



New South Wales

Environmental Planning and Assessment Amendment (Affordable Housing Development Contributions) Bill 2008

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Environmental Planning and Assessment Act 1979* with respect to development contributions as follows:

- (a) to require any development consent for the erection and use of buildings containing 10 or more dwellings to include a condition requiring the dedication of land, or the payment of a monetary contribution, for the purpose of providing affordable housing (and to require that development contribution to be no more than 25 per cent of the total floor area of the proposed building or buildings or its cash equivalent),
- (b) to omit the consideration of the potential impact of a proposed development contribution on the affordability of housing from the key considerations for development contributions,
- (c) to make affordable housing a key community infrastructure, so that a council's contributions plan can require a community infrastructure contribution to be made for the purpose of providing affordable housing,
- (d) to omit a provision that requires that planning agreements entered into by councils be limited to key community infrastructure,

- (e) to remove the Minister's power to direct a consent authority to transfer land dedicated, or a monetary contribution paid, as a compulsory development contribution to a person nominated by the Minister,
- (f) to require the consent authority, in all cases, to make available land dedicated as a compulsory contribution, or to apply a monetary contribution paid as a compulsory development contribution, for the purposes of affordable housing or to transfer the land, or pay the monetary contribution, to a social housing provider or a council,
- (g) to provide that any community infrastructure contribution or a State infrastructure contribution can be used for the purpose of providing affordable housing.

This Bill also repeals *State Environmental Planning Policy No 70—Affordable Housing (Revised Schemes)* and makes consequential amendments to the *Redfern–Waterloo Authority Act 2004* and a number of environmental planning instruments.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 is a formal provision that gives effect to the amendments to the *Environmental Planning and Assessment Act 1979* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Redfern–Waterloo Authority Act 2004* set out in Schedule 2.

Clause 5 is a formal provision that gives effect to the amendments to the environmental planning instruments specified in Schedule 3.

Clause 6 repeals *State Environmental Planning Policy No 70—Affordable Housing (Revised Schemes)* as a consequence of the amendments made by Schedule 1 [1] and [7] to the proposed Act.

Clause 7 provides for the repeal of the proposed Act after the proposed Act commences. Once the proposed Act commences, it will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Environmental Planning and Assessment Act 1979

Schedule 1 [1] replaces the existing definition of *affordable housing* in section 4 (1) of the *Environmental Planning and Assessment Act 1979* (which currently provides for the regulations or an environmental planning instrument to specify which households affordable housing is provided for). The revised definition covers housing that is intended to be supplied to households having disposable incomes in the lowest 40 per cent of household incomes, for the time being, for the Statistical

Subdivision of Inner Sydney, according to data published by the Australian Bureau of Statistics, and at a rental of no more than 30 per cent of relevant tenants' incomes.

Schedule 1 [2] inserts a note that is consequential on the amendment made by Schedule 1 [7].

Schedule 1 [3] and [5] make affordable housing a kind of key community infrastructure. (Proposed section 116I provides that a council's contributions plan cannot allow the council to require a community infrastructure contribution unless the community infrastructure is key community infrastructure or additional approved community infrastructure).

Schedule 1 [4] omits the consideration of the potential impact of a proposed development contribution on the affordability of housing from the key considerations for development contributions for the purposes of proposed Part 5B (Provision of public infrastructure).

Schedule 1 [6] omits a provision that provides that planning agreements entered into by councils are limited to key community infrastructure.

Schedule 1 [7] replaces the provisions about affordable housing proposed to be inserted by uncommenced provisions of the *Environmental Planning and Assessment Amendment Act 2008*.

Proposed section 116Y requires the payment of monetary contributions, or the dedication of land, for the purpose of affordable housing as a condition of any development consent relating to the erection of buildings containing 10 or more dwellings. (At present a development contribution may be required (at the consent authority's discretion) for the purpose of providing affordable housing in the case of any development.) The new provision may be imposed only if the need for affordable housing has been identified in a local environmental plan, rather than a State environmental planning policy.

Proposed section 116Z requires other contributions to be taken into account by a consent authority.

Proposed section 116ZA makes it clear that the proposed Division does not prevent the imposition of other conditions concerning affordable housing.

