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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.

Reference number:(n2020-3087)

Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Amendment Determination 2020

under the

Environmental Planning and Assessment Act 1979

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

Minister for Planning and Public Spaces

Dated: 25/06/2020

1 Name of Determination

This Determination is the *Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Amendment Determination 2020*.

2 Commencement

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

3 Amendment of Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Determination 2011

The *Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Determination 2011* is amended as set out in Schedule 1.

4 Reasons for allowing payment of contributions to be deferred

The reason for this Determination to amend the *Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Determination 2011* is to allow, in certain cases, the deferral of payment of special infrastructure contributions required by development consents granted during the COVID-19 pandemic, so as to contribute to measures to stimulate the NSW economy.

Schedule 1 Amendments

Clause 25A

Insert after clause 25:

25A Deferral of payment during pandemic period

Application of clause

- (1) This clause applies only to a development consent that is granted during the pandemic period and authorises the erection of a new building or a change of use of an existing building, and only if Part 6 of the Act will require an occupation certificate for:
 - (a) the commencement of the occupation or use of the whole or part of the new building, or
 - (b) the commencement of a change of building use for the whole or any part of the building.
- (2) However, this clause does not apply in either of the following circumstances:
 - (a) the estimated cost of the development that is the subject of the development consent is less than \$10,000,000, as determined in accordance with the *Environmental Planning and Assessment Regulation 2000* for the purpose of calculating the fee for the development application to carry out the development,
 - (b) the development consent authorises the subdivision of land that will result in the creation of additional lots, as well as authorising the erection of a building or a change of use of an existing building.
- (3) This clause applies only if the development consent is granted on or after the *Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Amendment Determination 2020* takes effect, and applies even if the development application concerned was made before this clause takes effect. This clause applies despite any other provision of this Determination.

SIC not required until occupation certificate stage

- (4) The special infrastructure contribution required by a development consent to which this clause applies, if made as a monetary contribution, may be paid at any time before the issue of the first occupation certificate in respect of any of the buildings to which the development consent relates, and is not required to be paid at any earlier time.
- (5) This subclause applies to a monetary contribution if, but for this clause, the whole or any part of the contribution would have been required to have been paid at a time that is earlier

than before the issue of the first occupation certificate (the *earlier stage for payment*), such as:

- (a) before the issue of a construction certificate in respect of any of the buildings to which the development consent relates, in accordance with clause 15, or
- (b) before the issue of a strata certificate in respect of the development, in accordance with clause 17.

In that case, despite subclause (4), the whole or part of the monetary contribution must be paid before the earlier stage for payment if that earlier stage for payment occurs after 25 September 2022.

- (6) To avoid doubt, a deferred payment arrangement in relation to the monetary contribution under a development consent to which this clause applies is not required in the case of a development consent for the creation of strata lots to which this clause applies, but nothing in this clause prevents the entry into such an arrangement in accordance with the other provisions of this Determination.

Interpretation

(7) In this clause:

- (a) *pandemic period* means the prescribed period within the meaning of section 10.17 of the Act, and
- (b) *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*.

Note. Under section 10.17 of the *Environmental Planning and Assessment Act 1979*, the prescribed period commenced on 25 March 2020. It ends 6 months later, unless regulations are made to extend the period for up to another 6 months.

Reference number:(n2020-3088)

Environmental Planning and Assessment (Special Infrastructure Contribution – Gosford City Centre) Amendment Determination 2020

under the

Environmental Planning and Assessment Act 1979

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

Minister for Planning and Public Spaces

Dated: 25/06/2020

1 Name of Determination

This Determination is the *Environmental Planning and Assessment (Special Infrastructure Contribution – Gosford City Centre) Amendment Determination 2020*.

2 Commencement

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

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

The *Environmental Planning and Assessment (Special Infrastructure Contribution – Gosford City Centre) Determination 2018* is amended as set out in Schedule 1.

4 Reasons for allowing payment of contributions to be deferred

The reason for this Determination to amend the *Environmental Planning and Assessment (Special Infrastructure Contribution – Gosford City Centre) Determination 2018* is to allow, in certain cases, the deferral of payment of special infrastructure contributions required by development consents granted during the COVID-19 pandemic, so as to contribute to measures to stimulate the NSW economy.

