

1992—No. 57

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT
1979—REGULATION**

(Relating to the making, amendment and repeal of contributions plans and related matters)

NEW SOUTH WALES



[Published in Gazette No. 20 of 14 February 1992]

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Environmental Planning and Assessment Act 1979, has been pleased to make the Regulation set forth hereunder.

IAN ARMSTRONG
Acting Minister for Planning.

Commencement

1. This Regulation commences on 28 February 1992.

Amendments

2. The Environmental Planning and Assessment Regulation 1980 is amended:

(a) by inserting after Part 4 the following Part:

PART 4A—CONTRIBUTIONS PLANS

Definitions

41C. (1) In this Part:

“**condition**” means a condition under section 94 of the Act;

“**contribution**” means the dedication of land, the making of a monetary contribution or the provision of a material public benefit, as referred to in section 94 of the Act;

“**contributions plan**” means a contributions plan referred to in section 94AB of the Act.

(2) For the purposes of this Part, public notice concerning a contributions plan is taken to be given when the notice is first published in a newspaper (being a newspaper that is published weekly or more frequently) circulating in the locality of the land to which the plan relates.

Public inspection of plans and records

41D. A council must keep the following available for inspection by the public, free of charge, during the council's office hours:

- (a) each current contributions plan; and
- (b) the contributions register it is required to keep by clause 41M; and
- (c) each annual statement it is required to prepare by clause 41N.

Format of plan

41E. A contributions plan is to be in the form of a written statement and may include supporting maps, plans, diagrams, illustrations and other materials.

Structure and subject-matter of plan

41F A contributions plan must include the following:

- (a) the purpose of the plan;
- (b) particulars identifying the land to which the plan applies;
- (c) details establishing the nexus between the expected types of development in the area and the demand for additional public amenities and services to meet that development;
- (d) the formulas to be used for determining the contributions required for different categories of public amenities and services;
- (e) contribution rates for different types of development specified in a schedule to the plan;
- (f) the council's policy concerning the timing of the payment of monetary contributions and the conditions subject to which deferred or periodic payment may be allowed;
- (g) a works schedule of the specific public amenities and services proposed to be provided by the council, together with an estimate of their cost and staging.

Notice of draft plan

41G. A council must give public notice of its decision to prepare a draft contributions plan within 14 days after the decision is made.

Exhibition of draft plan

41H. Following the preparation of a draft contributions plan, the council:

- (a) must give public notice of the place at which, and the dates and times of the period during which, the plan may be inspected by the public and copies obtained; and
- (b) must publicly exhibit at the place, and during the period, set out in the notice:
 - a copy of the plan; and
 - a copy of any supporting documents,and provide copies of these to interested persons; and
- (c) must specify in the notice the period (being a period no shorter than the 28-day minimum exhibition period required by section 94AB of the Act) during which submissions may be made to the council concerning the plan.

Making of submissions

41I. Any person may, during the period specified in the relevant notice, make written submissions to the council with respect to the draft contributions plan.

Approval etc. of draft plan

41J. (1) After considering any submissions received during the period specified in the relevant notice, the council:

- (a) may approve the draft contributions plan in the form in which it was publicly exhibited; or
- (b) may approve the draft contributions plan in that form with such alterations as the council thinks fit; or
- (c) may decide not to proceed with the plan.

(2) The council must give public notice of its decision within 14 days after the decision is made.

(3) Notice of a decision not to proceed with a contributions plan must include notice of the reasons for that decision.

(4) A contributions plan comes into effect on the date that public notice of its approval is given or on such later date as is specified in the plan.

Amendment etc. of plan

41K. (1) A council may amend or repeal a contributions plan by means of a subsequent contributions plan made in accordance with the provisions of clauses 41E–41J.

(2) A council may repeal a contributions plan by means of a public notice of its decision to repeal the plan.

(3) The repeal of a contributions plan under subclause (2) takes effect on the date of publication of the notice.

Accounting for monetary contributions

41L. (1) A council that receives monetary contributions under section 94 (1) or (2A) of the Act in relation to a particular contributions plan must maintain accounting records that allow those contributions (together with any additional amounts earned from their investment) to be distinguished from all other money held by the council.

