements will not apply to planning agreements that have already been signed, rezonings already gazetted or development applications where consent has been granted.

Changes to infrastructure funded by local section 94 and section 94A infrastructure contributions

Future local contributions will be set through an approved section 94 or section 94A plan based on Ministerial Guidelines (to be separately published) and will fund 100% of the following attributable local infrastructure costs:

- 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.

All other costs, such as facilities benefiting existing communities (including council or district-wide community and recreation facilities), can no longer be recovered through local contributions.

The Minister for Planning will issue guidelines to advise the categories of infrastructure costs to be funded from local contributions. Councils will still prepare their own section 94 or section 94A plans in accordance with the guidelines however these will need to be endorsed by a delegate of the Minister for Planning. Councils will be separately advised about the timing for the commencement of these arrangements.

Changes to section 94 and section 94A for riparian corridors

Local contributions will no longer be permitted to fund acquisition of land for riparian corridors. These areas will be protected and managed through planning (zoning and other) controls.

Councils will be separately advised about the timing and method of the preparation and implementation of section 94 and section 94A contributions plans.

Staged contribution collection

For all future greenfield release areas in NSW, a single contribution combining State and Local infrastructure charges will be set on a developable area basis, and collected at two stages:

- a Rezoning Infrastructure Contribution (RIC) shall apply on the purchaser, at the time land is first sold following rezoning or approval of a development application to recover 25% of State and local infrastructure costs

- a Serviced Infrastructure Contribution (SIC) will be payable by developers upon release of subdivision or occupancy certificates to recover the remaining 75% of State and local infrastructure costs.

Contributions will escalate annually against an appropriate construction cost index. Possible options for deferring the payment of the RIC and the SIC are being investigated by NSW Treasury.

Urban Improvement Fund

State contributions will be held in a new Urban Improvement Fund, to be managed by NSW Treasury. The NSW Government will provide \$200 million to initially establish the fund.

Collection methods are currently being developed.

Funds will be allocated to State agencies through the Budget process. In time, developers will have the opportunity to deliver relevant infrastructure as works in kind and apply for the State's 25% contribution against milestones.

Section 94 and section 94A contributions held in Trust

Section 94 and section 94A contributions from developments within the growth centres shall be held separately under Trust by NSW Treasury on behalf of councils. Councils can draw on these funds based on approved section 94 and section 94A plans, subject to funding being spent within the timetable of the approved plan.

The NSW Government may consider collecting and holding section 94 and section 94A contributions for greenfield development outside the growth centres on a case-by-case basis. In particular, this is likely to occur for other large scale greenfield release areas.

Precinct Acceleration Protocol

Within the growth centres, the Precinct Acceleration Protocol will be modified. Developers will now need to pay 75% of the modified range of infrastructure costs and will be provided with a 100% refund for linkage and excess capacity infrastructure as other developments proceed.

Land release in areas outside of the Metropolitan Development Program or a Regional/Subregional Strategy

Proposals in areas outside of the Metropolitan Development Program, a Regional or Subregional Strategy or an endorsed local strategy will be assessed against an objective gateway test based on the sustainability criteria included in the Metropolitan Strategy, Regional Strategies or endorsed local strategy where applicable. If compliant, 100% of the attributable infrastructure costs would be borne by the developer.

State infrastructure contributions and section 94 and section 94A contributions in existing urban areas

The revised contributions framework will apply to section 94 and section 94A contributions in both existing urban areas and greenfield areas. However, only the incremental costs arising from development can be collected through the levy.

Consultation

As these arrangements are developed local government and other stakeholders will be consulted.

Planning agreements

Where a State voluntary planning agreement is being proposed (e.g. to demonstrate satisfactory arrangements for infrastructure), it must in principle be consistent with the revised infrastructure contributions framework unless approved by NSW Treasury.

Transitional arrangements

Any local environmental plan, planning agreement or section 94 or section 94A contributions plan made on or before 12 November 2007 will continue to operate as if the changes announced by the Premier on 12 October 2007 had not been made. Once the mechanisms to implement the measures outlined in this circular have been finalised additional transitional measures will be put in place.

Policy initiatives requiring legislative change

Legislative changes will be examined as part of the planning reform program to:

- require section 94 plans to be approved by the Minister for Planning or delegate (*Environmental Planning and Assessment Act 1979*)
- establish requirements for the payment of a Rezoning Infrastructure Contribution at the time land is first sold following its rezoning (*Real Property Act 1900*)
- require the transfer of developer contributions collected by a council in the north west or south west metropolitan growth centres to the State Government (*Local Government Act 1993*)
- establish the Urban Improvement Fund.

What happens next?

The Department of Planning is working with NSW Treasury and the NSW Growth Centres Commission to develop guidelines and procedures to give effect to these reforms.

Authorised by:

Sam Haddad
Director-General

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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