Schedule 1 Amendments

Clause 15A

Insert after clause 15:

15A Deferral of payment during pandemic period

Application of clause

- (1) This clause applies only to a development consent that is granted during the pandemic period and authorises the erection of a new building or a change of use of an existing building, and only if Part 6 of the Act will require an occupation certificate for:
 - (a) the commencement of the occupation or use of the whole or part of the new building, or
 - (b) the commencement of a change of building use for the whole or any part of the building.
- (2) However, this clause does not apply in either of the following circumstances:
 - (a) the estimated cost of the development that is the subject of the development consent is less than \$10,000,000, as determined in accordance with the *Environmental Planning and Assessment Regulation 2000* for the purpose of calculating the fee for the development application to carry out the development,
 - (b) the development consent authorises the subdivision of land that will result in the creation of additional lots, as well as authorising the erection of a building or a change of use of an existing building.
- (3) This clause applies only if the development consent is granted on or after the *Environmental Planning and Assessment (Special Infrastructure Contribution – Gosford City Centre) Amendment Determination 2020* takes effect, and applies even if the development application concerned was made before this clause takes effect.

SIC not required until occupation certificate stage

- (4) Despite clause 15, the special infrastructure contribution required by a development consent to which this clause applies, if made as a monetary contribution, may be paid at any time before the issue of the first occupation certificate in respect of any of the buildings to which the development consent relates, and is not required to be paid before the issue of a construction certificate in relation to the building work involved.
- (5) However, if no construction certificate in relation to any such building work has been issued on or before 25 September 2022, the special infrastructure contribution must be paid before the issue of a construction certificate for the building work.

Interpretation

(6) In this clause:

- (a) ***pandemic period*** means the prescribed period within the meaning of section 10.17 of the Act, and
- (b) ***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*.

Note. Under section 10.17 of the *Environmental Planning and Assessment Act 1979*, the prescribed period commenced on 25 March 2020. It ends 6 months later, unless regulations are made to extend the period for up to another 6 months.

Reference number:(n2020-3089)

Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Direction 2020

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning and Public Spaces, in pursuance of section 7.24 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 (Special Infrastructure Contribution – Western Sydney Growth Areas) 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 consent authorities in relation to development within the Western Sydney Growth Areas Special Contributions Area.
- (2) To avoid doubt, this Direction also applies to:
 - (a) any local planning panel when exercising, on behalf of a council constituted for a local government area within (or partly within) the Western Sydney Growth Areas Special Contributions Area, the functions of the council as a consent authority, and
 - (b) any officer or employee of such a council to whom the council delegates its functions as a consent authority.

4 Condition that must be imposed

A consent authority must impose the following condition on the grant of development consent to any development within the Western Sydney Growth Areas Special Contributions Area for which a special infrastructure contribution is required to be made under the *Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Determination 2011*:

A special infrastructure contribution is to be made in accordance with the Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Determination 2011 (as in force when this consent becomes operative).

More information

A request for assessment by the Department of Planning, Industry and Environment of the amount of the special infrastructure contribution that is required under this condition can be made through the NSW planning portal (<https://www.planningportal.nsw.gov.au/special-infrastructure-contributions-online-service>). Please refer enquiries to SIContributions@planning.nsw.gov.au

5 Pending development applications

This Direction extends to development applications made to a consent authority, but not finally determined, before this Direction takes effect.

6 Revocation of existing directions

- (1) The direction under section 7.24 that was published in the Gazette on 21 January 2011 (the *Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Direction 2011*) and in force immediately before this Direction takes effect in relation to development on land within the Western Sydney Growth Areas Special Contributions Area is revoked.
- (2) The revocation of the direction does not affect:
 - (a) the operation of any condition of a development consent imposed in accordance with the terms of the direction, and
 - (b) anything done in accordance with such a condition or a determination under section 7.23 of the *Environmental Planning and Assessment Act 1979* to which the condition refers, and
 - (c) the operation of section 7.24 (3) of the *Environmental Planning and Assessment Act 1979* if the consent authority has failed to impose a condition on the grant of development consent in accordance with the terms of the direction.
- (3) Section 7.24 of the *Environmental Planning and Assessment Act 1979* continues to apply with respect to a condition of a development consent that is imposed in accordance with the terms of the direction revoked by this clause.

