

# Criteria to request a higher s7.12 percentage

## Discussion Paper

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# Contents

<b>Executive summary</b>	<b>1</b>
<b>1. Introduction</b>	<b>2</b>
1.1 Purpose	2
1.2 Improving the infrastructure contributions system	2
<b>2. How the s7.12 fixed rate levy operates?</b>	<b>2</b>
2.1 Areas where a higher maximum percentage levy currently applies	3
2.2 The standard 1% levy will be maintained	4
2.3 How the s7.12 fixed levy is applied	4
<b>3. Principles for a higher maximum levy</b>	<b>5</b>
3.1 Identified in a strategic plan	5
3.2 Significant employment growth	5
3.3 Local planning controls will need to support growth	5
<b>4. Potential criteria for discussion</b>	<b>7</b>
4.1 Criteria for a maximum levy up to 2%	7
4.2 Additional criteria for a maximum levy up to 3%	8
4.3 Discussion questions	9
<b>5. Have your say</b>	<b>9</b>

# Executive summary

An underlying principle of the NSW planning system is that new development should pay a contribution towards the cost of infrastructure needed to support that development. Section 7.12(s7.12) contributions are one of several mechanisms available to local councils to fund new development-related infrastructure. They operate as 'flat rate levies', meaning that they are charged as a percentage of the proposed development cost.

The *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) sets 1% as the standard highest maximum percentage which councils can levy under a s7.12 development contributions plan. The EP&A Regulation, however, identifies specific areas which are subject to higher maximum percentage levies if listed in clause 25K(1)(b). Currently, land in six local government areas (LGAs) is listed in this clause as having higher maximum percentage levies (see Table 2).

The Department is committed to ensuring the process of assessing and determining requests to increase the maximum percentage levy for s7.12 contributions is efficient and transparent.

For this purpose, the Department is proposing to adopt a series of consistent criteria and request evidence to assist with the assessment and determination of submissions to increase maximum percentage levies in specific areas.

The proposed criteria discussed in this paper are based on three key principles to increase the maximum percentage:

1. The area being proposed for a higher maximum percentage levy must be identified in a strategic plan as a strategic centre, local centre or economic corridor.
2. It must have an existing or identified potential for significant employment growth.
3. Planning controls will need to reflect and support the planned increase in population and employment capacity of the identified area.

Based on the above principles, a two sets of potential assessment criteria, for either an increase of the maximum percentage to up to 2%, or up to 3%, have been developed for discussion and feedback.

The use of criteria will provide certainty, transparency and consistency in the Department's decision-making in response to submissions seeking to increase the maximum percentage s7.12 levy in specific areas. They will also support councils in understanding when it may be appropriate to request a higher maximum percentage levy and assist them in preparing requests.

Feedback is sought on the proposed approach, including the draft criteria outlined in this paper. Targeted discussion questions have been developed to assist with the discussion (see Section 4.3). However, feedback on all aspects of the discussion paper are welcome and will be used to develop the finalised set of criteria.

# 1. Introduction

## 1.1 Purpose

Section 7.12 (s7.12) fixed development consent levies under the *Environmental Planning and Assessment Act 1979* (EP&A Act) are one of several mechanisms available to local councils to fund local infrastructure.

This discussion paper seeks feedback on a new approach to improve decision-making in relation to council requests to increase the maximum percentage for s7.12 levies as provided for under the EP&A Regulation. It outlines draft principles and criteria proposed to be used by councils and the Department when preparing and considering increasing the maximum percentage for s7.12 levies. It also outlines how s7.12 levies currently operate including how variations to the maximum percentage rate of 1% are considered.

## 1.2 Improving the infrastructure contributions system

The above proposals are part of a wider suite of system improvements intended to fix the uncertainty in the infrastructure contributions system. More information on other current proposals can be found on: [planning.nsw.gov.au/infrastructure-contribution-reforms](https://planning.nsw.gov.au/infrastructure-contribution-reforms).

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## 2. How the s7.12 fixed rate levy operates?

Section 7.12 fixed development consent levies operate as 'flat rate levies', meaning they are charged as a percentage of the proposed development cost. They were introduced into the EP&A Act in 2005 as an alternative to s7.11 development contributions and are generally used in rural, infill and mixed-use areas<sup>1</sup>.

The premise of a simple low flat percentage charge is that s7.12 contributions do not require consent authorities to identify the connection between development which pays the levy and the object of the expenditure of the levy. As such, s7.12(4) removes a proponents' right to appeal against a condition imposed for a s7.12 levy solely on the grounds of a lack of connection between the development and what the contributions are expended on.

