



New South Wales

Environmental Planning and Assessment Amendment (Development Contributions) Act 2005 No 19

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New South Wales

Environmental Planning and Assessment Amendment (Development Contributions) Act 2005 No 19

Act No 19, 2005

An Act to amend the *Environmental Planning and Assessment Act 1979* with respect to development contributions; and for other purposes. [Assented to 18 May 2005]

The Legislature of New South Wales enacts:

1 Name of Act

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

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Environmental Planning and Assessment Act 1979 No 203

The *Environmental Planning and Assessment Act 1979* is amended as set out in Schedule 1.

4 Consequential amendment of other Acts

The Acts specified in Schedule 2 are amended as set out in that Schedule.

Schedule 1 Amendment of Environmental Planning and Assessment Act 1979

(Section 3)

[1] **Section 79C Evaluation**

Insert after section 79C (1) (a) (iii):

- (iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and

[2] **Section 80A Imposition of conditions**

Insert “, 94A” after “94” in section 80A (1) (h).

[3] **Part 4, Division 6**

Omit the Division. Insert instead:

Division 6 Development contributions

Subdivision 1 Preliminary

93C Definitions

In this Division:

contributions plan means a contributions plan approved under section 94EA.

planning agreement means a voluntary agreement referred to in section 93F.

planning authority means:

- (a) a council, or
- (b) the Minister, or
- (c) the corporation, or
- (d) a development corporation (within the meaning of the *Growth Centres (Development Corporations) Act 1974*), or
- (e) a public authority declared by the regulations to be a planning authority for the purposes of this Division.

public amenities or *public services* do not include water supply or sewerage services.

93D Relationship to planning instruments

This Division (other than section 93I) does not derogate from or otherwise affect any provision of an environmental planning instrument, whether made before or after the commencement of this section, that requires satisfactory arrangements to be made for the provision of particular kinds of public infrastructure, facilities or services before development is carried out.

93E Provisions relating to money etc contributed under this Division

- (1) A consent authority or planning authority is to hold any monetary contribution or levy that is paid under this Division in accordance with the conditions of a development consent or with a planning agreement for the purpose for which the payment was required, and apply the money towards that purpose within a reasonable time.
- (2) However, money paid under this Division for different purposes in accordance with the conditions of development consents may be pooled and applied progressively for those purposes, subject to the requirements of any relevant contributions plan or ministerial direction under this Division.
- (3) Land dedicated in accordance with this Division is to be made available by the consent authority or planning authority for the purpose for which the dedication was required and within a reasonable time.
- (4) A reference in this section to a monetary contribution or levy includes a reference to any additional amount earned from its investment.

Subdivision 2 Planning agreements

93F Planning agreements

- (1) A planning agreement is a voluntary agreement or other arrangement under this Division between a planning authority (or 2 or more planning authorities) and a person (the *developer*):
 - (a) who has sought a change to an environmental planning instrument, or
 - (b) who has made, or proposes to make, a development application, or

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- (c) who has entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) or (b) applies,
under which the developer is required to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards a public purpose.
- (2) A public purpose includes (without limitation) any of the following:
- (a) the provision of (or the recoupment of the cost of providing) public amenities or public services,
 - (b) the provision of (or the recoupment of the cost of providing) affordable housing,
 - (c) the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land,
 - (d) the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure,
 - (e) the monitoring of the planning impacts of development,
 - (f) the conservation or enhancement of the natural environment.
- (3) A planning agreement must provide for the following:
- (a) a description of the land to which the agreement applies,
 - (b) a description of:
 - (i) the change to the environmental planning instrument to which the agreement applies, or
 - (ii) the development to which the agreement applies,
 - (c) the nature and extent of the provision to be made by the developer under the agreement, the time or times by which the provision is to be made and the manner by which the provision is to be made,
 - (d) in the case of development, whether the agreement excludes (wholly or in part) or does not exclude the application of section 94 or 94A to the development,
 - (e) if the agreement does not exclude the application of section 94 to the development, whether benefits under the agreement are or are not to be taken into consideration in determining a development contribution under section 94,
 - (f) a mechanism for the resolution of disputes under the agreement,