7 Definitions

In this Direction:

Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Determination 2011 means the Determination of that name as in force for the time being, including as amended by the *Environmental*

Planning and Assessment (Special Infrastructure Contribution - Western Sydney Growth Areas) Amendment Determination 2011 and the Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Amendment Determination 2020.

Western Sydney Growth Areas Special Contributions Area means the land described in Schedule 4 to the *Environmental Planning and Assessment Act 1979* as the land shown edged heavy black on the map marked “Western Sydney Growth Areas – Special Contributions Area” deposited in the head office of the Department.

Reference number:(n2020-3090)

Environmental Planning and Assessment (Special Infrastructure Contribution – Gosford City Centre) Amendment Direction 2020

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning and Public Spaces, in pursuance of section 7.24 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 (Special Infrastructure Contribution – Gosford City Centre) Amendment Direction 2020*.

2 When Direction takes effect

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

3 Council and other planning bodies to whom Direction is given

- (1) This Direction is given to consent authorities in relation to development within the Gosford City Centre Special Contributions Area.
- (2) To avoid doubt, this Direction also applies to:
 - (a) any local planning panel when exercising, on behalf of the council constituted for the local government area within which the Gosford City Centre Special Contributions Area is located, the functions of the council as a consent authority, and
 - (b) any officer or employee of such a council to whom the council delegates its functions as a consent authority.

4 Amendment of Environmental Planning and Assessment (Special Infrastructure Contribution – Gosford City Centre) Direction 2018

The *Environmental Planning and Assessment (Special Infrastructure Contribution – Gosford City Centre) Direction 2018* is amended as set out in Schedule 1.

Schedule 1 Amendments

Clause 4A

Insert after clause 4:

4A Condition for special infrastructure contribution that must be imposed on grant of development application during pandemic period

- (1) A consent authority must, during the pandemic period, impose the condition set out at the end of this clause on the grant of development consent to a development application to carry out development within the Gosford City Centre Special Contributions Area if the consent authority determines, for the purposes of determining the fee for the development application in accordance with the *Environmental Planning and Assessment Regulation 2000*, that the estimated cost is \$10,000,000 or more.
- (2) This clause has effect only on and from the date the *Environmental Planning and Assessment (Special Infrastructure Contribution – Gosford City Centre) Amendment Direction 2020* takes effect.
- (3) Clause 4 continues to apply if the estimated cost determined by the consent authority is less than \$10,000,000.
- (4) For the purposes of this clause, **pandemic period** means the prescribed period within the meaning of section 10.17 of the *Environmental Planning and Assessment Act 1979*.
- (5) This clause extends to development applications made, but not finally determined, before this clause takes effect.

Note. The prescribed period is a 6-month period that commenced on 25 March 2020, but which may be extended for another 6 months.

Condition that must be imposed during pandemic period

The developer must obtain a determination by the Planning Secretary as to whether a special infrastructure contribution is required to be made under the Environmental Planning and Assessment (Special Infrastructure Contribution – Gosford City Centre) Determination 2018, (2018 Determination). The developer must do so before the time by which a special infrastructure contribution, if made as a monetary contribution, would have to be paid under the 2018 Determination.

To assist the Planning Secretary in making that determination, the developer is to provide the Planning Secretary with an up-to-date estimate of the proposed cost of carrying out the development, as referred to in the 2018 Determination.

If the Planning Secretary determines that a special infrastructure contribution is required to be made under the 2018 Determination, a contribution must be made in accordance with that Determination (as in force when this consent takes effect).

A person may not apply for an occupation certificate (or a construction certificate after 25 September 2022) in relation to development the subject of this development consent unless the person provides, in connection with the application, written evidence from the Department of Planning, Industry and Environment that the special infrastructure contribution for the development has been made or that arrangements are in force with respect to the making of the contribution.

In this condition:

***developer** means the person having the benefit of this development consent, and
Planning Secretary means the Secretary of the Department of Planning, Industry and Environment.*

More information

A request for assessment by the Department of Planning, Industry and Environment of the amount of the special infrastructure contribution that is required under this condition can be made through the NSW planning portal (<https://www.planningportal.nsw.gov.au/special-infrastructure-contributions-online-service>). Please refer enquiries to SIContributions@planning.nsw.gov.au

Reference number:(n2020-3091)