The intent of fixed percentage levies is to deliver an efficient outcome for both developers and the consent authority by providing a low-cost charge on development in areas where nexus (the connection between proposed development and the demand created) and apportionment (the share of the total demand that the developer must pay) may be difficult to establish. This is particularly useful in regional areas, established urban areas or mixed-use areas where development rates are difficult to predict<sup>2</sup>.

The maximum percentages councils can levy in a s7.12 development contributions plan is defined in clause 25K of the EP&A Regulation.

<sup>1</sup> Note the City of Sydney has been able to adopt a 1% fixed development consent levy where the cost of development exceeds \$200,000 since 1997 through s61 of the City of Sydney Act 1988

<sup>2</sup> See 2005 Development Contributions - Practice Note

Table 1 – Current s7.12 standard maximum percentage

Proposed cost of the development	Maximum percentage of the levy
Up to \$100,000	Nil
\$100,001 - \$200,000	0.5 percent
More than \$200,000	1.0 percent

## 2.1 Areas where a higher maximum percentage levy currently applies

Councils have previously requested increases to the maximum percentage levy for specific parts of their local government area. In order to achieve a higher maximum levy percentage, the council makes a request and the Department recommends to the Minister on whether to list the area in clause 25K(1)(b) of the EP&A Regulation.

Presently six councils<sup>3</sup> levy higher maximum percentages for specified areas within their LGA which are identified as important economic and job priority areas. These are listed in Table 2. The higher maximum percentages were specifically permitted for a limited geographical area usually within the boundaries of the commercial cores where identified local and place-based local amenities were to be funded.

The intent and features shared by the areas which currently have a higher maximum percentage levy have been analysed and used to form the principles and criteria in this paper.

Table 2: List of s7.12 contribution plans with higher maximum percentage levies

LGA	Planning instrument where the land area is identified	Zones where the higher maximum levy apply	Maximum levy	Cost of development for which the maximum levy applies
Liverpool	Liverpool City Centre Local Environmental Plan 2007	Neighbourhood Centre, Commercial Core, Mixed Use, Enterprise Corridor	3%	>\$1,000,000
		High Density Residential, Light Industrial	2%	>\$1,000,000
Wollongong	Wollongong City Centre Local Environmental Plan 2007	Commercial Core	2%	>\$250,000
Parramatta	Parramatta City Centre Local Environmental Plan 2007	All	3%	>\$250,000
Newcastle	Newcastle City Centre Local Environmental Plan 2008	All	3%	>\$250,000
Burwood	Burwood Local Environmental Plan (Burwood Town Centre) 2010	All	4%	>\$250,000
Willoughby	Chatswood Central Business District (CBD) Section 94A Development Contributions Plan 2011	All in map 1	3%	>\$250,000

<sup>3</sup> Gosford City Centre will revert to 1% following introduction of Gosford City Centre Special Infrastructure Contribution and under a proposed amendment to the EP&A Regulation.

## 2.2 The standard 1% levy will be maintained

This paper is not proposing to increase the overall s7.12 maximum rate as specified under clause 25K(1)(a) of the EP&A Regulation, this will be maintained at 1% of the cost of development. This is because the charge is a flat rate levy on development costs, which track closely to construction costs overtime.

Contribution revenues from s7.12 contribution plans should therefore keep up with cost escalations of capital component of infrastructure costs. Australian Bureau of Statistics and internal Department's analysis have shown that both the House Construction Index (NSW) and Other Residential Building Construction Index (NSW) have relatively kept up with capital cost of infrastructure investments, when using the Road and Bridge Construction Index as a proxy.

## 2.3 How the s7.12 fixed levy is applied

The *2005 Development Contributions - Practice Note* outlines principles for the use of s7.12 fixed development consent levies. This discussion paper does not intend to depart from these principles, but rather provides additional requirements to strengthen or extend the desired development context for which the plan applies.

The following outlines general features of areas where a standard s7.12 fixed levy may apply as shaped by the existing principles. They provide a frame of reference for the principles and criteria discussed in Section 4 of this paper.

### Infrastructure demand is difficult to establish

Section 7.12 is designed to deliver an efficient outcome for both developers and the government where provision of the infrastructure benefits a dispersed set of contributors, and the connection, or nexus, between the development and required infrastructure is difficult to identify.

