

Environmental Planning and Assessment (Local Infrastructure Contributions – Timing of Payments) Direction 2020

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning and Public Spaces, in pursuance of section 7.17 of the *Environmental Planning and Assessment Act 1979*, give the following Direction.



Minister for Planning and Public Spaces

Dated: 25/06/2020

1 Name of Direction

This Direction is the *Environmental Planning and Assessment (Local Infrastructure Contributions – Timing of Payments) Direction 2020*.

2 When Direction takes effect

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

3 Consent authorities to whom Direction is given

- (1) This Direction is given to all consent authorities.
- (2) To avoid doubt, this Direction also applies to:
 - (a) any local planning panel when exercising, on behalf of a council, the functions of the council as a consent authority, and
 - (b) any other officer or employee of such a council to whom the council delegates its functions as a consent authority.

4 Application of Direction

- (1) This Direction applies to the grant of development consent that authorises the erection of a new building or a change of use of an existing building, but only if Part 6 of the *Environmental Planning and Assessment Act 1979* (the *Act*) will require an occupation certificate for:

- (a) the commencement of the occupation or use of the whole or any part of the new building, or
 - (b) the commencement of a change of building use for the whole or any part of the existing building.
- (2) However, this Direction does not apply in any of the following circumstances:
- (a) the estimated cost of the proposed development is less than \$10,000,000, as determined in accordance with the *Environmental Planning and Assessment Regulation 2000* for the purposes of calculating the fee for the development application for the proposed development,
 - (b) the development application concerned is for the subdivision of land that will result in the creation of additional lots, as well as for the erection of a building or a change of use of an existing building,
 - (c) the proposed development is the subject of an application for a complying development certificate.
- (3) In this clause, ***subdivision of land*** does not include the procurement of the registration of a strata plan or strata plan of subdivision, within the meaning of the *Strata Schemes Development Act 2015*.

5 Timing of payment of contributions

- (1) Subject to this clause, a consent authority must not impose a condition on the grant of development consent to which this Direction applies for the payment of a monetary contribution under section 7.11 of the Act, or a levy under section 7.12 of the Act, (a ***local infrastructure contribution***) that requires the payment to be made at any time that is earlier than before the issue of an occupation certificate in respect of any building to which the development consent relates.

Accordingly, a consent authority may require the payment of the whole of the monetary contribution required by the development consent before the issue of the first occupation certificate in respect of any of the buildings to which the consent relates.

- (2) This subclause applies if, but for this Direction, the whole or any part of the local infrastructure contribution could have been required to be paid at a time that is earlier than before the issue of an occupation certificate in respect of any building to which the development consent relates (the ***earlier stage for payment***), such as before the issue of a construction certificate or strata certificate, in accordance with the policy relating to the timing of payment of contributions set out in the applicable contributions plan.

In that case, the consent authority may, in the development consent, require the whole or part of the local infrastructure contribution to be paid at the earlier stage for payment, but only on the condition that the earlier stage occurs after 25 September 2022.

Note. An example of a condition that a consent authority may impose in accordance with clause 5 (1) and (2) above, where the applicable contributions plan provides for payment before the issue of a construction certificate, in circumstances where the development involves the erection of a building, is as follows:

(1) A monetary contribution that is required to be paid under the conditions of this consent must be paid before the issue of the first occupation certificate in respect of any building to which this consent relates, except as provided by condition (2).

(2) If no construction certificate in respect of the erection of any building to which the consent relates has been issued on or before 25 September 2022, the monetary contribution must be paid before the issue of the first construction certificate after that date for any such building.

- (4) This Direction does not affect an arrangement for the deferral of payment of a local infrastructure contribution, entered into before or after this Direction takes effect, in accordance with the policy for deferred payments in the applicable contributions plan.
- (5) However, a condition of consent imposed in accordance with subclause (1) after this Direction takes effect that requires payment of a local infrastructure contribution to be made before the issue of an occupation certificate, rather than at an earlier time, cannot require the developer to enter into an arrangement to secure the payment (such as the provision of a bank guarantee).

Note. Under section 7.17 (1B) of the *Environmental Planning and Assessment Act 1979*, any development consent that has been granted before this direction takes effect and that requires a monetary contribution or levy to be paid at an earlier stage (for example, before the issue of a construction certificate in relation to the development) is modified, so as to allow the contribution or levy to be paid before the issue of the occupation certificate instead. If the monetary contribution is payable under the consent in instalments, the unpaid instalments can be paid at the later stage in accordance with this direction.

6 Expiry of Direction

This Direction expires on the last day of the prescribed period within the meaning of section 10.17 of the Act. Its expiry does not affect the operation of any condition of consent imposed in accordance with it or a condition that is modified by operation of section 7.17 (1B) of the Act.

Note. Under section 10.17 of the *Environmental Planning and Assessment Act 1979*, the prescribed period (for the purposes of the COVID-19 pandemic) ends on 25 September 2020, unless a regulation is made extending that period. The period can be extended until 25 March 2021.
