

Environmental Planning and Assessment (Special Infrastructure Contribution – Gosford City Centre) Determination 2018

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning, in pursuance of section 7.23 of the *Environmental Planning and Assessment Act 1979*, make the following Determination.


Minister for Planning

Dated: 10/10/2018

Part 1 Preliminary

1 Name of Determination

This Determination is the *Environmental Planning and Assessment (Special Infrastructure Contribution – Gosford City Centre) Determination 2018*.

2 Commencement

This Determination takes effect on the date of its publication in the Gazette.

3 Land to which Determination applies

This Determination applies to Gosford City Centre Special Contributions Area.

Note. A map of Gosford City Centre Special Contributions Area is set out in Schedule 1 for information.

4 Objective of Determination

The objective of this Determination is to provide for special infrastructure contributions to be made to the provision of regional infrastructure, such as roads, community facilities, open space, and education, health and emergency services facilities, in connection with development in Gosford City Centre.

5 Definitions

(1) In this Determination:

business zone means any of the following land use zones:

- (a) Zone B1 Neighbourhood Centre,
- (b) Zone B2 Local Centre,
- (c) Zone B3 Commercial Core,
- (d) Zone B4 Mixed Use,
- (e) Zone B5 Business Development,
- (f) Zone B6 Enterprise Corridor,
- (g) Zone B7 Business Park,
- (h) Zone B8 Metropolitan Centre.

developer means the person having the benefit of a development consent for the time being.

Gosford City Centre Special Contributions Area means the special contributions area of that name, as described in Schedule 4 to the Act.

infrastructure has the same meaning as it has in Subdivision 4 of Division 7.1 of the Act.

planning agreement means a voluntary agreement referred to in section 7.4 of the Act with the Minister (whether or not another planning authority is also a party to the agreement).

public housing has the same meaning as in the *Housing Act 2001*.

residential zone means any of the following land use zones:

- (a) Zone R1 General Residential,
- (b) Zone R2 Low Density Residential,
- (c) Zone R3 Medium Density Residential,
- (d) Zone R4 High Density Residential,
- (e) Zone E4 Environmental Living.

SIC development means development for which a special infrastructure contribution must be made under clause 6.

social housing provider means any of the following:

- (a) the New South Wales Land and Housing Corporation constituted by the *Housing Act 2001*,
- (b) the Department of Family and Community Services,
- (c) a registered community housing provider within the meaning of the Community Housing Providers National Law (NSW),
- (d) the Aboriginal Housing Office constituted by the *Aboriginal Housing Act 1998*,
- (e) a registered Aboriginal housing organisation within the meaning of the *Aboriginal Housing Act 1998*,
- (f) a provider of specialist disability accommodation under the *National Disability Insurance Scheme Act 2013* of the Commonwealth,
- (g) a local government authority that provides affordable housing,

(h) a not-for-profit organisation that is a direct provider of rental housing to tenants.
special infrastructure contribution works-in-kind agreement – see clause 16.

Standard Instrument means the standard instrument for a principal local environmental plan prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006*.

the Act means the *Environmental Planning and Assessment Act 1979*.

(2) Words or expressions used in this Determination have the same meaning as they have in the Act, unless otherwise defined.

Note. See section 1.4 of the *Environmental Planning and Assessment Act 1979* for definitions generally and section 6.2 of the Act for the meaning of subdivision of land.

(3) The following words or expressions have the same meanings as they have in the Standard Instrument:

- (a) emergency services facility,
- (b) health services facility,
- (c) passenger transport facility,
- (d) place of public worship,
- (e) public utility undertaking,
- (f) recreation area,
- (g) school,
- (h) seniors housing.

(4) A reference in this Determination to the Minister in relation to a special infrastructure contribution works-in-kind agreement includes a reference to the Planning Secretary, or other officer of the Department of Planning and Environment, acting for and on behalf of the Crown in right of the State of New South Wales.

