



New South Wales

Environmental Planning and Assessment Amendment (Development Contributions) Regulation 2021

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*.

ROB STOKES, MP
Minister for Planning and Public Spaces

Explanatory note

The object of this Regulation is to make further provision about—

- (a) local infrastructure contributions that are administered by councils and requiring councils to make information available about the contributions, including how the contributions have been used or expended, and
- (b) planning agreements that are entered into by planning authorities and requiring planning authorities to make information available about the planning agreements and contributions received under the agreements, and
- (c) the preparation of planning agreements by omitting provisions relating to the preparation of explanatory notes and instead requiring planning authorities to consider a practice note prepared by the Planning Secretary when preparing an explanatory note for a planning agreement.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 7.10, 7.12, 7.18 and 10.13 (the general regulation-making power).

Environmental Planning and Assessment Amendment (Development Contributions) Regulation 2021

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Environmental Planning and Assessment Act 1979

1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Amendment (Development Contributions) Regulation 2021*.

2 Commencement

- (1) This Regulation commences on the day on which it is published on the NSW legislation website, except as provided by subclause (2).
- (2) Schedule 1[5], [6], [8], [9], [10], to the extent that it inserts clause 25H(3), [16], [18]–[20] and [23] commence on 1 July 2022.

Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

[1] Clause 25B Form and subject-matter of planning agreements

Insert after clause 25B(2), after the note—

- (3) A council that is negotiating, or entering into, a planning agreement must consider any relevant practice note.

[2] Clause 25E Explanatory note

Omit clause 25E(2)–(4). Insert instead—

- (2) In preparing the explanatory note, the planning authority must consider any relevant practice note prepared by the Planning Secretary under clause 25B(2).

[3] Clause 25F, heading

Omit the heading. Insert instead—

25F Information about planning agreements—councils

[4] Clauses 25F(2) and 25G(2)

Insert “, a description of the development, if relevant,” after “parties” wherever occurring.

[5] Clause 25F(3)

Omit “(free of charge) during the ordinary office hours”.

Insert instead “on the NSW planning portal and the website”.

[6] Clause 25F(3)(d)

Insert after clause 25F(3)(c)—

- (d) annual statements covering a period for the previous financial year, showing for the year—
- (i) the monetary amounts received by the council under planning agreements, and
 - (ii) the value of works contributed under planning agreements, including assets given in relation to the works, and
 - (iii) the value of land contributed under planning agreements.

[7] Clause 25G, heading

Omit the heading. Insert instead—

25G Information about planning agreements—Planning Secretary

[8] Clause 25G(3)

Omit “(free of charge) during the ordinary office hours of the Department”.

Insert instead “on the NSW planning portal”.

[9] Clause 25G(3)(d)

Insert after clause 25G(3)(c)—

- (d) financial reports covering a period for the previous financial year, showing for the year—

- (i) the monetary amounts received by the Minister under planning agreements, and
- (ii) the value of works contributed under planning agreements, including assets given in relation to the works, and
- (iii) the value of land contributed under planning agreements.

[10] Clause 25H

Omit the clause. Insert instead—

25H Information about planning agreements—other planning authorities

- (1) A planning authority must keep a planning agreement register.
- (2) The planning authority must record in the register a short description of any planning agreement, including any amendment, to which it is a party, including the following—
 - (a) the date the agreement was entered into,
 - (b) the names of the parties,
 - (c) a description of the development, if relevant,
 - (d) the land to which it applies.
- (3) A planning authority must make the following available for public inspection on the NSW planning portal and a website of the planning authority—
 - (a) the planning agreement register kept by the planning authority,
 - (b) copies of all planning agreements, including amendments, to which it is a party,
 - (c) copies of the explanatory notes relating to those agreements or amendments,
 - (d) financial reports covering a period for the previous financial year that show for the year—
 - (i) the monetary amounts received by the planning authority under planning agreements, and
 - (ii) the value of works contributed under planning agreements, including assets given in relation to the works, and
 - (iii) the value of land contributed under planning agreements.
- (4) In this clause—
planning authority does not include a council or the Minister.

[11] Clause 25K Section 7.12 levy—maximum percentage

Omit “*Wollongong City Centre Local Environmental Plan 2007*” from the Table to clause 25K(1)(b).

Insert instead “*Wollongong Local Environmental Plan 2009*”.

[12] Clause 25K(1)(b), Table

Omit “**Land identified in map 1 to the *Chatswood Central Business District (CBD) Section 94A Development Contributions Plan 2011*, as adopted by Willoughby City Council on 21 November 2011**”.

Insert instead “**Land identified in Figure 1 to the *Willoughby Local Infrastructure Contributions Plan 2019*, as adopted by Willoughby City Council on 11 June 2019**”.

[13] Clause 25K(1)(b), Table

Omit the matter relating to **Land identified on the Land Application Map under the Gosford City Centre Local Environmental Plan 2007**.

[14] Clause 25K(1A)

Insert after clause 25K(1)—

- (1A) For the avoidance of doubt, the Table to subclause (1)(b) continues to apply to the land specified in that Table even if the local environmental plan or contributions plan used to describe the land has been repealed.

