



# Planning circular

## PLANNING SYSTEM

Practice note amendment

<b>Circular</b>	PS 21-003
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<b>Related</b>	nil

## Increasing section 7.12 levies

This circular is to advise councils of the replacement of the Development Contributions – Practice Note, Section 94A Development Contributions Plan with the Section 7.12 Fixed Development Consent Levies – Practice Note and details the updates.

Updates to the practice note include providing separate criteria for metropolitan and regional councils requesting an increase to the standard maximum section 7.12 percentage levy of 1%.

### Background

In April 2020, the Minister for Planning and Public Spaces announced that the Department would begin a series of system improvements to the NSW infrastructure contributions system. This would support the NSW Productivity Commission's holistic review of infrastructure funding in NSW.

As part of the series of system improvements, a discussion paper was placed on public exhibition providing draft criteria for councils seeking an increase to the standard maximum section 7.12 percentage levy of 1% stipulated in clause 25K of the *Environmental Planning and Assessment Regulation 2000*.

The Section 7.12 Fixed Development Consent Levies – Practice Note replaces previous advice on the preparation of section 7.12 contribution plans found in the Development Contributions – Practice Note, Section 94A Development Contributions Plan. Information in it includes the planning context for section 7.12 levies, information to be included in a section 7.12 contributions plan, and criteria for councils seeking a higher than the standard maximum percentage levy.

### Legislative and policy framework

*Environmental Planning and Assessment Act 1979* - Section 7.12 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) enables a fixed rate levy on the proposed cost of development to be imposed when a development consent or complying development certificate is issued.

*Environmental Planning and Assessment Regulation 2000* - Clause 25K of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) specifies the maximum percentage of the cost of development that councils can impose as a levy. The levy can only be imposed by a council if council has a section 7.12 contributions plan in place.

Practice Note - The *Section 7.12 Fixed Development Consent Levies – Practice Note* provides general advice on how to prepare a section 7.12 contributions plan. It includes details on what should be included in the plan, how the cost of carrying out development is determined, what is not included in the costs, exemptions, information about maximum section 7.12 levies and criteria to apply for higher rates.

A section 7.12 contributions plan template is not included in the revised practice note. The old version can be found at: [planning.nsw.gov.au/Local-infrastructure-contributions-policy](http://planning.nsw.gov.au/Local-infrastructure-contributions-policy)

Ministerial Directions - Directions may be given by the Minister for Planning and Public Spaces to consent authorities on matters relating to the imposition of contributions under both section 7.11 and section 7.12. Ministerial Directions relevant to section 7.12 contributions include the *Environmental Planning and Assessment (Local Infrastructure Contributions – Pooling of Contributions) Direction 2020* and the *Environmental Planning and Assessment (Local Infrastructure Levies) Direction 2015*.

### Criteria for a higher maximum levy

Criteria for councils to apply for a higher maximum percentage levy are detailed in the *Section 7.12 Fixed Development Consent Levies – Practice Note*.

The criteria are to be used by the Department to determine whether it is appropriate to consider an identified area for a higher section 7.12 maximum percentage levy. In summary, the criteria for increasing the levy relate to:

- Jobs
- Strategic priority
- Local planning controls
- Schedule of works
- Consultation
- Regular plan review
- Financial modelling.

## Jobs

In the Greater Sydney Region the capacity for the area to accommodate employment growth will be considered favourably in an application process. An example of this includes facilitating an increase of at least 25% more employment opportunities than currently available in the centre.

## Strategic priority

In order to be considered for a higher maximum percentage levy, it is important that the proposed area is identified as a strategic centre, local centre or economic corridor in a strategic plan, which may be a local, regional, or a district plan.

This principle recognises the importance of supporting centres in facilitating growth and delivering placed-based public infrastructure with an appropriate funding mechanism. It is also consistent with previous decisions to increase the maximum percentages for areas already identified in the EP&A Regulation.

## Local planning controls

It is important to ensure that planning controls reflect the planning outcomes, strategic direction and targets identified for the centre in the relevant strategic plan. This includes any planned increase in population and employment capacity identified at the strategic level.

As such, the boundary of the contributions area must fall within the strategic centre as identified in the relevant strategic plan and this should be clearly reflected in planning instruments, including the local environmental plan (LEP) and development control plan (DCP).

## Schedule of works

Councils should consider whether the infrastructure in the schedule of works justifies the increased levy. For example, does the infrastructure in the schedule of works assist in the timely delivery of quality place-based community and green infrastructure and public space improvements that enhance the amenity of the area?

## Consultation

Consultation with the Department should be undertaken prior to the proposed section 7.12 development contribution plan being submitted for assessment.

## Regular plan reviews

It is important that section 7.12 contributions plans with a higher than the standard 1% maximum levy be subject to regular review, at least every 5 years. This will ensure that the plan and levy are achieving strategic priorities and delivering the identified infrastructure.

## Financial modelling

Applications for a levy of more than 2% levy require financial modelling to demonstrate why a lower levy is insufficient to achieve strategic priorities and deliver identified infrastructure.

## Further information

Further information is available in the *Section 7.12 Fixed Development Consent Levies – Practice Note* available at: [planning.nsw.gov.au/Local-infrastructure-contributions-policy](https://planning.nsw.gov.au/Local-infrastructure-contributions-policy)

For further information please contact Service NSW on 13 77 18.

Department of Planning, Industry and Environment circulars are available at: [planning.nsw.gov.au/circulars](https://planning.nsw.gov.au/circulars)

## Authorised by:

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