



New South Wales

Environmental Planning and Assessment Amendment (Development Contributions) Regulation 2005

under the

Environmental Planning and Assessment Act 1979

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Environmental Planning and Assessment Act 1979*.

CRAIG KNOWLES, M.P.,
Minister for Infrastructure and Planning

Explanatory note

The *Environmental Planning and Assessment Amendment (Development Contributions) Act 2005* amended the *Environmental Planning and Assessment Act 1979* (the *principal Act*) to extend the means by which planning authorities may obtain development contributions to be applied for the provision of public amenities and public services and for other purposes. This Regulation supplements the changes made to the principal Act by that amending Act.

This Regulation:

- (a) declares public authorities to be planning authorities for the purposes of the new provisions of the Act relating to planning agreements, and
- (b) makes provision for the form, subject-matter, making, amendment, revocation and public inspection of planning agreements, and
- (c) makes provision for the maximum percentage levy that can be collected under new section 94A of the principal Act (which requires applicants for development consent to pay a levy of a percentage of the proposed cost of the development) and for the costs of development that are to be included or excluded when calculating that levy, and
- (d) requires councils to keep a proper account of levies collected under new section 94A of the principal Act (in addition to the accounts already required to be kept of monetary contributions paid under section 94 of the principal Act), and
- (e) requires councils to keep a proper account of monies contributed for different purposes that are pooled and applied progressively for those purposes, and
- (f) makes further provision for the subject-matter and review of contributions plans, and

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- (g) provides for the transitional operation of a provision in the Act that allows development contributions paid for different purposes to be pooled and applied progressively for those purposes, and
- (h) makes other changes of a consequential nature.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 93G (2), 93L, 94 (3), 94A (5), 94EA and 157 (the general regulation-making power) and clause 1 of Schedule 6.

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1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Amendment (Development Contributions) Regulation 2005*.

2 Commencement

This Regulation commences on 8 July 2005.

3 Amendment of Environmental Planning and Assessment Regulation 2000

The *Environmental Planning and Assessment Regulation 2000* is amended as set out in Schedule 1.

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Schedule 1 Amendments

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(Section 3)

[1] Clause 3 Definitions

Omit “section 94B” from the definition of *contributions plan*.

Insert instead “section 94EA”.

[2] Clause 3

Insert in alphabetical order:

section 94A condition means a condition under section 94A of the Act requiring the payment of a levy.

section 94A levy means the payment of a levy, as referred to in section 94A of the Act.

[3] Part 4, heading

Omit “Contributions plans”. Insert instead “Development contributions”.

[4] Part 4, Division 1

Re-number Division 1 as Division 1C.

Insert before that Division (as so re-numbered):

Division 1 Preliminary

25A Planning authorities

Pursuant to paragraph (e) of the definition of *planning authority* in section 93C of the Act, all public authorities are declared to be planning authorities for the purposes of Division 6 of Part 4 of the Act.

Division 1A Planning agreements

25B Form and subject-matter of planning agreements

(1) A planning agreement must:

(a) be in writing, and

(b) be signed by the parties to the agreement.

Note. Section 93F (10) of the Act requires a planning agreement to conform with the Act, environmental planning instruments and development consents applying to the relevant land.

- (2) The Director-General may from time to time issue practice notes to assist parties in the preparation of planning agreements.

Note. Under section 93K of the Act the Minister may give planning authorities directions on requirements with respect to planning agreements.

25C Making, amendment and revocation of agreements

- (1) A planning agreement is not entered into until it is signed by all the parties to the agreement.

Note. Section 93G of the Act provides that the agreement cannot be entered into until public notice of the proposed agreement has been given.

- (2) A planning agreement may specify that it does not take effect until:
- (a) if the agreement relates to a proposed change to an environmental planning instrument—the date the change is made, or
 - (b) if the agreement relates to a development application or proposed development application—the date consent to the application is granted.
- (3) A planning agreement may be amended or revoked by further agreement in writing signed by the parties to the agreement (including by means of a subsequent planning agreement).