- (g) the enforcement of the agreement by a suitable means, such as the provision of a bond or guarantee, in the event of a breach of the agreement by the developer.
- (4) A provision of a planning agreement in respect of development is not invalid by reason only that there is no connection between the development and the object of expenditure of any money required to be paid by the provision.
Note. See section 93E (1), which requires money paid under a planning agreement to be applied for the purpose for which it was paid within a reasonable time.
- (5) If a planning agreement excludes the application of section 94 or 94A to particular development, a consent authority cannot impose a condition of development consent in respect of that development under either of those sections (except in respect of the application of any part of those sections that is not excluded by the agreement).
- (6) If a planning agreement excludes benefits under a planning agreement from being taken into consideration under section 94 in its application to development, section 94 (6) does not apply to any such benefit.
- (7) Any Minister, public authority or other person approved by the Minister is entitled to be an additional party to a planning agreement and to receive a benefit under the agreement on behalf of the State.
- (8) A council is not precluded from entering into a joint planning agreement with another council or other planning authority merely because it applies to any land not within, or any purposes not related to, the area of the council.
- (9) A planning agreement cannot impose an obligation on a planning authority:
 - (a) to grant development consent, or
 - (b) to exercise any function under this Act in relation to a change to an environmental planning instrument.
- (10) A planning agreement is void to the extent, if any, to which it requires or allows anything to be done that, when done, would breach this section or any other provision of this Act, or would breach the provisions of an environmental planning instrument or a development consent applying to the relevant land.
- (11) A reference in this section to a change to an environmental planning instrument includes a reference to the making or revocation of an environmental planning instrument.

93G Information about planning agreements

- (1) A planning agreement cannot be entered into, and a planning agreement cannot be amended or revoked, unless public notice has been given of the proposed agreement, amendment or revocation, and a copy of the proposed agreement, amendment or revocation has been available for inspection by the public for a period of not less than 28 days.
- (2) The regulations may provide for the public notice to be given under subsection (1) and may provide that it may be given contemporaneously with, in association with, or as part of, any other public notice or public notification that is required to be given of any matter relevant to the planning agreement.
- (3) If the Minister is not a party to a planning agreement, the relevant planning authority that is a party to the agreement must provide to the Minister:
 - (a) a copy of the agreement within 14 days after the agreement is entered into, and
 - (b) if the agreement is amended, a copy of the amendment within 14 days after the amendment is made, and
 - (c) if the agreement is revoked, notice of the revocation within 14 days after the revocation occurs.
- (4) If a council is not a party to a planning agreement that applies to the area of the council, the relevant planning authority that is a party to the agreement must provide to the council:
 - (a) a copy of the agreement within 14 days after the agreement is entered into, and
 - (b) if the agreement is amended, a copy of the amendment within 14 days after the amendment is made, and
 - (c) if the agreement is revoked, notice of the revocation within 14 days after the revocation occurs.
- (5) A planning authority that has entered into one or more planning agreements must, while any such planning agreements remain in force, include in its annual report particulars of compliance with and the effect of the planning agreements during the year to which the report relates.

93H Registered planning agreements to run with land

- (1) A planning agreement can be registered under this section if the following persons agree to its registration:

- (a) if the agreement relates to land under the *Real Property Act 1900*—each person who has an estate or interest in the land registered under that Act, or
 - (b) if the agreement relates to land not under the *Real Property Act 1900*—each person who is seised or possessed of an estate or interest in the land.
- (2) On lodgement by a planning authority of an application for registration in a form approved by the Registrar-General, the Registrar-General is to register the planning agreement:
- (a) by making an entry in the relevant folio of the Register kept under the *Real Property Act 1900* if the agreement relates to land under that Act, or
 - (b) by registering the agreement in the General Register of Deeds if the agreement relates to land not under the *Real Property Act 1900*.
- (3) A planning agreement that has been registered by the Registrar-General under this section is binding on, and is enforceable against, the owner of the land from time to time as if each owner for the time being had entered into the agreement.
- (4) A reference in this section to a planning agreement includes a reference to any amendment or revocation of a planning agreement.

