



PLANNING SYSTEM

Development contributions

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Related	

Changes to the development contributions system in NSW

This circular provides councils, other consent authorities, the planning and development industry and the community with an overview of the recent changes to the development contributions system under section 94 of the Environmental Planning and Assessment Act.

Introduction

On 6 May 2005 the Environmental Planning and Assessment Amendment (Development Contributions) Bill 2005 was passed by the NSW Parliament. The Bill received assent on 18 May 2005.

A copy of the EP&A Amendment (Development Contributions) Act 2005 can be downloaded from the NSW Government legislation website at: www.legislation.nsw.gov.au under legislation "As made", or via the DIPNR website at: www.dipnr.nsw.gov.au/planningreform.html.

The amendment Act will be proclaimed to commence on 8 July 2005. This will allow for amendments to the EP&A Regulation 2000 to be prepared and an update to the *Section 94 Contributions Plans Manual* to be finalised.

Purpose of the changes

The EP&A Act is amended to extend the way in which development contributions may be collected and used.

The changes offer two extra ways for development contributions to be obtained, by:

- voluntary planning agreements, or
- fixed development consent levies.

The traditional imposition of section 94 contributions as a condition of development consent remains as a third option.

These alternatives will allow consent authorities to choose the method, or combination of methods, that best suits their area.

For example, in greenfield areas, the traditional section 94 approach may be the most appropriate. In established urban areas, where there is little opportunity to acquire open space and development is often incremental, a fixed levy may be the most suitable option. Similarly a fixed levy might be best for small rural councils to use where development is sporadic, and the administration costs associated with preparing a section 94 contributions plan may be difficult to justify.

Voluntary planning agreements are likely to be particularly useful for large scale developments that have longer time frames, are likely to be developed in stages, and in situations where the developer has a key interest in delivering public infrastructure.

The amendments also introduce measures to improve the operation, accountability and flexibility of the existing development contributions system by authorising the borrowing or pooling of funds between contribution accounts and allowing cross boundary levying between neighbouring councils, subject to the preparation of a joint contributions plan by two or more councils. The amendments also allow for the recoupment of the historical cost of previously provided public services and amenities to be indexed in accordance with the Regulation.

Outline of main changes

Voluntary planning agreements

The amendment Act establishes a statutory framework for planning agreements as a means for planning authorities to obtain contributions for a public purpose. A planning agreement is a

contractual agreement between the planning authority and the developer.

Planning authorities include councils, the Minister, a development corporation or other public authority prescribed by the Regulations. A public purpose includes the provision of (or the recoupment of the cost of providing) public amenities and services, affordable housing, transport and other infrastructure, the funding of recurrent expenditure, the monitoring of the impacts of development and the conservation or enhancement of the natural environment.

Under a planning agreement a developer may be required to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them.

Because the terms of a planning agreement are a matter for commercial negotiation, there does not need to be a nexus between the development to which a planning agreement relates and the object of expenditure.

Planning agreements can be entered into at either the rezoning or development application stage.

A planning agreement must be publicly exhibited for 28 days before it is entered into.

A planning agreement may be registered by the Registrar-General in relation to the land to which it applies and thereby bind successors in title to the land.

Once entered into, a planning agreement becomes a statutory obligation. A breach of a planning agreement will be a breach of the EP&A Act.

Fixed development consent levy

A consent authority can impose as a condition of development consent a requirement that the applicant pay a levy of the percentage of the proposed cost of carrying out the development.

The levy must be authorised by a contributions plan and cannot be required in addition to a section 94 contribution on the same development consent.

There does not have to be a connection between the subject of the levy and the object the money is to be spent on, although a consent authority will need to identify the public amenities or services to be provided, recouped, extended or augmented to which the money is to be applied in a contributions plan.

Pooling of contribution funds

The amendment Act authorises that monetary contributions paid for different purposes (other than under a voluntary planning agreement) may be pooled and applied towards any other purpose for which a contribution is required to be paid. This change is designed to promote the efficient use of funds and timely provision of priority infrastructure while ensuring that all borrowed funds are ultimately paid back to the source development contributions fund.