It is often difficult to measure demand arising from non-residential development. Consequently, in some areas it can be more efficient and effective to collect contributions through a s7.12 fixed levy. This can be especially true in areas which are experiencing high levels of development to accommodate employment opportunities.

Section 7.12 also offers greater flexibility in what contributions can be spent on. This is important for employment centres where public amenities and services can be quite different to that required in standard residential precincts. For example, centres may require provision or upgrade to public spaces and centre domain works for retail precincts, concourses to transport interchanges and undergrounding of cables. In some cases, special customised local infrastructure is required to service the industries that anchor the centres.

### Growth is sporadic

In areas where the rate of development is difficult to predict, a s7.12 levy is useful in collecting contributions and funding dispersed local infrastructure projects. The strength of s7.12 contribution plans is that local infrastructure can still be provided from different sets of contributors and in areas with multiple land owners.

This is also especially important for urban centres which are experiencing high levels of growth. These areas can experience the added complexity of both residential and commercial development occurring and complex land ownership structures. It can be difficult to forecast levels of commercial development and different industries have different impacts on infrastructure requirements and amenities.

This makes s7.12 fixed levies appropriate for urban centres and commercial cores.

## 3. Principles for a higher maximum levy

The following principles are the basis on which higher maximum percentage levies are proposed to be set. They are instrumental in determining whether it is appropriate to consider an identified centre for a higher s7.12 maximum percentage levy.

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### 3.1 Identified in a strategic plan

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 regional plan, or district plan.

This principle recognises the importance of supporting centres in facilitating growth and delivering place-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.

### 3.2 Significant employment growth

In addition to being identified in a strategic plan, the centre needs to demonstrate a significant increase in employment capacity. This establishes a need for additional resources to fund infrastructure that supports mixed-use of employment-related development.

This is also related to the fact that it is difficult to measure demand arising from non-residential development, especially in areas experiencing high levels of development to accommodate employment opportunities.

Currently, the six areas identified in the EP&A Regulation as having higher maximum percentage levies share a common goal of facilitating employment growth. In fact, all of them except Burwood Town Centre are intended to facilitate at least 25% more new jobs than new residents over the planned 25-year period.

This principle, therefore, is linked to these centres having a specific need for distinct infrastructure and civic improvements.

### 3.3 Local planning controls will need to support growth

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).

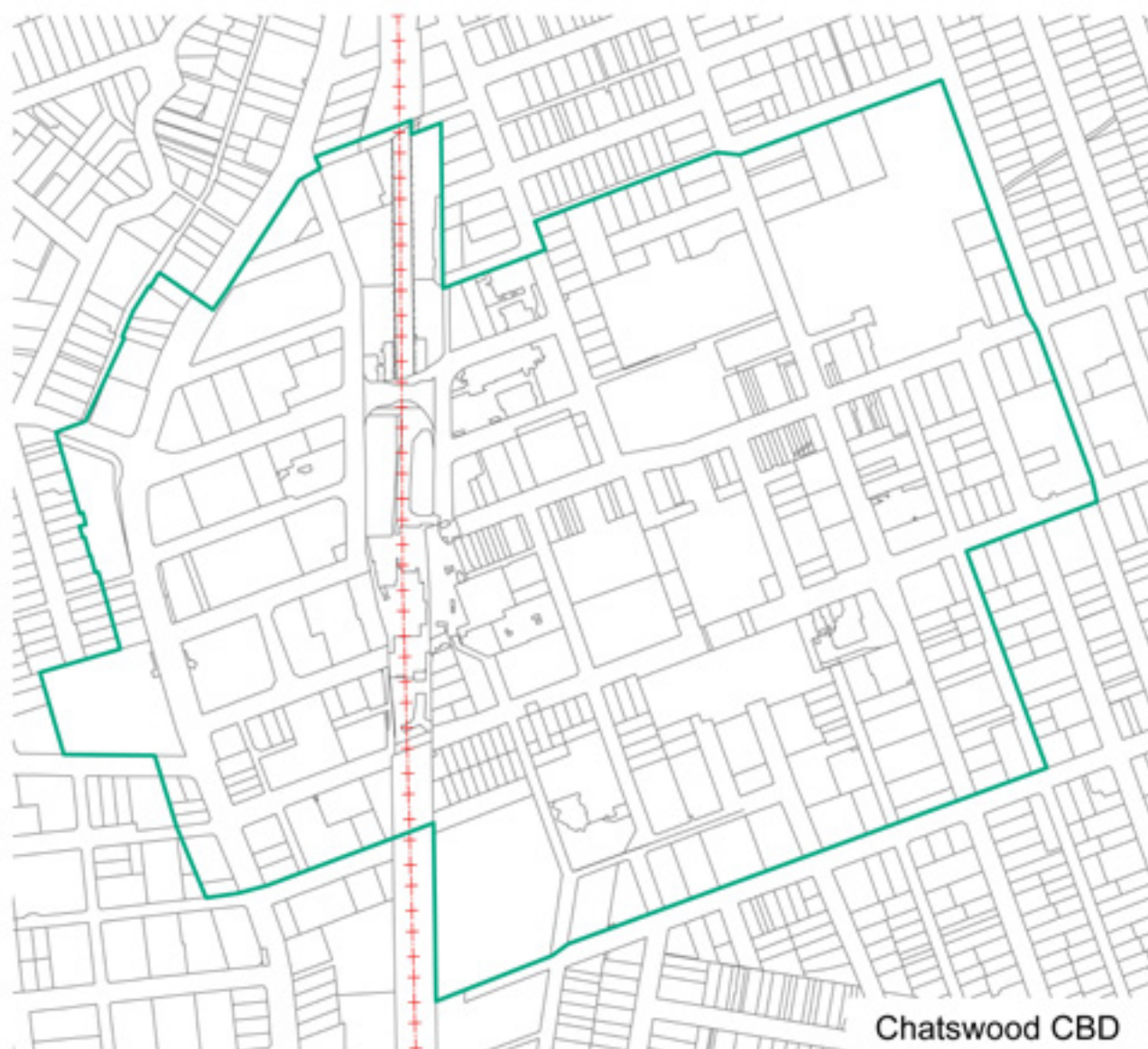
Refer to Example 1 below in relation to the process of increasing the maximum percentage levy for Chatswood Central Business District and related updates to its LEP.