93I Circumstances in which planning agreements can or cannot be required to be made

- (1) A provision of an environmental planning instrument (being a provision made after the commencement of this section):
- (a) that expressly requires a planning agreement to be entered into before a development application can be made, considered or determined, or
 - (b) that expressly prevents a development consent from being granted or having effect unless or until a planning agreement is entered into,
- has no effect.
- (2) A consent authority cannot refuse to grant development consent on the ground that a planning agreement has not been entered into in relation to the proposed development or that the developer has not offered to enter into such an agreement.

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- (3) However, a consent authority can require a planning agreement to be entered into as a condition of a development consent, but only if it requires a planning agreement that is in the terms of an offer made by the developer in connection with:
- (a) the development application, or
 - (b) a change to an environmental planning instrument sought by the developer for the purposes of making the development application.
- (4) In this section, *planning agreement* includes any agreement (however described) containing provisions similar to those that are contained in an agreement referred to in section 93F.

93J Jurisdiction of Court with respect to planning agreements

- (1) A person cannot appeal to the Court under this Act against the failure of a planning authority to enter into a planning agreement or against the terms of a planning agreement.
- (2) This section does not affect the jurisdiction of the Court under section 123.

93K Determinations or directions by Minister

The Minister may, generally or in any particular case or class of cases, determine or direct any other planning authority as to:

- (a) the procedures to be followed in negotiating a planning agreement, or
- (b) the publication of those procedures, or
- (c) other standard requirements with respect to planning agreements.

93L Regulations—planning agreements

The regulations may make provision for or with respect to planning agreements, including the following:

- (a) the form of planning agreements,
- (b) the subject-matter of planning agreements,
- (c) the making, amendment and revocation of planning agreements, including the giving of public notice and inspection by the public,
- (d) the public inspection of planning agreements after they have been made.

Subdivision 3 Development consent contributions

94 Contribution towards provision or improvement of amenities or services

- (1) If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:
 - (a) the dedication of land free of cost, or
 - (b) the payment of a monetary contribution, or both.
- (2) A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.
- (3) If:
 - (a) a consent authority has, at any time, whether before or after the date of commencement of this Part, provided public amenities or public services within the area in preparation for or to facilitate the carrying out of development in the area, and
 - (b) development for which development consent is sought will, if carried out, benefit from the provision of those public amenities or public services,the consent authority may grant the development consent subject to a condition requiring the payment of a monetary contribution towards recoupment of the cost of providing the public amenities or public services (being the cost as indexed in accordance with the regulations).
- (4) A condition referred to in subsection (3) may be imposed only to require a reasonable contribution towards recoupment of the cost concerned.
- (5) The consent authority may accept:
 - (a) the dedication of land in part or full satisfaction of a condition imposed in accordance with subsection (3), or
 - (b) the provision of a material public benefit (other than the dedication of land or the payment of a monetary contribution) in part or full satisfaction of a condition imposed in accordance with subsection (1) or (3).

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- (6) If a consent authority proposes to impose a condition in accordance with subsection (1) or (3) in respect of development, the consent authority must take into consideration any land, money or other material public benefit that the applicant has elsewhere dedicated or provided free of cost within the area (or any adjoining area) or previously paid to the consent authority, other than:
- (a) a benefit provided as a condition of the grant of development consent under this Act, or
 - (b) a benefit excluded from consideration under section 93F (6).
- (7) If:
- (a) a condition imposed under subsection (1) or (3) in relation to development has been complied with, and
 - (b) a public authority would, but for this subsection, be entitled under any other Act to require, in relation to or in connection with that development, a dedication of land or payment of money in respect of the provision of public amenities or public services or both,
- then, despite that other Act, compliance with the condition referred to in paragraph (a) is taken to have satisfied the requirement referred to in paragraph (b) to the extent of the value (determined, if the regulations so provide, in accordance with the regulations) of the land dedicated or the amount of money paid in compliance with the condition.

94A Fixed development consent levies

- (1) A consent authority may impose, as a condition of development consent, a requirement that the applicant pay a levy of the percentage, authorised by a contributions plan, of the proposed cost of carrying out the development.
- (2) A consent authority cannot impose as a condition of the same development consent a condition under this section as well as a condition under section 94.
- (3) Money required to be paid by a condition imposed under this section is to be applied towards the provision, extension or augmentation of public amenities or public services (or towards recouping the cost of their provision, extension or augmentation). The application of the money is subject to any relevant provisions of the contributions plan.