(2) The accounting records maintained in relation to a contributions plan must be kept so as to indicate:

- (a) the various categories of public amenities or services for which expenditure is authorised by the plan; and
- (b) the monetary contributions received in accordance with the plan, by reference to the various categories of public amenities or services for which they have been received; and
- (c) the amounts spent in accordance with the plan, by reference to the various categories of public amenities or services for which they have been spent.

(3) A council must disclose the following information in relation to each contributions plan in the notes to its annual financial report:

- (a) the opening and closing balances of money held by the council for the accounting period to which the report relates; and
- (b) the total amounts received by way of monetary contribution during that period, by reference to the various categories of public amenities or services for which they have been received; and
- (c) the total amounts spent in accordance with the plan during that period, by reference to the various categories of public amenities or services for which they have been spent; and

(d) the outstanding obligations of the council to provide public amenities or services, by reference to the various categories of public amenities or services for which monetary contributions have been received during that or any previous accounting period.

(4) A council:

- (a) that has received monetary contributions under section 94 (1) or (2A) of the Act before 28 February 1992; or
- (b) that receives monetary contributions under section 94 (1) or (2A) of the Act (otherwise than in accordance with a contributions plan) after 28 February 1992 but before 17 December 1992,

must maintain accounting records that allow those contributions (together with any additional amounts held from their investment) to be distinguished from all other income and expenditure of the council.

Contributions register

41M. (1) Any council which imposes conditions on development consents under section 94 (1) or (2A) of the Act must maintain a contributions register.

- (2) The council must record the following details in the register:
 - (a) particulars sufficient to identify each development consent in respect of which such a condition has been imposed;
 - (b) the nature and extent of the contribution required by the condition in relation to each public amenity or service;
 - (c) the name of the contributions plan in accordance with which the condition was imposed;
 - (d) the date or dates on which any contribution or part of a contribution required by the condition was received and its nature and extent.

Annual statement

41N. (1) As soon as practicable after the end of each financial year, a council must prepare an annual statement with respect to the contributions plans in force within its area.

(2) The annual statement must disclose, in relation to each contributions plan, the information required by clause 41L (3) to appear in the notes to its annual financial report.

(b) by inserting after clause 44 (4) the following subclause:

(5) A notice given under this clause with respect to a development consent on which a condition has been imposed under section 94 of the Act (being a development consent granted on or after 17 December 1992) must include the following particulars in addition to the particulars required by Form 7:

- (a) the specific public amenity or service in respect of which the condition has been imposed; and
- (b) the name of the contributions plan in accordance with which the condition has been imposed; and
- (c) the address of a place at which a copy of the contributions plan may be inspected.

(c) by inserting in Schedule 2 after paragraph (f) the following paragraph:

(f1) Where a contributions plan that is expressed to apply to the land has been approved under clause 41J, the name of the plan (whether or not the plan is in force).

EXPLANATORY NOTE

This Regulation is made in connection with the commencement of the Environment Planning and Assessment (Contributions Plans) Amendment Act 1991. That Act amends the Environmental Planning and Assessment Act 1979 (“the Principal Act”) so that councils will be able to require contributions of money or land as a condition of consent to the carrying out of development on any land only in accordance with the provisions of a contributions plan in force in respect of the land.

The purpose of this Regulation is to amend the Environmental Planning and Assessment Regulation 1980 so as:

- (a) to make provision for the preparation, exhibition, approval, commencement, amendment and repeal of contributions plans under section 94AB of the principal Act; and
- (b) to require councils to keep proper accounting records of monetary contributions received under section 94 of the Principal Act; and
- (c) to require councils to maintain contributions registers to enable members of the public to ascertain what contributions have been required under section 94 of the principal Act and which of those contributions have been received; and

- (d) to require a council that grants a development consent subject to a condition requiring a contribution of land or money under section 94 of the Principal Act to include in the relevant notice of determination particulars identifying the public amenity or service for which the contribution is required and the name of the contributions plan in accordance with which the condition has been imposed; and
- (e) to require certificates issued by a council under section 149 (2) of the Principal Act to indicate whether or not any contributions plan applies to the land the subject of the certificate.
