

Circular	PS 11-012
Issued	15 March 2011
Related	PS10-022

Section 94E Direction – Development contributions

The purpose of this circular is to provide councils, accredited certifiers and the community with information regarding the revocation and issuing of a new Section 94E Direction in relation to the capping of development contributions.

Background

Development contributions help provide new and growing communities across NSW with appropriate infrastructure. These contributions are levied under the *Environmental Planning and Assessment Act, 1979* (the EP&A Act).

The Minister for Planning (the Minister) issued a Direction under Section 94E of the EP&A Act which took effect on 16 September 2010.

That Direction provided for the following in relation to the contributions that can be levied under Section 94 of the EP&A Act for residential development:

- a cap of \$20,000 per dwelling/lot for established areas,
- a cap of \$30,000 per dwelling/lot for greenfield areas,
- an exemption for areas where development applications been lodged (including those that had been determined) and remain valid, as of 31 August 2010, for more than 25% of the expected yield from the development area or contributions plan.
- the Minister to consider, on the application of a council and request of a developer, approving a higher contribution amount.

Overview of the changes

The changes to the Section 94E Direction relate specifically to the Schedules to the Direction. Although the format of the Direction has changed, the requirements relating to the cap on contributions have not.

Changes to the Schedules

Certain land is exempted from the requirements of the direction (Schedule 1). Where a council has adopted a new plan (following the Minister's agreement that it is a refinement of the previous plan) the reference to the plan has been updated. This change will ensure that the exemptions from the cap continue to apply to certain land within the Liverpool City, Ku-ring-gai and Shoalhaven City Local Government Areas.

New greenfields areas have also been included in Schedule 2 for the Shoalhaven City, Wollongong City, Nambucca Shire and Blacktown City Local Government Areas. The maximum contribution in these areas is \$30,000.

Timing of changes

The Direction takes effect on 4 March 2011 and applies to consents granted after that date.

Savings and transitional arrangements

The Direction does not apply to Section 94 contribution conditions imposed before 4 March 2011.

The Direction revokes the earlier Direction that took effect on 16 September 2010.

The revocation of the earlier Direction does not affect the operation of a condition of a development consent imposed in accordance with that direction.

Further information

This and other Ministerial directions are available on the on the Department's website at <http://www.planning.nsw.gov.au>

For further information, please contact the Department of Planning's Information Centre on 1300 305 695.

Note: Department of Planning circulars are published are available from <http://www.planning.nsw.gov.au/circulars>

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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Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2011

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning, in pursuance of section 94E of the *Environmental Planning and Assessment Act 1979*, give the following Direction.



Minister for Planning

Dated: **3 MAR 2011**

1 Name of Direction

This Direction is the *Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2011*.

2 When Direction takes effect

This Direction takes effect on 4 March 2011.

3 Consent authorities to which Direction is given

- (1) This Direction is given to all councils.
- (2) This Direction also applies to any joint regional planning panel ("planning panel") when exercising consent authority functions of one or more councils.

4 No cap on contributions for development on Schedule 1 land

This Direction does not apply to a development consent to the extent that it authorises the carrying out of development on any land identified in Schedule 1.

5 Definitions

- (1) In this Direction:
 - (a) *dwelling* means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile, and
 - (b) *residential lot* means a lot created by the subdivision of land for the purpose of a dwelling, not being a lot that, in the opinion of the council (or planning panel), is to be further subdivided for the purpose of creating lots for the purpose of dwellings.

Note. See section 4B of the *Environmental Planning and Assessment Act 1979* for the meaning of "subdivision of land".

- (2) A reference in this Direction to a development consent that authorises a dwelling is a reference to a development consent that authorises the erection of the dwelling or the use of a building or part of a building as a dwelling.

Note. See section 4 (2) of the *Environmental Planning and Assessment Act 1979* for interpretation of the phrase "erection of a dwelling".

- (3) Notes in this Direction do not form part of this Direction.