- (4) A condition imposed under this section is not invalid by reason only that there is no connection between the development the subject of the development consent and the object of expenditure of any money required to be paid by the condition.
- (5) The regulations may make provision for or with respect to levies under this section, including:
 - (a) the means by which the proposed cost of carrying out development is to be estimated or determined, and
 - (b) the maximum percentage of a levy.

94B Section 94 or 94A conditions subject to contributions plan

- (1) A consent authority may impose a condition under section 94 or 94A only if it is of a kind allowed by, and is determined in accordance with, a contributions plan (subject to any direction of the Minister under this Division).
- (2) However, in the case of a consent authority other than a council:
 - (a) the consent authority may impose a condition under section 94 or 94A even though it is not authorised (or of a kind allowed) by, or is not determined in accordance with, a contributions plan, but
 - (b) the consent authority must, before imposing the condition, have regard to any contributions plan that applies to the whole or any part of the area in which development is to be carried out.
- (3) A condition under section 94 that is of a kind allowed by a contributions plan (or a direction of the Minister under this Division) may be disallowed or amended by the Court on appeal because it is unreasonable in the particular circumstances of that case, even if it was determined in accordance with the relevant contributions plan (or direction). This subsection does not authorise the Court to disallow or amend the contributions plan or direction.
- (4) A condition under section 94A that is of a kind allowed by, and determined in accordance with, a contributions plan (or a direction of the Minister under this Division) may not be disallowed or amended by the Court on appeal.

94C Cross-boundary issues

- (1) A condition may be imposed under section 94 or 94A for the benefit (or partly for the benefit) of an area that adjoins the local government area in which the development is to be carried out.

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- (2) Any monetary contribution that is required to be paid under any such condition is to be apportioned among the relevant councils:
 - (a) in accordance with any joint or other contributions plan approved by those councils, or
 - (b) if provision is not made for the apportionment in any such plan—in accordance with the terms of the development consent for the development.
 - (3) Any dispute between the councils concerned is to be referred to the Director-General and resolved in accordance with any direction given by the Director-General.

94D Section 94 or 94A conditions imposed by Minister or Director-General in growth centres etc

- (1) This section applies where the Minister or the Director-General, as the consent authority, imposes conditions under section 94 or 94A in relation to:
 - (a) land within a growth centre, or
 - (b) other land within one or more council areas.
- (2) This Division applies to land within a growth centre as if references in this Division to the area were references to the growth centre.
- (3) Any monetary contribution paid in accordance with a condition under section 94 or 94A:
 - (a) must be paid by the Minister or Director-General to the corporation for the growth centre or to the councils of the areas concerned, and
 - (b) must (together with any additional amount earned from its investment) be applied within a reasonable time for the purpose for which it was levied.
- (4) This section applies to the Minister as consent authority whether or not the Minister is the consent authority pursuant to section 88A.
- (5) In this section, *growth centre* has the same meaning as in the *Growth Centres (Development Corporations) Act 1974*.

94E Directions by Minister

- (1) The Minister may, generally or in any particular case or class of cases, direct a consent authority as to:
 - (a) the public amenities and public services in relation to which a condition under section 94 may or may not be imposed, and
 - (b) in the case of a condition under section 94 requiring the payment of a monetary contribution:
 - (i) the means by which or the factors in relation to which the amount of the contribution may or may not be calculated or determined, and
 - (ii) the maximum amount of any such contribution, and
 - (c) the things that may or may not be accepted as a material public benefit for the purposes of a condition under section 94, and
 - (d) the type or area of development in respect of which a condition under section 94A may be imposed and the maximum percentage of the levy, and
 - (e) the use of monetary contributions or levies for purposes other than those for which they were paid, and
 - (f) the preparation of joint contributions plans by two or more councils.
- (2) A consent authority to which a direction is given under this section must comply with the direction in accordance with its terms.
- (3) A consent authority must not, in granting development consent in relation to which a direction under this section applies, impose a condition that is not in accordance with the terms of the direction, despite the other provisions of this Division and despite the provisions of any contributions plan.