## Example 1: Chatswood Central Business District (CBD) s94A (now s7.12) development contributions

In 2010 the maximum fixed contribution levy for Chatswood CBD was increased to 3% for developments over \$250,000. This decision was based on planning controls for Chatswood CBD being updated through Willoughby Local Environmental Plan 2011 in recognition of Chatswood's role as a key sub-regional centre, as identified in 2005 Sydney Metropolitan Strategy.

The Willoughby Local Environmental Plan was updated then to facilitate 7,000 new jobs (30% increase) and accommodate 3,000 new residents over the 25 years to 2036, in line with the metropolitan strategy. This equates to over 233% more new jobs than additional residents, which is in line with the principle of significant employment growth.



*Map of Chatswood CBD area where up to 3% section 7.12 levy applies, adapted from Willoughby Local Infrastructure Contributions Plan 2019*

## 4. Potential criteria for discussion

The following criteria are proposed for discussion. Their intent is to assist councils and the Department with the assessment and determination of requests to increase maximum percentage levies in specific areas. The proposed criteria are based on the three principles outlined in Section 3. They are also founded on criteria used in the past to determine requests for increases to the maximum percentage levies.

Councils that want to request a higher maximum percentage would need to provide a draft s7.12 plan with a works schedule and would also need to provide evidence addressing the criteria outlined below. A request for a levy up to 2% would have to address the criteria outlined in 4.1. A request for a levy up to 3% would have to address the criteria in 4.1 and 4.2.

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### 4.1 Criteria for a maximum levy up to 2%

#### **C1.1 The area must be identified in the relevant strategic plan**

The area must be identified in a strategic plan, which may be a regional plan, or district plan.

#### **C1.2 The strategic plan must include a 'significant' employment growth target for the centre**

The strategic plan must identify the centre as having potential for significant employment growth over the next 25 years. There are a few ways to quantify the significant increase in employment including:

- Supporting at least 25% more new jobs than the number of additional residents planned to be accommodated in the contribution area.
- Facilitating an increase of at least 25% more employment opportunities than currently available.
- An increase in additional non-residential gross floor area greater than 20% of existing total non-residential gross floor area.

#### **C1.3 Local planning controls must reflect relevant strategic direction and targets for the centre**

The planning controls for the area, including development standards and controls in the LEP and DCP, will need to reflect the strategic direction and targets for the centre in the relevant strategic plan at the time the higher maximum percentage levy starts operating.

