

New South Wales Vice-Chancellors' Committee

DRAFT NSWVCC Contributions Task Force Paper for Approval

1. Executive Summary

Education services and universities are significant contributors to the NSW economy. In addition to education, research, and employment opportunities, universities also provide a range of essential and support services and infrastructure to their communities, as well as the wider population at large.

Under the current planning system, universities are Crown authorities for DAs. Crown authorities are provided special provisions under the EP&A Act to ensure developments are not unreasonably refused or conditionally approved. This also extends to the levying of contributions.

Existing (but out-dated) Department of Planning & Infrastructure 'Circular D6 : Crown Development Applications and Conditions of Consent' applies to Crown DAs to ensure universities (amongst other Crown authorities) are not required to pay contributions for development, other than in very minor and specific cases.

Despite these provisions, universities to the greater part are still seen as traditional developers with a commercial objective. There is no consistency in how university developments are treated with respect to the requirement or the levying of contributions.

It is the NSWVCC's strong desire to see both short and longer term action to remedy this now long-running anomaly. The NSWVCC seeks an immediate review and strengthening and replacement of Circular D6 to ensure an appropriate regime in relation to Crown Development, and thereby clarity and consistency around contributions for Crown Development. Further, longer term solutions under the new planning system are sought for universities to be considered in the same way that hospitals and other social services are considered. In essence, the desired objective is clarity and consistency in no development contributions applying to universities.

2. Summary of current processes and framework

Background

Education services are the second largest export earner in NSW after coal. Income generated in NSW by education services amounted to \$5.5 billion in 2011-12. UNSW alone has approximately 12,000 international students that generate between \$350 - \$400 million of export income for NSW each year.

The NSW Government has released an Industry Action Plan for International Education and Research that:

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- Recognises universities as a key sector of the State's economy for “...strong growth, resilience, improved innovation and productivity, global competitiveness, and new investment opportunities”;
- Focuses on further establishing Sydney as an international university city and attracting international partners to invest and locate in NSW education and research precincts; and
- Recommends universities be given more input into the Planning System Review regarding improved planning and removal of complexity for the development of student accommodation.

Universities make major capital investments in buildings and infrastructure e.g.

- \$2 billion in major university projects approved in the past 5 years in NSW that will create an estimated 9,000 direct construction jobs and 13,400 indirect jobs throughout other sectors; and
- \$6.2 billion of capital works projects in the pipeline until 2020, creating an estimated 27,900 direct construction jobs and 41,655 indirect jobs.

Universities also have a significant amount of annual infrastructure works that do not meet the \$30 million threshold for SSD, but which still make a significant contribution to the NSW economy.

The significant size of university campuses and the extent of essential and support services and infrastructure that give them a unique character as quasi ‘town centres’ or ‘small cities’ with significant land use and transport impacts.

Universities bring a range of social and public benefits to the local community and broader region e.g.

- Open space, sport and recreational facilities, libraries, medical services etc available for use by the general public;
- The increased provision of transport infrastructure and services; and
- ‘Flow-on’ retail expenditure to surrounding businesses that adds variety, vitality and viability to the local economy.

Current Framework and Processes

Universities are Crown authorities by virtue of clause 226 of the Environmental Planning & Assessment Regulation, 2000.

Section 89 of the Environmental Planning & Assessment Act, 1979 (EP&A Act) provides that a consent authority is unable to impose a condition of consent without the approval of the applicant or the Minister, including for the levying of contributions.

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While currently section 94 and 94A of the EP&A Act provides that the consent authority “may” impose a section 94 levy where a contributions plan applies, it is not obliged to do so. Universities consider that university developments are an appropriate case for the exercise of the consent authority’s discretion not to seek such a levy, where an automatic exemption is not available.

The underlying purpose of Council’s current Section 94 and section 94A contributions plans is to raise funding from private, commercially driven, developments to be put towards the cost of public facilities and infrastructure burdened by those developments. Imposing a levy on a university’s own public infrastructure, and by so doing financially compromise a university’s ability to perform its own public functions, conflicts with the public policy of the Plan.

For guidance as to the public policy context, consent authorities are referred to the Department of Planning and Infrastructure’s Circular D6 - ‘Crown Development Applications and Conditions of Consent’. While this Circular was formulated in 1995, it still remains in-force and is the only relevant guiding document in relation to Crown applications and development contributions.

The effect of this Circular is that, where the applicant is a Crown authority, and the development is for Educational Services, no contributions should be collected for Open Space, Community Facilities, Parking, and general local and main road upgrades.

Circular D6 provides that the only categories which might sustain a section 94 levy are:

- Drainage; and
- Upgrading of Local Roads/Local Traffic Management (works associated with the site entrance).

Recognition of the public nature of universities

Universities and their functions are inherently of a public nature providing educational and employment opportunities to the local community and to the public at large.

This is in stark contrast to strictly commercial developments where a levy would be considered reasonable to support local infrastructure.