25D Public notice of planning agreements

- (1) If a planning authority proposes to enter into a planning agreement, or an agreement to amend or revoke a planning agreement, in connection with a proposed change to a local environmental plan, or a development application, the planning authority is to ensure that public notice of the proposed agreement, amendment or revocation, is given as part of and contemporaneously with, and in the same manner as:
- (a) any public notice of the relevant draft local environmental plan that is required to be given by the planning authority under section 66 (1) of the Act, or
 - (b) any notice of the development application that is required to be given by the planning authority by or under the Act, as the case requires.
- (2) If the Minister proposes to enter into a planning agreement, or an agreement to amend or revoke a planning agreement, in connection with a proposed change to a regional environmental plan, the Director-General is to ensure that public notice of the

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proposed agreement, amendment or revocation, is given as part of and contemporaneously with, and in the same manner as, any public notice of the relevant draft regional environmental plan that is required to be given under section 47 of the Act.

- (3) The public notice of a proposed agreement, amendment or revocation must specify the arrangements relating to inspection by the public of copies of the proposed agreement, amendment or revocation.

Note. Section 93G of the Act requires a copy of the proposed agreement, amendment or revocation to be made available for inspection by the public for a period of not less than 28 days.

25E Explanatory note

- (1) A planning authority proposing to enter into a planning agreement, or an agreement that revokes or amends a planning agreement, must prepare a written statement (referred to in this Division as an *explanatory note*):
 - (a) that summarises the objectives, nature and effect of the proposed agreement, amendment or revocation, and
 - (b) that contains an assessment of the merits of the proposed agreement, amendment or revocation, including the impact (positive or negative) on the public or any relevant section of the public.
- (2) Without limiting subclause (1), an explanatory note must:
 - (a) identify how the agreement, amendment or revocation promotes the public interest and one or more of the objects of the Act, and
 - (b) if the planning authority is a development corporation, identify how the agreement, amendment or revocation promotes one or more of its responsibilities under the *Growth Centres (Development Corporations) Act 1974*, and
 - (c) if the planning authority is a public authority constituted by or under an Act, identify how the planning agreement, amendment or revocation promotes one or more of the objects (if any) of the Act by or under which it is constituted, and
 - (d) if the planning authority is a council, identify how the agreement, amendment or revocation promotes one or more of the elements of the council's charter under section 8 of the *Local Government Act 1993*, and

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- (e) identify a planning purpose or purposes served by the agreement, amendment or revocation, and contain an assessment of whether the agreement, amendment or revocation provides for a reasonable means of achieving that purpose, and
 - (f) identify whether the agreement, amendment or revocation conforms with the planning authority's capital works program (if any).
- (3) The explanatory note is to be prepared jointly with the other parties proposing to enter into the planning agreement.
 - (4) However, if 2 or more planning authorities propose to enter into a planning agreement, an explanatory note may include separate assessments prepared by the planning authorities in relation to matters affecting only one of the planning authorities, or affecting those planning authorities in a different manner.
 - (5) A copy of the explanatory note must be exhibited with the copy of the proposed agreement, amendment or revocation when it is made available for inspection by the public in accordance with the Act.
 - (6) If a council is not a party to a planning agreement that applies to the area of the council, a copy of the explanatory note must be provided to the council when a copy of the agreement is provided to the council under section 93G (4) of the Act.
 - (7) A planning agreement may provide that the explanatory note is not to be used to assist in construing the agreement.

25F Councils to facilitate public inspection of relevant planning agreements

- (1) A council must keep a planning agreement register.
- (2) The council must record in the register a short description of any planning agreement (including any amendment) that applies to the area of the council, including the date the agreement was entered into, the names of the parties and the land to which it applies.
- (3) A council must make the following available for public inspection (free of charge) during the ordinary office hours of the council:
 - (a) the planning agreement register kept by the council,
 - (b) copies of all planning agreements (including amendments) that apply to the area of the council,

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(c) copies of the explanatory notes relating to those agreements or amendments.