[15] Part 4, Division 5, heading

Insert “**and reporting**” after “**Accounting**”.

[16] Clause 34 Councils must maintain contributions register

Omit clause 34(2)(a)–(d). Insert instead—

- (a) particulars sufficient to identify each development consent for which a condition has been imposed, including—
- (i) the development application to which the development consent relates, and
 - (ii) the relevant consent authority, and
 - (iii) the date on which the development consent was granted,
- (b) the nature and extent of the section 7.11 contribution or section 7.12 levy required by the condition for each public amenity or service, including—
- (i) the purpose for which the contribution or levy was received, and
 - (ii) the value and location of any land dedicated or material public benefit provided, and
 - (iii) the total of the contribution or levy payable, and
 - (iv) the total of the contribution or levy received,
- (c) the contributions plan under which the condition was imposed,
- (d) the date or dates on which any section 7.11 contribution or section 7.12 levy required by the condition was received, and its nature and extent.

[17] Clause 35, heading

Insert “**—councils**” after “**levies**”.

[18] Clause 35(2)

Omit the subclause. Insert instead—

- (1A) The accounting records for a contributions plan must also identify all contributions received by the council under the plan and, for the contributions—
- (a) the monetary amount or value of the contributions, and
 - (b) whether the contributions were in the form of—
 - (i) money, or
 - (ii) land, or
 - (iii) a material public benefit, other than money or land, or
 - (iv) a combination of the things in subparagraphs (i)–(iii).

- (2) The accounting records for a contributions plan must show—
- (a) all section 7.11 contributions or section 7.12 levies received under the plan, by reference to the various kinds of public amenities or services for which they have been received and for which expenditure is authorised by the plan, and
Example— open space, roads and traffic facilities, community facilities, or drainage and stormwater management
 - (b) for section 7.11 contributions or section 7.12 levies paid for different purposes, the pooling or progressive application of the contributions or levies for those purposes, in accordance with—
 - (i) requirements of the plan, or
 - (ii) a ministerial direction under Division 7.1 of the Act, and
 - (c) the amounts spent in accordance with the plan, by reference to the various kinds of public amenities or services for which they have been spent.

[19] Clause 35(3)(a1)

Insert after clause 35(3)(a)—

- (a1) the value of land and material public benefits, other than land or money, contributed,

[20] Clause 35A

Insert after clause 35—

35A Matters to be included in annual reports of councils

- (1) A council must disclose, in its annual report, how section 7.11 contributions or section 7.12 levies have been used or expended under each contributions plan.
- (2) The following details must be included for each project for which the contributions or levies have been used or expended—
 - (a) the project identification number and description,
 - (b) the kind of public amenity or service to which the project relates,
 - (c) the amount of monetary contributions or levies used or expended on the project,
 - (d) the percentage of the cost of the project funded by contributions or levies,
 - (e) the amounts expended that have been temporarily borrowed from money to be expended for another purpose under the same or another contributions plan,
 - (f) the value of the following used for the project—
 - (i) land,
 - (ii) material public benefit other than money or land,
 - (g) whether the project is complete.
- (3) The annual report must also include—
 - (a) the total value of all contributions and levies received during the period covered by the annual report, and
 - (b) the total value of all contributions and levies expended during the period covered by the annual report.

- (4) The information required to be included in the annual report must also be published on the NSW planning portal.

[21] Clause 36 Councils must prepare annual statements

Omit clause 36(2). Insert instead—

- (2) The annual statement must disclose, for each contributions plan, the information required by clause 35 to be included in the notes to its annual financial report.

[22] Clause 37 Councils must keep certain records available for public inspection

Insert after clause 37(1)(a)—

- (a1) the current contribution rates under each of those plans,

[23] Clause 37(2)

Omit clause 37(2). Insert instead—

- (2) The documents must be made available for public inspection on the NSW planning portal and the website of the council.

Schedule 2 Amendment of Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017

Part 6

Insert after Part 5—

Part 6 Provisions consequent on commencement of Environmental Planning and Assessment Amendment (Development Contributions) Regulation 2020

26 Definitions

In this Part—

amending regulation means the *Environmental Planning and Assessment Amendment (Development Contributions) Regulation 2020*.

principal regulation means the *Environmental Planning and Assessment Regulation 2000*.

27 Practice notes about planning agreements

Clause 25B(3) of the principal regulation does not apply to a new planning agreement or an amendment or revocation of an existing planning agreement if public notice of the agreement, amendment or revocation has been given under section 7.5 of the Act before the commencement of clause 25B(3).

28 Annual statements and financial reports

Clauses 25F(3)(d), 25G(3)(d) and 25H(3)(d) of the principal regulation do not apply to a planning agreement entered into before the commencement of the paragraphs.

29 Contributions register

Clause 34(2)(a) of the principal regulation as substituted by the amending regulation does not apply to a development application received before the substitution.

30 Accounting for contributions and levies

Clause 35(1A) of the principal regulation does not apply to a contribution received before the commencement of that subclause.