Teaching and research facilities, libraries, laboratories, student accommodation and all associated infrastructure are all integral to a university’s broader educational functions and are critical to the University’s key academic objectives.

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Universities also provide significant amounts of accessible open space, recreation and community facilities, available for students, staff and the public generally. Universities accommodate a range of facilities which are accessed by the wider public, and for which the university is responsible to maintain. These typically include:

- Fitness Centres
- Child minding facilities / child care centres
- Libraries
- Sporting fields
- Community halls and office space
- Research facilities focusing on issues of significant public interest for the benefit of current and future communities
- Research links to community organisations and industry partners
- Multi-faith religious centres
- Performing Arts Theatres
- Museums and art galleries
- Landscaped passive recreation areas
- Specialist facilities of public interest (eg observatories, special flora and fauna habitats and the like)

The availability of these amenities and services on the Campus, which are maintained by the Universities, reduces the demand on public amenities outside the Campus. As such, these facilities comprise valid off-sets to any impact on local infrastructure by the development.

Accordingly, the net effect is that there should not be any requirement for universities to pay any section 94 / 94A contributions.

3. Critique / Issues of process and framework

Current Issues

There are some specific issues that impact on universities being able to effectively deliver capital works and infrastructure, such as:

- The inconsistent levying of s94 and s94A development contributions on universities by local authorities and the Department and the protracted negotiations that often result, contribute to difficulties in project budgeting and programming;
- The significant amount that universities in NSW pay in development contributions (e.g. UNSW alone has paid more than \$3 million to date) and the levying of contributions on student accommodation development – regarded as a form of affordable housing;

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- The lack of understanding that universities require particular planning consideration as Crown development under the Act and the Regulation, Public Authorities under the Infrastructure SEPP, and 'not-for-profit' institutions endorsed as charities by the Australian Tax Office.

Crown Activities provide a public service or facility which lead to significant benefits for the public, in terms of essential community services and employment opportunities. Therefore, it is important that these essential community services are not delayed by unnecessary disputes over conditions of consent. These activities are not likely to require the provision of public services and amenities in the same way as developments undertaken with a commercial objective.

In terms of moving towards a new system, The White Paper and Planning Bill is silent on the role that public authorities/Crown development/universities play in the issue of infrastructure contributions although the Department has advised that the principles of Circular No. D6 would still apply. The Circular provides a guide to Councils and State agencies on justifiable categories of contributions for Crown developments (such as universities) that provide an essential community service. To date however, not all local Councils give regard to the Circular with respect to university development.

4. Summary of submissions and research findings

The inconsistent approach to application of Circular D6 has been a significant concern of all universities for some time. The NSWVCC has made numerous representations to the Department (in addition to various individual universities also making submissions over time). The focus of these representations has been to seek a consistent approach which also provides for certainty, rather than a case-by-case approach.

These submissions have provided detailed (and consistent) commentary on the following:

- A university is not a developer in the usual sense of the term and is a not-for-profit public institution.
- University projects rely on significant grants, donations, and external funding to provide new facilities, including research buildings. Without this assistance some developments simply wouldn't happen.

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- Development Contributions and levies consume resources which should be devoted to university core business of teaching and research.
- Universities typically are ATO registered charities and "the advancement of education" is a recognised category of charitable purposes under common law. Any revenue which universities may derive from any of their buildings or other facilities is used to further the principal purposes of universities (viz education, learning, research and dissemination of knowledge).
- Universities continue to provide a wide range of social, cultural, and recreational public benefits and contributions to Council areas within which they sit and to the area's resident and worker populations.
- The levying of contributions on projects that are funded by external sources including Commonwealth Government grants, is simply diverting a portion of funds for an educational purpose to local services (often without any direct nexus to the development).
- Section 94A contributions (or contributions with upper limit fixed levies) do not require a nexus, meaning part or all of the % collected may go towards infrastructure improvements that have no connection to university or its environs.
- Universities often appear to be contributing the bulk of contributions collected in some centres, given exemptions afforded to other projects and the size of university projects from a capital investment value perspective / basis.
- The prevailing DoPI principles underlying the levying of contributions for Crown Development and education facilities projects are not applied, and if applied, are applied inconsistently.

A review of Part 3A and SSD approvals at UNSW in particular revealed that anywhere from 0% to 1% of the project CIV has been levied, with no strict rationale or logic as to what is fully exempted or what pays a concessional rate or a full 1% rate.

The recent UNSW High Street (Gate 2) Student Housing Part 3A project was subject to a full 1% contribution (using Council's s94A plan), whilst the UNSW Lowy Cancer Research Centre Part 3A project was fully exempted. In between, other research building developments (also Part 3A or SSD projects) were subject to 0.1% and 0.2% contributions. Randwick Council similarly has sought a full 1% payment, or a concessional rate with an additional element of public domain or infrastructure works for other recent developments on the Campus. Research on this matter

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carried out for the NSWVCC members across a number of university projects highlights the need for a consistent approach and recognition of the status of universities as Crown authorities that provide public and social good in the same manner that TAFEs or schools do.