(4) In this clause, *planning agreement* includes a planning agreement to which the council is not a party but which has been provided to the council under the Act.

25G Director-General to facilitate public inspection of relevant planning agreements

- (1) The Director-General must keep a planning agreement register.
- (2) The Director-General must record in the register a short description of any planning agreement (including any amendment) entered into by the Minister, including the date the agreement was entered into, the names of the parties and the land to which it applies.
- (3) The Director-General must make the following available for public inspection (free of charge) during the ordinary office hours of the Department:
 - (a) the planning agreement register kept by the Director-General,
 - (b) copies of all planning agreements (including amendments) to which the Minister is a party,
 - (c) copies of the explanatory notes relating to those agreements or amendments.

25H Other planning authorities to facilitate public inspection of relevant planning agreements

A planning authority (not being a council or the Minister) must make the following available for public inspection (free of charge) during the ordinary office hours of the planning authority:

- (a) copies of all planning agreements (including amendments) to which it is a party,
- (b) copies of the explanatory notes relating to those agreements or amendments.

Division 1B Development consent contributions

25I Indexation of monetary section 94 contribution—recoupment of costs

For the purposes of section 94 (3) of the Act, the cost of providing public amenities or public services is to be indexed quarterly or

annually (as specified in the relevant contributions plan) in accordance with movements in the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician.

25J Section 94A levy—determination of proposed cost of development

- (1) The proposed cost of carrying out development is to be determined by the consent authority, for the purpose of a section 94A levy, by adding up all the costs and expenses that have been or are to be incurred by the applicant in carrying out the development, including the following:
 - (a) if the development involves the erection of a building, or the carrying out of engineering or construction work—the costs of or incidental to erecting the building, or carrying out the work, including the costs (if any) of and incidental to demolition, excavation and site preparation, decontamination or remediation,
 - (b) if the development involves a change of use of land—the costs of or incidental to doing anything necessary to enable the use of the land to be changed,
 - (c) if the development involves the subdivision of land—the costs of or incidental to preparing, executing and registering the plan of subdivision and any related covenants, easements or other rights.
- (2) For the purpose of determining the proposed cost of carrying out development, a consent authority may have regard to an estimate of the proposed cost of carrying out the development prepared by a person, or a person of a class, approved by the consent authority to provide such estimates.
- (3) The following costs and expenses are not to be included in any estimate or determination of the proposed cost of carrying out development:
 - (a) the cost of the land on which the development is to be carried out,
 - (b) the costs of any repairs to any building or works on the land that are to be retained in connection with the development,
 - (c) the costs associated with marketing or financing the development (including interest on any loans),
 - (d) the costs associated with legal work carried out or to be carried out in connection with the development,
 - (e) project management costs associated with the development,

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- (f) the cost of building insurance in respect of the development,
 - (g) the costs of fittings and furnishings, including any refitting or refurbishing, associated with the development (except where the development involves an enlargement, expansion or intensification of a current use of land),
 - (h) the costs of commercial stock inventory,
 - (i) any taxes, levies or charges (other than GST) paid or payable in connection with the development by or under any law.
- (4) The proposed cost of carrying out development may be adjusted before payment, in accordance with a contributions plan, to reflect quarterly or annual variations to readily accessible index figures adopted by the plan (such as a Consumer Price Index) between the date the proposed cost was determined by the consent authority and the date the levy is required to be paid.
- (5) To avoid doubt, nothing in this clause affects the determination of the fee payable for a development application.

25K Section 94A levy—maximum percentage

The maximum percentage of a section 94A levy is 1 percent of the proposed cost of carrying out the development.

[5] Clause 27 What particulars must a contributions plan contain?