6 Maximum amount of monetary contributions under s 94

- (1) This clause applies to a development consent to the extent that it authorises one or more dwellings or the subdivision of land into residential lots.
- (2) A council (or planning panel) must not grant development consent (other than for development on land identified in Schedule 2) subject to a condition under section 94 (1) or (3) of the *Environmental Planning and Assessment Act 1979* requiring the payment of a monetary contribution that:
 - (a) in the case of a development consent that authorises one or more dwellings, exceeds \$20 000 for each dwelling authorised by the consent, or
 - (b) in the case of a development consent that authorises subdivision into residential lots, exceeds \$20 000 for each residential lot authorised to be created by the development consent.
- (3) A council (or planning panel) must not grant development consent for development on any land identified in Schedule 2 subject to a condition under section 94 (1) or (3) of the *Environmental Planning and Assessment Act 1979* requiring the payment of a monetary contribution that:
 - (a) in the case of a development consent that authorises one or more dwellings, exceeds \$30 000 for each dwelling authorised by the consent, or
 - (b) in the case of a development consent that authorises subdivision into residential lots, exceeds \$30 000 for each residential lot authorised to be created by the development consent.
- (4) A council (or planning panel) may, in a particular case, require, as a condition on the grant of development consent, the payment of a monetary contribution that exceeds the maximum amount of the contribution calculated in accordance with subclause (2) or (3), but only with both the written agreement of the applicant for the consent and the written approval of the Minister, given before the condition is imposed.

7 Pending development applications

- (1) This Direction extends to development applications made to a council, but not finally determined, before this Direction takes effect.
- (2) This Direction does not apply to:
 - (a) any application for modification of a development consent that was granted before this Direction takes effect, and

- (b) any condition of a development consent that was granted before this Direction takes effect.

8 Revocation of existing direction

- (1) The direction under section 94E of the *Environmental Planning and Assessment Act 1979*, relating to the imposition of conditions under section 94 of that Act, that took effect on 16 September 2010 is revoked.
- (2) The revocation of the direction does not affect the operation of a condition of a development consent imposed in accordance with the direction.

Note.

Section 94EC (1A) of the *Environmental Planning and Assessment Act 1979* provides as follows:

The imposition of a condition by an accredited certifier as authorised by a contributions plan is subject to compliance with any directions given under section 94E (1) (a), (b) or (d) with which a council would be required to comply if issuing the complying development certificate concerned.

Schedule 1 Land in respect of which there is no cap on the amount of the contribution by virtue of this Direction

- (1) Land within the Bathurst Regional Local Government Area identified as Area E in the *Section 94 Contributions Plan Robin Hill - Roads and Drainage Construction*.
- (2) Land within the Blacktown City Local Government Area identified as any of the following:
 - (a) a 1980's Release Area in the *Section 94 Contributions Plan No.1 – 1980's Release Areas*,
 - (b) a catchment area in the *Section 94 Contributions Plan No.2 – Local Roadworks*,
 - (c) Catchment 1:Blacktown, Catchment 2: Rooty Hill/Mount Druitt or Catchment 3: Riverstone/Schofields in the *Section 94 Contributions Plan No.3 – Open Space in Established Residential Areas*,
 - (d) the Mount Druitt Development Area in the *Section 94 Contributions Plan No.4 – Mount Druitt Development Area*,
 - (e) the Parklea Release Area in the *Section 94 Contributions Plan No. 5 – Parklea Release Area*,
 - (f) the Metella Road Toongabbie Floodplain Catchment in the *Section 94 Contributions Plan No.15 – Metella Road Floodplain*.
- (3) Land within the Camden Local Government Area identified as:
 - (a) the Elderslie Release Area or the Spring Farm Release Area in the *Camden Contributions Plan 2004*, or
 - (b) the Narellan Release Area or the Harrington Park Release Area on the map marked 'Camden LGA – Exemptions Area' held at the head office of the Department of Planning.
- (4) Land within the Campbelltown City Local Government Area identified as the Glenfield Road Urban Release Area in the *Section 94 Development Contributions Plan – Glenfield Road Urban Release Area*.
- (5) Land within the Coffs Harbour City Local Government Area identified as:
 - (a) the Wests Coffs Release Area in the *West Coffs Release Area Contributions Plan 2006*, or
 - (b) the Moonee Release Area identified in the *Moonee Developer Contributions Plan 2008*.
- (6) Land within the Hawkesbury City Local Government Area identified as the Pitt Town Residential Precinct in the *Hawkesbury Section 94 Contributions Plan 2008*.
- (7) Land within the Holroyd City Local Government Area identified as the Neil Street Precinct in the *Neil Street Precinct Section 94 Development Contributions Plan 2007*.
- (8) Land within the Ku-ring-gai Local Government Area identified as:
 - (a) zoned R3 Medium Density Residential, R4 High Density Residential, B2 Local Centre, B4 Mixed Use, B5 Business Development, B7 Business Park, SP2 Infrastructure or RE1 Public Recreation under the *Ku-ring-gai Local Environmental Plan (Town Centres) 2010* and to which the *Ku-ring-gai Contribution Plan 2010* applies, or