Part 2 Requirement to make SIC for development within SCA

6 Development for which SIC must be made

(1) Subject to this clause, a special infrastructure contribution must be made for development within the Gosford City Centre Special Contributions Area where:

- (a) the cost of carrying out the development (as determined by the Planning Secretary under this Determination) is \$1,000,000 or more, and
- (b) the land on which the development may be carried out is in a residential zone or business zone.

Note. A special infrastructure contribution may be imposed only as a condition of development consent. See the direction given by the Minister under section 7.24 of the *Environmental Planning and Assessment Act 1979* to councils and other consent authorities to impose a condition in relation to a special infrastructure contribution on a grant of consent given after the date on which this Determination takes effect, where the estimate of the costs of the development (as required

to be made under the *Environmental Planning and Assessment Regulation 2000* for the purpose of calculating the fee for making the development application) is \$1,000,000 or more.

- (2) A special infrastructure contribution is not required for development that comprises only the demolition of a building or of a work.

Note. See the definition of “development” in section 1.5 of the *Environmental Planning and Assessment Act 1979*.

- (3) A special infrastructure contribution is not required to be made for development that is for any of the following purposes:

- (a) school,
- (b) TAFE establishment,
- (c) emergency services facility,
- (d) health services facility owned or operated by a public authority,
- (e) passenger transport facility,
- (f) place of public worship,
- (g) public open space,
- (h) public utility undertaking,
- (i) bus depot,
- (j) recreation area,
- (k) public amenities or public services, for which development contributions have been imposed under section 7.11 or section 7.12 of the Act, or may be imposed in accordance with a contributions plan that is in force (when consent is granted for the development),
- (l) infrastructure for which a contribution may be required to be made under this Determination,
- (m) public housing,
- (n) seniors housing, if carried out by or on behalf of a social housing provider,
- (o) affordable housing.

For the purposes of this Determination, a purpose set out above is a *designated community purpose*.

- (4) A special infrastructure contribution is not required to be made in respect of complying development for which a complying development certificate is issued.

7 Development that is SIC development in part only

A special infrastructure contribution is required to be made for SIC development even if the development consent for the SIC development:

- (a) also authorises development on land outside the Gosford City Centre Special Contributions Area, or
- (b) also authorises development on land that is not within a residential zone or business zone.

8 Nature of contribution

- (1) The special infrastructure contribution for SIC development is to be made as:
- (a) a monetary contribution, or
 - (b) a contribution of a kind specified in a special infrastructure contribution works-in-kind agreement that is in force in relation to the SIC development, or
 - (c) a contribution specified in a planning agreement that applies to the SIC development where:
 - (i) the contribution required to be provided under the agreement is for the provision of an item (or part of an item) of infrastructure specified in Schedule 2 or for the dedication or other provision of land for the purpose of that infrastructure, and
 - (ii) the agreement does not exclude the application of section 7.24 of the Act to the SIC development, and
 - (iii) the agreement provides that an obligation to make a special infrastructure contribution imposed by a condition of development consent for the SIC development in accordance with this Determination (or other determination under section 7.23 of the Act that applies to the land on which the SIC development may be carried out) may be met (wholly or partly) by the provision of the contribution under the planning agreement.

Note. A special infrastructure contribution works-in-kind agreement is an agreement that is entered into after a development consent imposing an obligation to make a special infrastructure contribution has been granted. It is an agreement about how that obligation may be satisfied. A planning agreement as described in section 7.4 of the *Environmental Planning and Assessment Act 1979* is generally entered into before development consent is granted.

- (2) The special infrastructure contribution may comprise part of the amount of the monetary contribution otherwise payable and the balance as a contribution provided by a special infrastructure contribution works-in-kind agreement (or a planning agreement of a kind described in subclause (1) (c)).

Note. A special infrastructure contribution cannot be imposed as a condition of consent to the carrying out of development if a planning agreement made in accordance with section 7.4 of the *Environmental Planning and Assessment Act 1979* excludes the application of section 7.24 to the development.

