

Housing and Productivity Contribution: Frequently Asked Questions

This fact sheet provides a list of frequently asked questions and answers to assist practitioners implementing the new Housing and Productivity Contribution.

Lodging an application

What is considered a “lodged” application for the purpose of knowing if the contribution applies?

A development application is “made” when the DA fees have been paid. Applicants submit their applications through the portal, and the local government is required to issue the fee notice within 14 days. The application is lodged on the day the fees are paid by the applicant. The contribution does not change any lodgement requirements.

If the development application is lodged before 1 October 2023, then the contribution does not apply. If the development application is lodged on or after 1 October 2023, then the contribution will apply. Transitional discounts linked to the timing of payment are in place for the first two years of operation to support phase-in of the contributions.

What if a development consent is in place, but a related subdivision is lodged post commencement?

Applications for high density residential developments (residential flat buildings and shop top housing) that have been made prior to commencement and did not seek approval for strata subdivision at the same time, will not be charged a contribution when the subdivision application is subsequently made.

Development types

What development types does the Housing and Productivity Contribution apply to?

The contribution applies to:

- residential development that intensifies land-use where new dwellings are created, such as houses, apartments, terraces and dual occupancies
- commercial and retail development such as shops, neighbourhood shops, supermarkets, and commercial office buildings where new floorspace is created
- industrial development such as warehouses and industrial buildings, where new floorspace is created.

Land uses outside of these categories will generally be exempt.

Do secondary dwellings or granny flats attract a charge?

No, secondary dwellings or granny flats constructed on existing lots will not attract a charge. However, if the lot is later subdivided then a contribution will be payable for the additional dwelling lot.

How is build-to-rent development treated?

A development application for build to rent housing seeks approval for apartments, but the completed building remains in single ownership and is not subdivided. The contribution will apply as the development is generating greater demand on infrastructure, but the payment would be made prior to issuing of a construction certificate as there is no future subdivision trigger. If the development is later subdivided, no further payment would be required.

Exemptions

Are there any types of development that are exempt?

There are a number of development types where the contribution does not apply:

- Social and affordable housing delivered under the State Environmental Planning Policy (Housing) 2021.
- Secondary dwellings, granny flats and knock-down-rebuilds
- Industrial development in the Port Botany, Port Kembla and Port of Newcastle lease areas

The Ministerial Order details all applicable exemptions.

If a mixed-use development contains some forms of housing that are exempt, how is the contribution calculated?

Development applications for mixed-use buildings will only attract a charge for components which are not exempt.

Application types

How are concept development applications treated?

This advice relates to where there is a concept approval in place and applications are made for subsequent stages of development under that approval (made either before or after 1 October 2023). The Housing and Productivity Contribution will be reduced by 100% (that is, no payment required) for that stage of development if the first construction certificate is being issued prior to 1 July 2025. This will require a manual 'case management' approach with support from the Department team. The consent for the subsequent stage will have a condition of consent

requiring payment. Before requesting release of the construction certificate, contact will need to be made via hpc.enquiry@planning.nsw.gov.au so that we can apply the 100% discount.

How are staged development applications treated?

Staged development applications lodged prior to the commencement of the contribution are not charged.

Staged development applications lodged on or after 1 October will be required to pay the contribution. The contribution amounts will be set out relative to each stage of the development. You will pay the contribution for the relevant stage prior to release of the post consent certificate for that stage.

How does the contribution apply to superlots which will be further subdivided?

The creation of superlots will attract a charge for every new lot created in addition to the parent lot. Any subsequent subdivision of the superlot will recognise the existence of the original lot and will not attract a second charge on that lot, only additional lots created.

What happens if I need to modify an existing consent?

Modifications to consents issued prior to commencement are exempt from paying the contribution. Where a consent is modified after the commencement of the contribution, the amount will be amended and reflected in the final consent condition.

How are development applications subject to planning appeal dealt with if the contribution amount changes?

For development applications lodged in the portal that are subsequently appealed, the original portal application will be “closed” and there will be a need to create a “review of development application” case in the portal (available from 1 December 2023). This enables the re-entering of the application into the portal to reflect the final decision and revised contributions case where applicable.

Contribution rates and payment

How have the contribution rates been calculated?

The proposed rates are based on the recommendations of the Productivity Commissioner from 2020 and have been adjusted based on a published [feasibility analysis](#). The Government has progressed the recommendation of the Productivity Commissioner for a broad and low charge on developers.

The HPC has had significant and ongoing consultation with stakeholders since mid-2020 and have been signalled over the last three years. The rates are supported by the phased implementation from October 2023 to June 2025 so developers can adjust to the new charges.

Are the rates indexed?

The contribution rates will be indexed quarterly using the Producer Price Index (Road and Bridge Construction (NSW)) published by the Australian Bureau of Statistics. This index was selected as a better reflection of the change in cost of delivering infrastructure than the Consumer Price Index (which focuses on household expenditure such as food).

Functionality has been built within the NSW Planning Portal to manage the indexation of the rates, and update contributions due at the time of payment.

How will prospective landowners and developers be notified?

The *Environmental Planning and Assessment Legislation Amendment (Housing and Productivity Contributions) Regulation 2023* accompanies the commencement of the contribution. This includes a requirement to update planning certificates to ensure that landowners, and purchasers of land, are made aware that a housing and productivity contribution may be payable for development on the land.

The amended Regulation requires information about the new housing and productivity contributions scheme to be included from 1 February 2024. This timeframe gives affected councils time to update their planning certificates. In the interim, should councils wish to update planning certificates earlier, the following text may be considered for inclusion in the contributions section of the certificate:

“The subject land is within [Greater Sydney/Lower Hunter/Central Coast/Illawarra-Shoalhaven – delete as applicable] to which the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023 applies.”

If land is within an area to which the *Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Determination 2011* or the *Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Aerotropolis) 2022* continues to apply, a planning certificate should continue to specify that the land is within that area.

How does the applicant pay the contribution?

The contribution will be paid through the NSW Planning Portal which uses the Service NSW payment gateway, enabling options using PayPal, BPAY etc. The applicant submits the payment and payments are made into a Special Deposits Account held by NSW Treasury. Local governments do not need to collect the contribution.

When is payment made?

For residential, commercial and industrial development, payment is generally required prior to release of the construction certificate (for development applications), or prior to the Notification to Commence Works (for complying development certificates). For subdivision of land, the contribution is paid prior to the release of the subdivision certificate.

Can I estimate what a future contribution amount might be?

The NSW Planning Portal will contain an estimator tool that does not require the lodgement of a formal application to use. This will be available from 1 December 2023.

What happens if there's already a State Planning Agreement in place?

While applications will still need to be lodged using the NSW Planning Portal, the system will not automatically identify that there is a planning agreement in place and an HPC condition will be applied to the development consent. At the time of clearing the conditions, applicants will need to request reconciliation of the contribution amount by providing details of their planning agreement directly to the Department of Planning and Environment.

This will require a manual 'case management' approach with support from the Department team. Requests can be made via hpc.enquiry@planning.nsw.gov.au.

Can I use works-in-kind in lieu of paying the contribution?

Works-in-kind will continue to be an option for developers to use to meet their contribution obligations. This will require case-management for individual applications.

The Department of Planning and Environment is preparing a governance framework to explain when works-in-kind can be used, as well as the process for entering into an agreement and how credits will be managed. The draft framework is expected to be available in late 2023.

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