Subdivision 4 Development contributions plans

94EA Contributions plans—making

- (1) A council, or two or more councils, may, subject to and in accordance with the regulations, prepare and approve a contributions plan for the purpose of imposing conditions under this Division.

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- (2) If a contributions plan authorises the imposition of conditions under section 94A, the plan is to specify the type or area of development in respect of which a condition under section 94A may be imposed and is to preclude the imposition of a condition under section 94 in respect of that type or area of development.
 - (3) The regulations may make provision for or with respect to the preparation and approval of contributions plans, including the format, structure and subject-matter of plans.

94EB Contributions plans—judicial notice, validity etc

- (1) Judicial notice is to be taken of a contributions plan and of the date on which the plan came into effect.
- (2) It is to be presumed, in the absence of evidence to the contrary, that all conditions and preliminary steps precedent to the making of a contributions plan have been complied with and performed.
- (3) The validity of any procedure required to be followed in making or approving a contributions plan is not to be questioned in any legal proceedings except those commenced in the Court by any person within 3 months after the date on which the plan came into effect.
- (4) The amendment or repeal, whether in whole or in part, of a contributions plan does not affect the previous operation of the plan or anything duly done under the plan.

94EC Contributions plans—complying development

- (1) In relation to an application made to an accredited certifier for a complying development certificate, a contributions plan:
 - (a) is to specify whether or not the accredited certifier must, if a complying development certificate is issued, impose a condition under section 94 or 94A, and
 - (b) can only authorise the imposition by an accredited certifier of a condition under section 94 that requires the payment of a monetary contribution, and
 - (c) must specify the amount of the monetary contribution or levy that an accredited certifier must so impose or the precise method by which the amount is to be determined.
- (2) This section does not limit anything for which a contributions plan may make provision in relation to a consent authority.

[4] Section 122 Definitions

Insert after section 122 (b) (v):

(vi) a planning agreement referred to in section 93F.

[5] Schedule 6 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

*Environmental Planning and Assessment Amendment
(Development Contributions) Act 2005*

[6] Schedule 6

Insert at the end of the Schedule (with appropriate Part and clause numbers):

**Part Environmental Planning and Assessment
Amendment (Development Contributions)
Act 2005**

Definition

In this Part, *2005 amending Act* means the *Environmental Planning and Assessment Amendment (Development Contributions) Act 2005*.

Application of amendments

The substitution of Division 6 of Part 4 of this Act by the 2005 amending Act does not affect anything done under that Division before its substitution, and anything so done is taken to have been done under the corresponding provision of that Division as so substituted.

Schedule 2 Consequential amendment of other Acts

(Section 4)

2.1 City of Sydney Act 1988 No 48

[1] Section 61 Development contributions

Omit “section 94AB” from section 61 (1).

Insert instead “Division 6 of Part 4”.

[2] Section 61 (4) (a)

Omit “section 94AB (3) or 94A”.

Insert instead “any direction of the Minister under Division 6 of Part 4”.

[3] Section 61 (6) and (7)

Insert at the end of the section:

(6) If the *Central Sydney Local Environmental Plan 1996* is replaced by another environmental planning instrument, this section continues to apply to the land to which that Plan applied immediately before its repeal.

(7) A condition authorised by this section is not affected by the enactment of the *Environmental Planning and Assessment Amendment (Development Contributions) Act 2005*. However, this section ceases to apply if a contributions plan is prepared and approved under Division 6 of Part 4 of the Planning Act (as amended by that Act) that authorises the imposition of a levy under section 94A of the Planning Act in relation to the land to which this section applies.

2.2 Local Government Act 1993 No 30

Section 12 What information is publicly available?

Omit “plans made under section 94AB of” from section 12 (1).

Insert instead “contributions plans made under”.

Environmental Planning and Assessment Amendment (Development Contributions) Act 2005 No 19

Schedule 2 Consequential amendment of other Acts

2.3 Sydney Olympic Park Authority Act 2001 No 57

Section 23 Contributions under sec 94 of EP and A Act

Omit “section 94B”. Insert instead “Division 6 of Part 4”.

[Second reading speech made in—
Legislative Assembly on 8 December 2004
Legislative Council on 6 May 2005]

BY AUTHORITY