Part 3 Level of SIC and timing

9 Amount of monetary contribution

The monetary contribution that is payable as a special infrastructure contribution for SIC development is 2% of the proposed cost of carrying out that development.

10 Determination of the cost of carrying out development

- (1) The proposed cost of carrying out SIC development is to be determined by the Planning Secretary for the purpose of clause 9, by adding up all the costs that have been or are to be incurred in carrying out the development, including the following:
 - (a) if the development involves the erection of a building or the carrying out of engineering or construction work – the costs of or incidental to erecting the building, or carrying out the work, including the costs (if any) of and incidental to demolition, excavation and site preparation, decontamination or remediation,
 - (b) if the development involves a change of use of land – the costs of or incidental to doing anything necessary to enable the use of the land to be changed,
 - (c) if the development involves the subdivision of land – the costs of or incidental to preparing, executing and registering the plan of subdivision (including strata plan) and any related covenants, easements or other rights.

- (2) The following costs are not to be included in any determination of the proposed cost of carrying out the SIC development:
 - (a) the cost of the land on which the development is to be carried out,
 - (b) the costs of any repairs to any building or works on that land that are to be retained in connection with the development,
 - (c) the costs associated with marketing or financing the development (including interest on loans),
 - (d) the costs associated with legal work carried out or to be carried out in connection with the development,
 - (e) project management costs associated with the development,
 - (f) the cost of building insurance in respect of the development,
 - (g) the costs of fittings and furnishings, including any refitting or refurbishing, associated with the development (except where the development involves an enlargement, expansion or intensification of a current use of land),
 - (h) the costs of commercial stock inventory,
 - (i) any taxes, levies or charges (other than GST) paid or payable in connection with the development by or under any law,
 - (j) the costs of enabling access by disabled persons in respect of the development,
 - (k) the costs of energy and water efficiency measures associated with the development,
 - (l) the costs of any development that is the adaptive reuse of a heritage item,
 - (m) the costs of any development that is for a designated community purpose.

Note. The costs that are to be included or excluded under this clause in calculating the costs of carrying out the development concerned reflect the requirements of clause 25J of the *Environmental Planning and Assessment Regulation 2000* in relation to the calculation of a levy under section 7.12 of the *Environmental Planning and Assessment Act 1979*. However, subclause (2) (m) provides, in addition, for the exclusion of the costs of development for a designated community purpose.

- (3) If the development consent for the SIC development also authorises development in a land use zone other than a residential or business zone, the costs of that development are to be included in the determination of the cost of carrying out the SIC development.

11 Reduction in costs if mixed use building

- (1) This clause applies to SIC development where the relevant development consent authorises the use of part of a building for one or more designated community purposes (such as affordable housing or a TAFE establishment) and the remainder of the building for other purposes.
- (2) The determination of the cost of carrying out the SIC development may be made without excluding the costs of the development for the designated community purposes (as referred to in clause 10 (2) (m)). In that case, the cost, as otherwise estimated or determined in accordance with clause 10, is to be reduced by an amount calculated by multiplying that cost by the following:

gross floor area of building for designated community purpose ÷ gross floor area of building

- (3) For the purposes of this clause, *gross floor area* has the same meaning as it has in the Standard Instrument.

12 Estimate to be verified by suitably qualified person

- (1) To assist the Planning Secretary to determine the proposed cost of carrying out the SIC development under clauses 10 and 11, the developer is to provide the Planning Secretary with an up-to-date estimate of the proposed cost that is prepared or verified:
- (a) by a quantity surveyor who is a member of the Australian Institute of Quantity Surveyors or the Royal Institute of Chartered Surveyors and not connected to the developer, or
 - (b) where the estimate of the proposed cost is less than \$3,000,000 - by a person registered as an architect in accordance with the *Architects Act 2003*, or a person accredited as a building designer by the Building Designers Association of Australia, and not connected to the developer.
- (2) If the development consent for the SIC development is modified after the Planning Secretary has last determined the proposed cost of carrying out the SIC development, the developer is to provide the Planning Secretary with a revised up-to-date estimate of the proposed cost in accordance with subclause (1).

