



## DEVELOPMENT CONTRIBUTIONS

### Background

Development contributions provide councils with a funding mechanism to meet the additional demand for local and community infrastructure generated by development.

The current Act provides councils with the options of raising developments contributions under:

- strictly defined Section 94 contributions plans, requiring a nexus between the development and the infrastructure being funded;
- flat percentage contributions levied under Section 94A; and
- contributions under Voluntary Planning Agreements.

The current Act also provides councils and communities with flexibility to determine the types of local and community wide infrastructure to be funded by the development contributions.

### Proposals

The draft legislation (Schedule 3) repeals the existing provisions of EPAA (Part 4, Divisions 6 & 6A) and replaces these provisions with a new Part 9. There are a number of amendments to the provisions relating to development contributions for both Local and State Government.

### New wording

Section 94 levies are now 'direct contributions' and s94A are 'indirect contributions' (s906). There is provision to apply to the Minister to vary the maximum percentage to be levied under indirect contributions (currently this is a maximum of 0.5% on development valued over \$100,000 and 1% on development valued over \$200,000).

### Contributions plans

Requires councils to prepare and exhibit contributions plans (as per current provisions); council can approve contributions plan but must make it available to the Minister within 14 days (Schedule 1, s6). The Minister can direct council to amend, repeal or make a plan (Schedule 1, s7).

### Key considerations

Councils and the Minister must have regard to key considerations when developing plans and setting development contributions (s903) which include:

- The time frame for providing infrastructure.
- Impact on housing affordability.
- Reasonable apportionment between existing and new demand.
- Reasonable estimate of the cost of infrastructure.

### Limits on the use of funds

Local development contributions are limited to funding 'key community infrastructure' (s908 and cl6 of Schedule 1) comprising:

- a) local roads;
- b) local bus infrastructure;
- c) local parks;
- d) local sporting, recreational, cultural, civic and social services facilities;
- e) drainage and stormwater management works;
- f) land for any community infrastructure (except land for riparian corridors); and
- g) district infrastructure of the kind referred to in paragraphs (a)–(d) but only if there is a direct connection with the development to which a contribution relates.

Contributions can be levied for '**additional community infrastructure**' if approved by the Minister (s908). Councils must provide a business case or an independent report to the Minister when requesting approval to fund additional community infrastructure (Schedule 1, cl31B). Land for riparian corridors cannot be approved as additional community infrastructure (s908).

### **Ministerial directions**

The Minister can direct councils in regard to (s911):

- the type of community infrastructure that can be levied for;
- the means for determining contribution levels;
- the maximum amount of any direct contribution;
- type or area of development for which community contributions may be imposed and the maximum percentage of an indirect contribution; and
- time frames for spending contributions.

### **Community Infrastructure Trust Fund**

To be established for community infrastructure contributions paid in growth centres. The Fund is to be administered by the Secretary of Treasury (Schedule 1, cl25).

The Minister may make, amend or repeal areas included under Community Infrastructure Trust Fund by order in the Gazette (Schedule 1, cl26).

### **State infrastructure contributions**

The legislation makes provision for levying of **state infrastructure contributions** (SICs) in **state contributions areas** (currently Growth Centres and Wollongong) for public infrastructure.

The Minister determines the level and nature of contributions (s914) which will be held in a State infrastructure fund, administered by Treasury. In setting the contributions level, the Minister *must* take account of the reasonableness of the contribution (s915) and he *may* consult owners of land, consult a panel of landowners or publicly exhibit the proposal and seek submissions (Schedule 1, cl15).

There are no appeals on state infrastructure contributions (s16).

The Minister can add or delete land from State contributions areas by order in the Gazette (s20).

### **Planning Agreements**

The legislation provides for similar provisions to apply to voluntary planning agreements (VPAs).

Notably, all VPAs in place at the commencement of the amendments will be taken to contain all corresponding conditions of the new contributions provisions.

This is important because it means that the conditions of a currently in force VPA, that were agreed to between the council and the developer, will be repealed and the VPA will only be able to contain provisions relating to 'key community infrastructure' as set out in the amendments.

### **Assessment**

The provisions of the legislation give the Minister greater directive powers over local development contributions and introduce a new system of state infrastructure contributions.

### **Local contributions**

For local contributions, the legislation:

- Places limits on the types of projects councils can levy for, with a requirement to seek the approval of the Minister to fund projects outside those listed as key community infrastructure.
- Gives the Minister power to determine the quantum of contributions (\$ or %), to limit the type of development that can be levied and the time frames for spending contributions.

- Growth Centre councils' contributions will be collected and held by Treasury in the Community Infrastructure Trust Fund. It is relatively easy for the Minister to declare other areas to come within the ambit of the Trust Fund via an order in the Government Gazette.

### **State contributions**

The legislation also introduces a new levy on greenfield releases (State Infrastructure Contributions) in areas outside the Growth Centres without similar provisions for accountability and transparency as are required of councils. For example, the legislation:

- places no limits on the type of projects to be funded;
- does not require the State to prepare a contributions plan;
- does not require the Minister (although he may) to consult with landholders or exhibit the contributions proposal; and
- provides for no appeals against the Minister's decision on setting contributions rates.

There is also no formal mechanism for coordinating the setting of state and local levies. This has the potential to result in state levies 'crowding out' local levies, particularly if the state levies are set prior to local levies being determined. In the absence of such a formal mechanism, councils must rely on the goodwill of the State Government to cooperate with individual councils in the setting of an appropriate level of development contributions (State and local) to fund the infrastructure needed in greenfield release areas.

### **Voluntary Planning Agreements**

With respect to Voluntary Planning Agreements (VPAs), there should be provision to have the existing VPAs continue unaffected as both the council and the developer entered into these agreements in good faith. The effects for council could be quite damaging. One council estimates that it will lose millions of dollars in developer contributions due to the amending legislation.

In addition, the existing VPAs will be subject to the operation of the new Section 903 which will require the parties to consider certain key criteria when determining developer contributions. This will give developers the opportunity to review their current contributions and possibly walk away from those that they claim fall outside the amendments. Once again, there is the possibility for councils to lose considerable sums of contributions that may already have been earmarked for community infrastructure.

Other questions that need to be answered include:

- What will this mean for VPAs that are currently in place and cover more than one council area?
- Does this provide scope for developers to be able to claim back contributions that have not yet been spent by council but that do not fall within the new scheme?

### **Recommendations**

The Associations welcome the State Government's concession on councils being able to levy contributions to pay part of the cost of upgrading or building district or council wide facilities, although the definitions and wording of the legislation and the lack of detail regarding practice notes, regulation, and Ministerial directions is a major concern.

The Associations oppose:

- The wide ranging and discretionary powers given to the Minister to direct councils' collection and use of development contributions.
- Treasury control over Growth Centre councils' funds from development contributions.
- The lack of a formal mechanism for determining levies in greenfield release areas with significant potential for State levies to 'crowd out' local levies.
- The lack of appropriate transitional and savings provisions, particularly with respect to the continuation of existing plans and VPAs.

**The Associations recommend that the legislation on development contributions be deferred until such time as the package of amendments is available for public scrutiny and Local Government's concerns with the legislation have been addressed.**