- (b) zoned No 2(d3) Residential “D3” under the *Ku-ring-gai Local Environmental Plan No 194* and to which the *Ku-ring-gai Contribution Plan 2010* applies.
- (9) Land within the Lake Macquarie City Local Government Area identified as:
 - (a) the Northlakes Urban Release Area in the *Lake Macquarie Section 94 Contributions Plan No.2 – Northlakes*, or
 - (b) the Belmont Catchment, the Charlestown Catchment, the Glendale Catchment, the Morriset Catchment or the Toronto Catchment in the *Lake Macquarie Section 94 Contributions Plan No.1 – Citywide*.
 - (10) Land within the Liverpool City Local Government Area identified as Carnes Hill, Hoxton Park, Middleton Grange or Prestons in the *Liverpool Contributions Plan 2009*.
 - (11) Land within the Marrickville Local Government Area to which the *Marrickville Section 94 Contributions Plan 2004* applies.
 - (12) Land within the Palerang Local Government Area identified as Summerhill Road, Matthews Lane, the Woolshed Lane, Wanna Wanna Road, Clare Lane, Joe Rocks Road or Fernloff Road on the map marked ‘Palerang LGA – Exemptions Area’ held at the head office of the Department of Planning.
 - (13) Land within the Penrith City Local Government Area identified as:
 - (a) Claremont Meadows Stage 2 in the *Claremont Meadows Development Contributions Plan Amendment No.1*, or
 - (b) Glenmore Park Stage 1 in the *Glenmore Park Stage 1 Development Contributions Plan 2008*.
 - (14) Land within the Pittwater Local Government Area identified as the Warriewood Valley Urban Release Area in the *Warriewood Valley Section 94 Contributions Plan No. 15 Amendment No.16*.
 - (15) Land within the Port Macquarie-Hastings Local Government Area identified as Kings Creek in the *Kings Creek Contributions Plan Version 2.5*.
 - (16) Land within the Queanbeyan City Local Government Area identified as the Wanna Wanna Road Precinct on the map marked ‘Queanbeyan LGA – Exemptions Area’ held at the head office of the Department of Planning.
 - (17) Land within the Shoalhaven City Local Government Area identified as the Riversdale Road Area, the Parma Road Area or the Kangaroo River Bridge Area in the *Shoalhaven Contributions Plan 2010*.
 - (18) Land within The Hills Shire Local Government Area identified as any of the following:
 - (a) Kellyville/Rouse Hill in the *Section 94 Contributions Plan No.8 – Kellyville/Rouse Hill*,
 - (b) Bella Vista Village in the *Section 94 Contributions Plan No.2 – Bella Vista Village*,
 - (c) the West Pennant Hills Valley in the *Section 94 Contributions Plan No.2 – West Pennant Hills Valley*,
 - (d) Crestwood in the *Section 94 Contributions Plan No.3 – Crestwood*,

- (e) Glenhaven in the *Section 94 Contributions Plan No.4 – Glenhaven*,
 - (f) Castle Hill in the *Section 94 Contributions Plan No.5 – Castle Hill*,
 - (g) a Southern Precinct in the *Section 94 Contributions Plan No.7 – Southern Precincts*.
- (19) Land within the Tweed Local Government Area identified as Seaside City in the *Section 94 Contributions Plan No.28 – Seaside City*.
- (20) Land within the Wyong Local government Area identified as:
- (a) The Entrance District in the *Section 94 Contributions Plan No.3 ‘The Entrance District’*, or
 - (b) the Warnervale District Release Areas in the *Section 94 Contributions Plan No.7A ‘Drainage, Water Quality, Open Space, Community Facilities and Roads – Warnervale District’*.