13 Adjustment of the cost of carrying out development

- (1) The proposed cost of carrying out SIC development, as determined by the Planning Secretary in accordance with clauses 10 and 11, is to be adjusted at the time that the contribution is made for the SIC development, by applying the following formula:

$$A = C \times \text{latest CPI number} / \text{base CPI number}$$

where:

A is the adjusted proposed cost of carrying out the SIC development.

C is the proposed cost of carrying out the SIC development as last determined by the Planning Secretary.

latest CPI number is the Consumer Price Index number for the quarter immediately preceding the time when the special infrastructure contribution is to be made, or if that number has not been published by the Australian Bureau of Statistics, the latest Consumer Price Index number for a quarter that has been published.

base CPI number is the Consumer Price Index number for the quarter in which the Planning Secretary last determined the proposed cost of carrying out the SIC development

No adjustment of the proposed cost of carrying out SIC development is necessary if:

- (a) the contribution for the SIC development is paid in the same quarter as the Secretary's determination of the cost, or
- (b) the Base CPI number has not yet been published by the Australian Bureau of Statistics.

- (2) In this clause, *Consumer Price Index* means the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics in the latest published series of that index.
- (3) If the Consumer Price Index ceases to be published or issued by the Australian Bureau of Statistics, a reference to the index in this clause is taken to be a reference instead to an index designated by the Minister for the purpose of this clause.

14 Final decision by Planning Secretary

- (1) A developer is entitled under this Determination to an exclusion of certain costs from the determination of the proposed cost of carrying out SIC development, only if the developer establishes the matters relevant to the exclusion to the Planning Secretary's satisfaction.
- (2) The Planning Secretary may make any decision required to be made for the purpose of calculating the special infrastructure contribution for the SIC development in accordance with this Determination and, for that purpose, may have regard to any information available at the time.

15 When a monetary contribution for SIC development must be paid

If a special infrastructure contribution for SIC development is to be made as a monetary contribution, it must be paid before any construction certificate (other than a construction

certificate for subdivision work or a subdivision works certificate) is issued in relation to the building work the subject of the relevant development consent.

Part 4 Miscellaneous provisions

16 Special infrastructure contribution works-in-kind agreement

- (1) For the purposes of this Determination, a special infrastructure contribution works-in-kind agreement is an agreement that meets the requirements set out in this clause.
- (2) A special infrastructure contribution works-in-kind agreement is an agreement between the Minister and the developer for the carrying out of works to provide an item (or part of an item) of infrastructure specified in Schedule 2, or for the dedication or other provision of land for the purpose of any such infrastructure, in lieu (in part or in whole) of the payment of a monetary contribution for the development concerned.
- (3) A special infrastructure contribution works-in-kind agreement, in relation to the carrying out of works, is to:
 - (a) specify or acknowledge the monetary contribution that would otherwise be payable for the SIC development, and
 - (b) describe the works that are to be or may be carried out by or on behalf of the developer to contribute to the provision of a specified item or items of infrastructure in lieu of a monetary contribution, and
 - (c) specify the attributable cost of the item or items of infrastructure and provide for the adjustment of that cost if necessary, and
 - (d) provide that the maximum amount of the liability to make the special infrastructure contribution that may be discharged by the carrying out of the works is not to exceed the attributable cost of the item or items of infrastructure, and
 - (e) provide for the nature or form of security to be provided by the developer for a failure to meet obligations with respect to the special infrastructure contribution or in circumstances where the works concerned are not completed by the time at which the contribution, if made as a monetary contribution, would have been required to be made under this Determination.
- (4) A special infrastructure contribution works-in-kind agreement, in relation to the dedication or other provision of land, is to:
 - (a) specify or acknowledge the monetary contribution that would otherwise be payable for the SIC development, and
 - (b) specify the time by which the land is to be dedicated or otherwise provided, and
 - (c) specify the manner in which the value of that land is to be calculated, and
 - (d) provide for the nature or form of security to be provided by the developer for a failure to meet obligations with respect to the special infrastructure contribution or in circumstances where the land concerned is not dedicated or otherwise