However, while such funds may be pooled the funds must still be applied for the purpose for which they were raised within a reasonable time.

Cross boundary contributions

The amendment Act provides that a development contribution may be levied or imposed for the benefit of an adjoining council area and that adjoining councils may collectively develop a development contributions plan and distribute money between them for purposes in accordance with that plan.

This recognises that a development can occur near a local government area boundary but have a wider impact on more than one local government area.

Attachment A provides a comparison table between the provisions in the EP&A Amendment (Development Contributions) Act 2005 and the existing provisions in Division 6 of Part 4 of the EP&A Act.

Changes to the EP&A Regulation

The EP&A Regulation will be amended to supplement the changes made by the amendment Act.

The Regulation will:

- declare which public authorities are to be planning authorities for the purposes of the Act
- make provision for the form, subject matter, making, amendment, revocation and public inspection of planning agreements
- set the maximum percentage levy that can be collected under the new section 94A of the Act at 1 per cent of the proposed development cost
- make provision for the costs of development that are to be included or excluded when calculating the levy
- require councils to keep a proper account of levies collected under the new section 94A, in addition to the accounts already required to be kept of monetary contributions paid under section 94 of the Act
- require councils to keep a proper account of monies contributed for different purposes that are pooled and applied progressively for those purposes
- make further provision for the subject matter and review of contributions plans
- make other changes of a consequential and transitional nature.

Updating the Section 94 Contributions Plans Manual

Work is also underway to revise the existing *Section 94 Contributions Plans Manual* to reflect the changes arising out of the new legislation and regulations. The Manual will also address various recommendations made in the Ministerial taskforce report on funding local infrastructure (section 94 and development levies) and provide updated guidance on best practice.

Benefits of the reform package

The changes to the NSW development contributions system will give councils and other consent authorities much more flexibility and choice in the ways development contributions can be obtained in a contemporary urban management environment and in dealing with the changing pattern and rate of development in cities, regional towns and rural areas.

The changes clarify the legal framework around a number of common practices and promote the best of these practices. The changes allow councils to sensibly manage their resources to get maximum benefit from funds collected.

The package includes measures to improve transparency and accountability of funds received and improves councils' ability to expend funds in a timely manner.

The changes will improve the efficient delivery of facilities and infrastructure to communities and widens the range of public purposes (through the voluntary planning agreement regime) for which developer contributions can be obtained.

Further information

For further information about the Environmental Planning and Assessment Act and Regulation, contact:

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For more information about the current reforms to the NSW planning system, visit the DIPNR website www.dipnr.nsw.gov.au/planningreform.html.

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Important note

This information sheet does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this document.

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Attachment A

A comparison between the new provisions in the EP&A Amendment (Development Contributions) Act 2005 and the existing provisions in Division 6 of Part 4 of the EP&A Act.

Development Contributions Act (sections)	EP&A Act (sections)
79C(1)(a)(iiia) Evaluation	No equivalent
80A (1)(h) Imposition of conditions	No equivalent
93C Definitions	No equivalent
93D Relationship to planning instruments	No equivalent
93E Provisions relating to money etc contributed under this Division	94(6) & 94(8) No equivalent
93F Planning agreements	No equivalent
93G Information about planning agreements	No equivalent
93H Registered planning agreements to run with the land	No equivalent
93I Circumstances in which planning agreements can or cannot be required to be made	No equivalent
93J Jurisdiction of Court with respect to planning agreements	No equivalent
93K Determinations or directions by Minister	No equivalent
93L Regulations – planning agreements	No equivalent
94 Contribution towards provision or improvement of amenities or services	94(1) – (5), 94(9) – (10)
94A Fixed development consent levies	No equivalent
94B Section 94 or 94A conditions subject to contributions plan	94(11) – (12)
94C Cross-boundary issues	No equivalent
94D Section 94 or 94A conditions imposed by Minister or Director-General on growth centres etc	94A
94E Directions by Minister	94E
94EA Contributions plans – making	94B
94EB Contributions plans – judicial notice, validity etc	94C
94EC Contributions plans – complying development	94D
122(b)(vi) Definitions	No equivalent