#### **C1.4 The contributions plan should focus primarily on delivering quality place-based community infrastructure and improvements that enhance amenity of the centre**

The focus of a higher levy should to deliver quality place outcomes and the draft plan should demonstrate this. This could be measured in several ways, including:

- Open space, public domain streetscape, community facilities, and district infrastructure costs must represent at least 50% of total value of the contributions plan.
- Roads, traffic and stormwater management costs cannot constitute more than 49% of total value of the contributions plan.

Areas primarily requiring roads, traffic and stormwater infrastructure are more appropriately addressed through a s7.11 contributions plan. This infrastructure can be attributed to both residential and non-residential developments. There are established guides and modelling methodologies to apportion these types of infrastructure needs to most non-residential developments.

**C1.5 Plan administration cost must not exceed 0.2% of total value of the contributions plan**

This is because s7.12 contributions plans require less work and associated costs to make, and less administration when development applications are submitted. It should be noted that *2005 Development Contributions - Practice Note* does not permit costs associated with administration of a s7.12 contributions plan to be included as part of the overall infrastructure costs to be recovered through development contributions.

**C1.6 The contributions plan should clearly set out the relationship between the expected types of development in the area and the demand for additional public amenities and services**

A consent authority may impose a condition of development consent for the payment of a levy even though there is not a connection between the development, the subject of the consent and the public amenities or public services for which the levy is required.

However, when developing a contributions plan for the purpose of authorising s7.12 levies, the consent authority should consider whether development of a class for which the levy will be payable generates a need for, or benefit from, the relevant public amenities or services.

**C1.7 Demonstrate that s7.11 has been considered and why it is not appropriate in this area**

Council should show the efficiency of implementing a s7.12 contributions plan in lieu of a s7.11 plan for the centre's development context.

**C1.8 Include a financial analysis that demonstrates a 1% fixed levy is insufficient, and forecast the revenue outcomes for a higher percentage levy**

Financial modelling must show the estimated revenue generated by the higher percentage levy compared to a standard 1% fixed levy. It must also compare the expected revenue with total estimated cost of the infrastructure identified on the works schedule.

**C1.9 Changes to the works schedule require approval from the Minister**

The Minister will need to approve any future changes to items on the work schedule, otherwise the higher percentage levy will no longer apply, and the contributions plan will revert to the maximum of 1%.

This will ensure ongoing monitoring and review of eligibility for the higher maximum percentage.

## 4.2 Additional criteria for a maximum levy up to 3%

**C2.1 The contribution plan must include funding and delivery of district-level infrastructure, representing at least 10% of total value of the contributions plan**

To justify a levy that is three times the legislative maximum percentage, the area must have a significant district presence and as such it will require more interconnecting or wide-reaching level of infrastructure provision. This might include major parklands and sports-fields, or district libraries and other community facilities.

**C2.2 The works schedule must be prepared in consultation with the Department to identify potential district level infrastructure**

A collaborative approach between State and local governments ensures strategic planning and infrastructure provision meets local needs, are place appropriate, enhance local character and aligns with broader economic strategies.

## 4.3 Discussion questions

To facilitate the discussion on this paper the Department has prepared the following questions:

1. Should all the criteria be mandatory for a s7.12 plan to be considered for a higher percentage levy?
2. Are there any alternative criteria that should be considered?
3. C1.2: Considering the different ways 'significant' employment growth can be measured, what would be the most effective?
4. C1.9: Is this requirement necessary? Are there other mechanisms that would ensure ongoing monitoring and review?
5. C2.1: District level infrastructure remains generally undefined. Should the Department publish a list of acceptable district-level infrastructure items or should it be determined on a case by case basis?
6. C2.1: Is 10% of the total value of the contributions an appropriate amount to be allocated for the provision of district level infrastructure? Should this be desirable rather than mandatory?

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## 5. Have your say

The Department welcomes your feedback on the proposals in this paper. Your feedback will help us better understand the views of the community and will assist us to finalise the proposals.

Submissions can be made via the Department's website:

[www.planningportal.nsw.gov.au/exhibition](http://www.planningportal.nsw.gov.au/exhibition)

You may also post your submission to:

Executive Director

Planning Policy

Department of Planning, Industry and Environment

Locked Bag 5022, Parramatta NSW 2124.

All submissions will be made public in line with our objective to promote an open and transparent planning system. If you do not want your name published, please state this clearly at the top of your submission. The Department will publish all individual submissions and an assessment report on all submissions shortly after the exhibition period has ended.

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