provided by the time at which the contribution, if made as a monetary contribution, would have been required to be made under this Determination.

- (5) In this clause, *attributable cost*, in relation to an item of infrastructure, means the amount specified in Schedule 2 for that item.

Note. The decision to negotiate or enter into a special infrastructure contribution works-in-kind agreement as proposed by a developer is entirely at the Minister's discretion. The developer is not entitled to enter into any such agreement in lieu of making a monetary contribution. For example, if the NSW Government gives priority to providing one item of infrastructure over another, then the Minister may decide not to agree to the developer providing that other item.

17 Matters for which contributions made

- (1) For the purpose of section 7.23 (3A) of the Act, 1.5% of a special infrastructure contribution required to be made by this Determination is for matters specified in section 7.22 (1) (d) of the Act.

Note. The matters specified in section 7.22 (1) (d) of the *Environmental Planning and Assessment Act 1979* are the carrying out of any research or investigation, preparing any report, study or instrument, and doing any other matter or thing in connection with the exercise of any statutory function under the Act, by the Minister, the Planning Ministerial Corporation, the Planning Secretary or the Department of Planning and Environment.

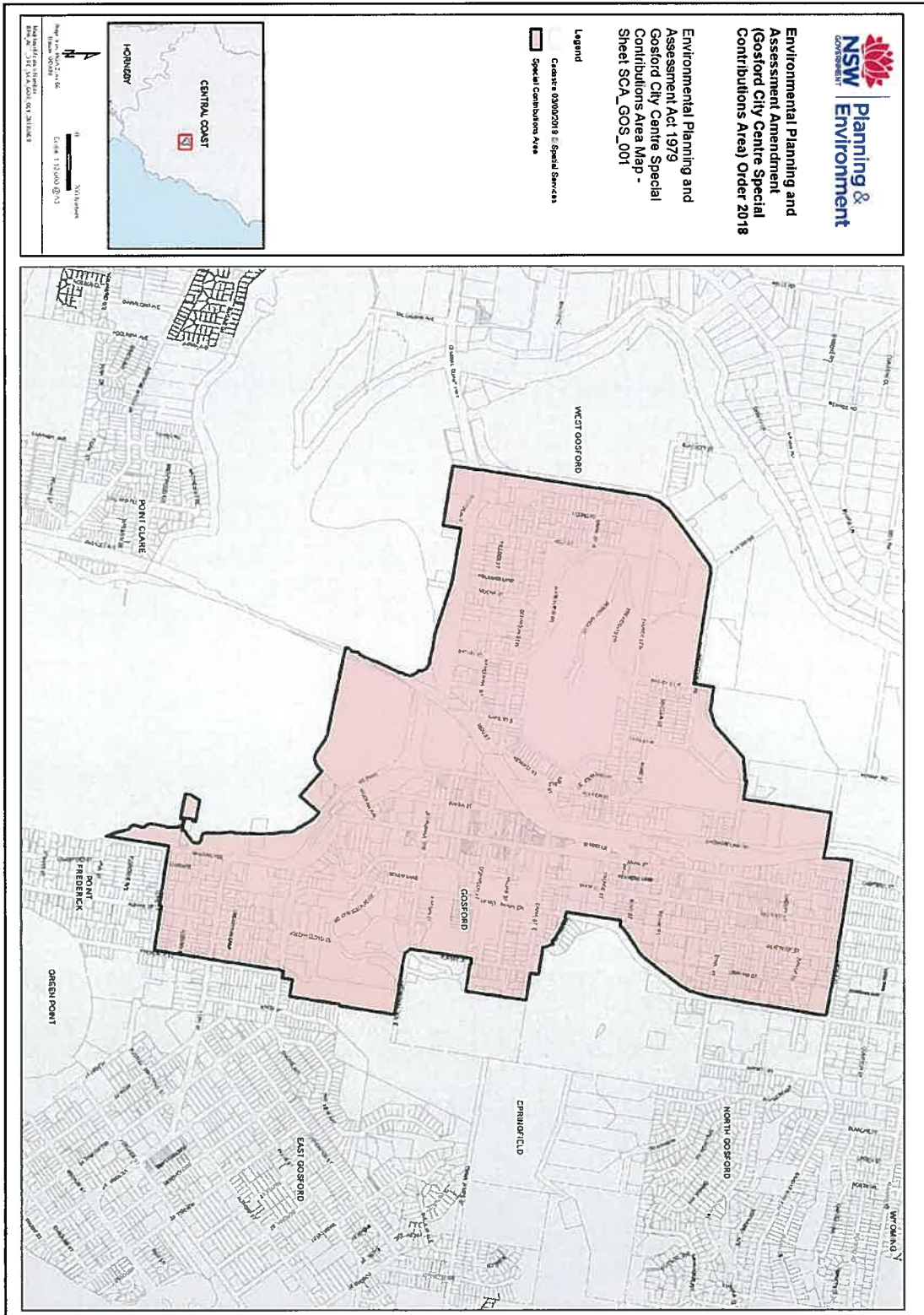
- (2) For the purposes of section 7.32 (6) of the Act, affordable housing is not a class of infrastructure for which special infrastructure contributions are required to be made under this Determination.