Schedule 2 Land subject to the \$30,000 maximum contribution

- (1) Land within the Blacktown City Local Government Area identified as Riverstone Precinct or Alex Avenue Precinct in the *Section 94 Contributions Plan No. 20 – Riverstone & Alex Avenue Precincts*.
- (2) Land within the Camden Local Government Area identified as:
 - (a) the Oran Park Precinct or Turner Road Precinct in the *Oran Park and Turner Road Precincts Section 94 Contributions Plan*, or
 - (b) Harrington Grove or Mater Dei on the map marked 'Camden LGA – Greenfield Release Areas' held at the head office of the Department of Planning.
- (3) Land within the Coffs Harbour City Local Government Area identified as the Hearnese Lake Release Area or Sandy Beach Release Area in the *Hearnese Lake/Sandy Beach Release Area Developer Contributions Plan 2008*.
- (4) Land within the Eurobodalla Local Government Area identified as Glenella Service Road 1c, Batehaven Greenfield Area, Broulee Greenfield Area, Dalmeny Greenfield Area, Kianga Greenfield Area, Malua Bay Greenfield Area, Bay Ridge 1c, Moruya 1c, Tomakin Greenfield Area, Longbeach Greenfield Area, Moruya South Greenfield Area, Moruya West Greenfield Area, Mystery Bay Greenfield Area, Narooma Greenfield Area, Nelligen 1c, Rosedale Greenfield Area, Central Tilba 1c or Bingi 1c on the map marked 'Eurobodalla LGA – Greenfield Release Areas' held at the head office of the Department of Planning.
- (5) Land within the Greater Taree City Local Government Area identified as the Old Bar Precinct 2B or Precinct 3 in the *Old Bar Contributions Plan 2010*.
- (6) Land within the Lake Macquarie City Local Government Area identified as North Wallarah in the *Lake Macquarie Section 94 Contributions Plan No.5 – North Wallarah*.
- (7) Land within the Liverpool Local Government Area identified as Edmondson Park in *Liverpool Contributions Plan 2008 – Edmondson Park*.
- (8) Land within the Maitland City Local Government Area identified as the Thornton North Release Area in the *Thornton North Section 94 Contributions Plan*.
- (9) Land within the Nambucca Shire Local Government Area identified as the Contribution Catchment on Map C1 in the *Smiths Lane Local Road and Traffic Infrastructure Developer Contribution Plan 2010*.
- (10) Land within the Penrith City Local Government Area identified as:
 - (a) the WELL Precinct in the *Werrington Enterprise Living and Learning (WELL) Precinct Development Contribution Plan*, or
 - (b) Glenmore Park Stage 2 in the *Glenmore Park Stage 2 Development Contributions Plan*.
- (11) Land within the Port Macquarie-Hastings Local Government Area identified as Thrumster, Innes Peninsula, Camden Haven or Lake Cathie / Bonny Hills on the map marked 'Port Macquarie-Hastings LGA – Greenfield Release Areas' held at the head office of the Department of Planning.

- (12) Land within Shoalhaven City Local Government Area identified in *Shoalhaven Contributions Plan 2010* as any of the following:
- (a) Iron Bark Road Tapitallee upgrade area,
 - (b) Flannery Lane upgrade area,
 - (c) Browns Mountain Road upgrade area,
 - (d) Broger's Creek Road gravel upgrade area,
 - (e) Wattamolla Road upgrade area,
 - (f) Graham's Road/unnamed road gravel upgrade area,
 - (g) Spotted Gum Drive upgrade area,
 - (h) Hart Road bitumen upgrade area,
 - (i) Sinclair Road Part 3 bitumen upgrade area,
 - (j) Bendalong Mountain Road upgrade area,
 - (k) Pointer Road upgrade area,
 - (l) Bugong Road upgrade area.
- (13) Land within The Hills Shire Local Government Area identified as:
- (a) the Balmoral Road Release Area in the *Section 94 Contributions Plan No. 12 – Balmoral Road*, or
 - (b) North Kellyville in the *Section 94 Contributions Plan No.13 – North Kellyville*.
- (14) Land within the Tweed Local Government Area identified as Black Rocks, Koala Beach, West Murwillumbah, Tanglewood, Kings Forest – Casuarina Beach, SALT, West Kingscliff, Area 'E' (Terranora), Terranora Village, Bilambil Heights, Cobaki Lakes, Nightcap Village or Hastings Point on the map marked 'Tweed LGA – Greenfield Release Areas' held at the head office of the Department of Planning.
- (15) Land within the Wollongong City Local Government Area identified as the West Dapto Release Area in the *West Dapto Section 94 Development Contributions Plan 2010*.
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