



Section 7.12 fixed development consent levies

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Preface

Legislative and regulatory framework

Part 7 Division 7.1 Subdivision 3 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) provides the legislative framework for local infrastructure contributions.

Part 4 of the *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation) includes further provisions on local infrastructure contributions and requirements relating to the making, amending and revocation of contributions plans.

Updates to this practice note

This practice note will be periodically updated. More detailed information or guidance on specific matters in this practice note may also be the subject of future separate practice notes.

Terminology

The following terminology is used to convey key concepts:

- **development application** has the same meaning as in the EP&A Act
- **development consent** has the same meaning as in the EP&A Act
- **planning proposal** has the same meaning as in the EP&A Act
- **public benefit** is the benefit enjoyed by the public as a consequence of a development contribution
- **public facilities** means public infrastructure, amenities and services.

1 Section 7.12 fixed development consent levies – Practice Note

1.1 What is a section 7.12 development contributions plan?

Section 7.12 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) allows a fixed rate levy on the proposed cost of development to be imposed when a development consent or complying development certificate is issued. The maximum percentages of the cost that can be imposed as a levy are specified in clause 25K of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation). The levy can only be imposed by a council if a council has a section 7.12 (s7.12) development contributions plan in place.

Councils should ensure their s7.12 contributions plans state the criteria used to determine when a s7.12 levy will be imposed rather than a section 7.11 (s7.11) contribution. The same applies to a s7.11 contributions plan.

1.2 What is the planning context for section 7.12 levies?

Section 7.12 development contributions are generally used in the following areas:

- Rural and regional areas, where there are slow rates of residential development or development is sporadic.
- Commercial and industrial areas, where direct demand for public infrastructure is difficult to establish for individual development.
- Established urban areas, where development is mainly 'infill' development and is also sporadic.

In such areas, it is difficult to determine the types of future development and activities, the rate at which development will occur, and where it will occur. Section 7.11 contributions plans are generally not used in these areas as it is difficult to establish and apportion the increase in demand for public infrastructure caused by the development.

These difficulties do not exist under section 7.12 because it authorises the imposition of a levy which is calculated as a flat percentage of development cost, and the EP&A Act does not require any connection between individual development which pays the levy and the object of the expenditure of the levy.

However, clause 27 of the EP&A Regulation requires a contributions plan to specify the relationship between the expected types of development and the demand for additional public amenities and public services. As such, while there may not need to be a connection between an individual development and the infrastructure provided using the contribution from that development, there still should be a connection between the types of development on which the levy is imposed and the infrastructure being funded by the levy.

1.3 What is to be included in a section 7.12 contributions plan?

Part 4 of the EP&A Regulation requires a s7.12 contributions plan to include the following:

- The purpose of the plan.
- The land to which the plan applies.
- The relationship between the expected types of development in the area to which the plan applies and the demand for additional public amenities and services to meet that development.
- The percentage of the s7.12 levy and, if the percentage differs for different types of development, the percentage of the levy for those different types of development, as specified in a schedule to the plan.
- The manner (if any) in which the proposed costs of carrying out the development, after being determined by the council, are to be adjusted between the date of that determination and the date the levy is required to be paid to reflect variations to readily accessible index figures adopted by the plan.
- The council's policy concerning the timing of the payment of s7.12 levies and the imposition of s7.12 conditions that allow deferred or periodic payment.
- A map showing the specific public amenities and services proposed to be provided by the council, supported by a works schedule that contains an estimate of their cost and staging (whether by reference to dates or thresholds).
- If the plan authorises s7.12 levies paid for different purposes to be pooled and applied progressively for those purposes, the priorities for the expenditure of the contributions, particularised by reference to the works schedule.

These must all be covered in the s7.12 development contributions plan. Some of these requirements are the same for a s7.11 development contributions plan and the s7.11 practice note covers these issues. Consequently, they are not covered in this practice note.

1.4 How is the cost of carrying out development determined?

Clause 25J of the EP&A Regulation specifies the items that should and should not be included in the calculation of the cost of carrying out development.

A consent authority is required to add up the costs and expenses, or estimated costs and expenses of a development, including:

- For the erection of a building or engineering or construction work - the costs associated with incidental demolition, excavation and site preparation, decontamination or remediation.
- For 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.
- For the subdivision of land - the costs of or incidental to preparing, executing and registering the plan of subdivision and any related covenants, easements or other rights.

1.5 What is not included in the cost?

Clause 25J of the EP&A Regulation provides that the costs of the following are not to be added into the cost of development:

- Land on which the development is to be carried out.
- Repairs to any building or works on the land that are to be retained in connection with the development.
- Marketing or financing the development (including interest on any loans).
- Legal work carried out or to be carried out in connection with the development.
- Project management associated with the development.
- Building insurance in respect of the development.
- 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).
- Commercial stock inventory.
- Taxes, levies or charges (other than GST) paid or payable in connection with the development.
- Enabling access by disabled persons in respect of the development.
- Energy and water efficiency measures associated with the development.
- Development that is provided as affordable housing.
- Development that is the adaptive reuse of a heritage item.

Development on land in respect of which a s7.11 contribution has been paid under a previous development consent relating to the subdivision of the land generally cannot be required to pay a s7.12 levy.

Additionally, a works schedule in a s7.12 contributions plan should not include any costs associated with the administration of a s7.12 contributions plan.