18 Reasons for the level and nature of the special infrastructure contribution

For the purpose of section 7.23 (5) of the Act, the reasons for the level and nature of special infrastructure contributions required to be made by this Determination are as follows:

- (a) to assist in providing adequate funding for regional public infrastructure (described in Schedule 2) in the Gosford City Centre Special Contributions Area,
- (b) to ensure that future development bears a share of the cost of the provision of such infrastructure,
- (c) to provide for the adjustment of special infrastructure contributions to reflect changes in economic conditions between the time of assessing the contribution payable and the time at which the contribution is made,
- (d) to provide flexibility as to the manner in which special infrastructure contributions may be made,
- (e) to ensure that special infrastructure contributions reflect a reasonable apportionment between the demand for infrastructure generated by existing development and the demand for that infrastructure that is likely to be generated by new development for which contributions must be paid,
- (f) to ensure that the level of special infrastructure contributions does not adversely affect growth within Gosford City Centre.

SCHEDULE 1 – GOSFORD CITY CENTRE SPECIAL CONTRIBUTIONS AREA MAP



SCHEDULE 2 – LIST OF INFRASTRUCTURE

Gosford City Centre Special Infrastructure Contribution List of Infrastructure

Special Infrastructure Contribution	2% of the cost of carrying out development
Total estimated cost of infrastructure items	\$ 126,697,676

Infrastructure items Attributable cost of infrastructure

Roads and active transport network

Undertake road network upgrades and changes to better align with a movement and place approach in Gosford City Centre, to improve pedestrian amenity and manage through traffic	\$ 111,000,000
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Undertake investigations to consider improvements to facilitate traffic along the Henry Parry Drive corridor in conjunction with nearby land use changes	\$ 2,000,000
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Community facilities and open space

Kibble Park upgrade	\$ 3,035,000
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Education, Health and Emergency Services

Contribution for provision of education, health and emergency services facilities	\$ 8,781,027
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7% of costs recoverable through contributions

Planning and delivery costs

Planning and SIC review costs	\$ 1,881,649
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1.5% of costs recoverable through contributions