Despite the above, universities are conscious of their central position in the local government areas in which they are situated and their ongoing relationship with Councils and the local community at a number of levels. Universities understand the critical need to continue to work cooperatively with Councils to reach agreement on an appropriate balance of development conditions that meet Council's planning responsibilities and also meet the universities' needs for critical infrastructure to advance their public education obligations.

5. Proposed Framework

The NSWVCC's desired outcome is two-fold.

- A remedy in the short term to a contributions framework that is presently open to wide interpretation, inconsistent application, and which is inequitable, and
- A longer term solution recognising and reflecting existing and upgraded status of universities and educational establishments in legislation as social infrastructure providers and significant contributors to the local, regional and national economy.

The current framework is out-of-date and whilst it has ongoing status via a Departmental Circular, is not often relied upon by consent authorities as being contemporary and in-force.

To fully review, strengthen and replace the existing Circular D6 should be an immediate priority for this key sector in the economy.

The longer term solution would build upon this review and ensure that the relevant mechanisms (with the relevant status) be applied under the White Paper and Planning Bill 2013 (and any resulting Regulation).

To that end, universities (as educational establishments) should be exempt from the payment of infrastructure contributions due to the significant contribution they make to local and regional infrastructure.

Under the new planning system there will be three forms of infrastructure contributions:

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- Local infrastructure contributions (previously known as section 94 contributions) e.g. for local roads and traffic management, local open space, basic community facilities and drainage.
- Regional infrastructure contributions e.g. for State and regional roads, transport depots and interchanges, educational establishments and upgrades to regional open space.
- Regional growth funds to purchase land for open space and drainage.

Mechanisms outside this system such as Planning Agreements and providing infrastructure as a condition of development consent will be curtailed and only available in exceptional circumstances. Works-in-kind contributions will still be available.

The White Paper and Planning Bill are silent on whether a public authority/university is required to pay local infrastructure contributions. It is understood that the principles of Circular D6 would still apply under the proposed planning system. Accordingly, the strengthened and revised framework for Crown Developers should reinforce that universities should not be subject to contributions and that educational establishments should be exempted within these plans from the payment of contributions in the same way other essential community services are such as health, hospitals and churches.

Under the White Paper / Planning Bill, all new development will be charged a levy for 'educational establishments' as part of the regional infrastructure contributions. It is an unreasonable use of infrastructure contributions for universities to firstly provide land for education and educational facilities and then to be levied for new development on this same land. As an education provider an automatic exemption should be considered and applied.

We understand that the new planning system around regional growth funds in relation to educational establishments and particularly to universities is still to be determined. As per the relevant argument above, the NSWVCC maintains that significant open space and drainage works would have no direct nexus to universities, given the significant social and physical infrastructure contributions universities already make and provide to both their own and wider-ranging communities. It should be noted that university campuses generally have their own open spaces / playing fields and stormwater management systems, thus lessening any demand for such facilities to be provided by Councils.

It would appear that planning agreements may be the vehicle to clarify the role universities play in the contributions framework. Rather than dealing with this

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matter on a case-by-case basis via a lengthy and expensive process, a more direct method of clarifying the contributions regime applicable to educational establishments and universities is strongly preferred. To that end relevant provisions in the future Regulation or the bringing forward of the revised/updated Circular D6 would be preferable.

6. Recommendations

Short Term (existing planning system)

The NSWVCC's recommendation is a complete review, strengthening and replacement of the existing Circular D6, whether via a section 117(2) Direction or a Practice Note, to ensure an appropriate regime in relation to Crown Development and clarity and consistency around contributions to Crown Development.

The recommended position is that there be no contributions applicable to universities (either as separately defined or as the defined grouping of educational establishments).

Longer Term (future planning system)

The NSWVCC's recommendation with respect to local and regional contributions (and regional growth funds) is that no direct or indirect contributions apply to universities (either as separately defined or as the defined grouping of educational establishments). The future Regulation to support the operation of the Act or the equivalent of a section 117(2) Direction would appear to provide appropriate clarity.

These recommendations are on the basis of the positions as set out above in relation to universities:

- being Crown developers and public authorities for the purposes of planning legislation,
- not being developers in the traditional sense and being registered charities and not-for-profit organisations,
- relying on grants, internal and external funding sources, and donations – the levying which would be tantamount to redirecting scarce funds to localised purposes, often without any direct or clear nexus, and
- being providers and operators of significant social and physical infrastructure that provides a wide and full range of services and facilities to its community and the wider community at large.

It should be recognised that not only do the general public / wider community have access to these services, but that the university communities are often catered for with services and facilities that are unique to the locality of region and may act as

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attractors and substitutes in their own right. Further, universities communities often do not rely on Council-based services as the university otherwise provides for this alternative.