1.6 Are there exemptions to section 7.12 levies?

Councils may choose to exempt types of development from s7.12 levies. Such exemptions are at the discretion of the council. Considerations regarding exemptions are covered in detail in the s7.11 practice note, which indicates that exemptions have previously been given by councils for the following types of development:

- low income (affordable) housing
- works undertaken for charitable purposes or by a registered charity
- places of worship, public hospitals, police and fire stations
- childcare facilities
- libraries
- other community or educational facilities.

Exemption policies must be stated in the s7.12 contributions plan and be specific about the types of facilities to be exempted. Alternatively, council must state the criteria that will be used to determine an exemption.

1.7 What is the maximum rate of the levy?

Clause 25K(1)(a) of the EP&A Regulation sets a maximum rate of 1% of the cost of the carrying out of a development, although councils may impose a lower rate.

Section 7.12 contributions plans must clearly set out the rates schedule. In the case of a joint s7.12 plan, each council area subject to a s7.12 levy should be specifically identified as well as the rates adopted for each area.

The restrictions on the maximum rate are:

- No levy can be imposed on a development where the development cost is \$100,000 or less.
- A maximum rate of 0.5% can be imposed on a development where the cost is between \$100,001 and \$200,000.
- The maximum rate of 1% can be imposed where the construction cost exceeds \$200,000.

1.8 Can council seek a higher maximum rate?

Councils can apply to the Department of Planning, Industry and Environment requesting an increase to the maximum s7.12 percentage levy above the percentages specified in clause 25K(1)(a) of the EP&A Regulation. Clause 25K(1)(b) of the EP&A Regulation lists areas that are subject to higher maximum s7.12 percentage levies.

The Department assesses a council's request, makes recommendations to the Minister, and if required, has an amendment to the EP&A Regulation prepared to increase the levy. In assessing councils' requests, the Department will consider individual geographical, socio-economic, and development contexts.

The tables below provide guidance on the type of information required to assist the Department to make recommendations to the Minister. The Minister retains the discretion to determine the rate of a council's maximum s7.12 levy, including the ability to refuse a request even if the council demonstrates that it meets the criteria.

Table 1.1 sets out general criteria that a council should consider when making an application for a s7.12 levy increase from 1% to 2%. Additional criteria, listed in Table 1.2., apply to councils seeking a s7.12 levy increase from 2% to 3%. Councils seeking a s7.12 levy increase to more than 3% are encouraged to contact the Department to discuss the request prior to making the application. Notwithstanding, all councils requesting a levy of more than 2% are required to meet the criteria set out in Table 1.1 and Table 1.2.

The Department will assess all requests for higher maximum rates on their merits, including any requests to deviate from the outlined criteria or percentages. It should be noted that councils may consider different maximum rates and thresholds for different types of development.

Table 1.1: Councils should demonstrate how an area meets the following criteria for an increased levy of more than 1% on the cost of development.

| Item | Criteria for Greater Sydney Region councils* |
|------|---|
| a. | The strategic areas are identified in a regional plan, district plan or respective Local Strategic Planning Statement, as a strategic centre, growth area, local centre or economic corridor. |
| b. | Local planning controls reflect, or are being amended to reflect relevant strategic direction and targets for the centre or defined area. |
| c. | A requirement for a review every 5 years from the date the new contributions plan comes into force is written into the contributions plan. |
| d. | Ongoing consultation with the Department regarding changes to works schedules will be undertaken, otherwise the higher percentage levy will no longer apply. |
| e. | <p>The contributions plan should focus on delivering quality place-based community and green infrastructure, and public space improvements that enhance amenity of the centre.</p> <p>Criteria for all other councils: Contributions should focus on delivering high cost infrastructure items identified in regional plans and strategic plans such as roads.</p> |
| f. | <p>The centre has been identified by the relevant strategic plan/s to accommodate significant employment growth. An example of this includes facilitating an increase of at least 25% more employment opportunities than currently available in the centre.</p> <p>Criteria for all other councils: Not applicable.</p> |

* Defined as councils within the boundary of Greater Sydney Region as defined in Schedule 1 to the *Greater Sydney Commission Act 2015*.

Table 1.2: Councils should demonstrate how an area meets the criteria in Table 1.1 and the following criteria for an increased levy of more than 2% of the cost of development.

| Item | Criteria |
|------|---|
| a. | The works schedule has been prepared in consultation with the Department.** |
| b. | Financial modelling is provided demonstrating that a maximum 2% levy on the cost of development is insufficient to deliver identified infrastructure in the proposed timeframe. |

** This gives an opportunity for the Department to liaise and coordinate with broader infrastructure agencies in identifying strategic, place-appropriate infrastructure. Additionally, the Department can also help to ensure infrastructure needs are met in the most efficient manner.

1.9 Can section 7.12 payments be adjusted?

Clause 25J(4) of the EP&A Regulation allows the adjustment of a s7.12 contribution between the date of the consent and the time of payment of the contribution. The following is a model condition of consent for a s7.12 levy:

Sample section 7.12 contribution condition

Condition ##

Pursuant to section 4.17 of the *Environmental Planning and Assessment Act 1979*, and the *[name]* Section 7.12 Development Contributions Plan, a contribution of \$*[insert total amount]* must be paid to Council.

The amount to be paid is to be adjusted at the time of the actual payment, in accordance with the *[name]* Section 7.12 Development Contributions Plan. The contribution is to be paid before *[insert requirement]*.