Omit clause 27 (1) (e)–(g). Insert instead:

- (e) the section 94 contribution rates for different types of development, as specified in a schedule to the plan,
- (f) if the plan authorises the imposition of a section 94A condition:
 - (i) the percentage of the section 94A levy and, if the percentage differs for different types of development, the percentage of the levy for those different types of development, as specified in a schedule to the plan, and
 - (ii) the manner (if any) in which the proposed cost of carrying out the development, after being determined by the consent authority, is to be adjusted to reflect quarterly or annual variations to readily accessible index figures adopted by the plan (such as a Consumer Price Index) between the date of that determination and the date the levy is required to be paid,

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- (g) the council's policy concerning the timing of the payment of monetary section 94 contributions, section 94A levies and the imposition of section 94 conditions or section 94A conditions that allow deferred or periodic payment,
 - (h) a map showing the specific public amenities and services proposed to be provided by the council, supported by a works schedule that contains an estimate of their cost and staging (whether by reference to dates or thresholds),
 - (i) if the plan authorises monetary section 94 contributions or section 94A levies paid for different purposes to be pooled and applied progressively for those purposes, the priorities for the expenditure of the contributions or levies, particularised by reference to the works schedule.

[6] Clause 27 (2)

Omit "contribution rates".

Insert instead "section 94 contribution rates or section 94A levy percentages".

[7] Clause 27 (3)

Insert after clause 27 (2):

- (3) A contributions plan must not contain a provision that authorises monetary section 94 contributions or section 94A levies paid for different purposes to be pooled and applied progressively for those purposes unless the council is satisfied that the pooling and progressive application of the money paid will not unreasonably prejudice the carrying into effect, within a reasonable time, of the purposes for which the money was originally paid.

[8] Clause 32 How may a contributions plan be amended or repealed?

Omit clause 32 (3) (b). Insert instead:

- (b) changes to the rates of section 94 monetary contributions set out in the plan to reflect quarterly or annual variations to:
 - (i) readily accessible index figures adopted by the plan (such as a Consumer Price Index), or
 - (ii) index figures prepared by or on behalf of the council from time to time that are specifically adopted by the plan,

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[9] Clause 33A

Insert after clause 33:

33A Review of contributions plan

- (1) A council is required to keep a contributions plan under review and, if a date by which a plan is to be reviewed is stated in it, is to review the plan by that date.
- (2) A council is also to consider any submissions about contributions plans received from public authorities or the public.

[10] Clause 34 Councils must maintain contributions register

Insert “or section 94A conditions” after “section 94 conditions” in clause 34 (1).

[11] Clause 34 (2) (b) and (d)

Insert “or section 94A levy” after “section 94 contribution” wherever occurring.

[12] Clause 35 Accounting for contributions and levies

Omit “monetary section 94 contributions (and any additional amounts earned from their investment)” from clause 35 (1).

Insert instead “monetary section 94 contributions, section 94A levies, and any additional amounts earned from their investment.”.

[13] Clause 35 (2) and (3)

Insert “or section 94A levies” after “section 94 contributions” wherever occurring.

[14] Clause 35 (2) (ba)

Insert after clause 35 (2) (b):

- (ba) in respect of section 94 contributions or section 94A levies paid for different purposes, the pooling or progressive application of the contributions or levies for those purposes, in accordance with any requirements of the plan or any ministerial direction under Division 6 of Part 4 of the Act,

[15] Clause 101 Additional particulars with respect to section 94 and 94A conditions

Insert at the end of clause 101:

- (2) The notice to an applicant concerning a development consent the subject of a section 94A condition must include the following particulars in addition to any other particulars it is required to contain:
 - (a) the contributions plan under which the condition is imposed,
 - (b) the address of the places where a copy of the contributions plan may be inspected.

[16] Clause 146 Compliance with conditions of development consent

Insert “or levy” after “monetary contribution” in clause 146 (b).

[17] Clause 271 Precinct plans and section 94EA contributions plans under SEPP 59

Omit “section 94B” from clause 271 (1) (b).

Insert instead “section 94EA”.

[18] Clause 286B

Insert after clause 286A:

286B Savings and transitional provision: changes to development contributions scheme

Section 93E (2) of the Act, as inserted by the *Environmental Planning and Assessment Amendment (Development Contributions) Act 2005*, extends to money paid under Division 6 of Part 4 of the Act before its substitution by that Act.