Proposed section 116ZB removes the Minister's power to direct a consent authority to transfer such land or such a monetary contribution to a person nominated by the Minister and requires the consent authority, in all cases, to make such land available, or apply such a monetary contribution, for the purposes of affordable housing.

Proposed section 116ZBA provides that a monetary contribution (together with any additional amount earned from its investment) may be applied for the purpose of providing affordable housing in the area concerned or an adjoining area even if the purpose for which the contribution was paid is not related to affordable housing.

Schedule 1 [8] makes an amendment that is consequential on the amendment made by Schedule 1 [1].

Explanatory note

Schedule 1 [9] enables the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [10] makes provision of a savings and transitional nature consequent on the enactment of the proposed Act.

Schedule 2 Consequential amendment of Redfern–Waterloo Authority Act 2004

Schedule 2 [1]–[6] contains amendments to the *Redfern–Waterloo Authority Act 2004* that are consequential on the amendment made by Schedule 1 [7].

Schedule 2 [7] amends clause 1 of Schedule 4 to the *Redfern–Waterloo Authority Act 2004* to enable the Governor to make regulations of a savings or transitional nature consequent on the amendments made to that Act by Schedule 2 [1]–[6].

Schedule 3 Consequential amendment of environmental planning instruments

Schedule 3 contains amendments to *South Sydney Local Environmental Plan 1998*, *Sydney Regional Environmental Plan No 26—City West* and *Willoughby Local Environmental Plan 1995* that are consequential on the amendment made by Schedule 1 [7].



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Environmental Planning and Assessment Amendment (Affordable Housing Development Contributions) Bill 2008

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New South Wales

Environmental Planning and Assessment Amendment (Affordable Housing Development Contributions) Bill 2008

No. , 2008

A Bill for

An Act to amend the *Environmental Planning and Assessment Act 1979* with respect to the collection of affordable housing contributions from developers; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Environmental Planning and Assessment Amendment (Affordable Housing Development Contributions) Act 2008</i> .	3 4
2 Commencement	5
This Act commences immediately after the commencement of Schedule 3.1 [6] to the <i>Environmental Planning and Assessment Amendment Act 2008</i> .	6 7 8
3 Amendment of Environmental Planning and Assessment Act 1979 No 203	9 10
The <i>Environmental Planning and Assessment Act 1979</i> is amended as set out in Schedule 1.	11 12
4 Consequential amendment of Redfern–Waterloo Authority Act 2004 No 107	13 14
The <i>Redfern–Waterloo Authority Act 2004</i> is amended as set out in Schedule 2.	15 16
5 Consequential amendment of environmental planning instruments	17
The environmental planning instruments specified in Schedule 3 are amended as set out in that Schedule.	18 19
6 Repeal of State Environmental Planning Policy No 70—Affordable Housing (Revised Schemes)	20 21
<i>State Environmental Planning Policy No 70—Affordable Housing (Revised Schemes)</i> is repealed.	22 23
7 Repeal of Act	24
(1) This Act is repealed on the day following the day on which this Act commences.	25 26
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	27 28

Schedule 1	Amendment of Environmental Planning and Assessment Act 1979	1
		2
	(Section 3)	3
[1] Section 4 Definitions		4
	Omit the definition of <i>affordable housing</i> from section 4 (1). Insert instead:	5
	<i>affordable housing</i> means housing that is intended to be supplied to households:	6
	(a) having disposable incomes in the lowest 40 per cent of household incomes, for the time being, for the Statistical Subdivision of Inner Sydney (Statistical Subdivision 10505), according to data published by the Australian Bureau of Statistics, and	7
	(b) at a rental of no more than 30 per cent of relevant tenants' incomes.	8
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[2] Section 80A Imposition of conditions		15
	Insert at the end of the section:	16
	Note. Section 116Y requires that development consent for development for the purposes of a building or buildings that contain 10 or more dwellings must always be subject to a condition requiring a development contribution (which may involve paying money or dedicating land) to be used for the purpose of providing affordable housing, if the relevant local environmental plan has identified a need for affordable housing.	17
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[3] Section 116C Community and public infrastructure (as proposed to be inserted by Act No 36 of 2008)		23
	Omit "and public services" from the definition of <i>community infrastructure</i> in section 116C (1).	24
	Insert instead ", public services and affordable housing".	25
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		27
[4] Section 116D Key considerations for development contributions (as proposed to be inserted by Act No 36 of 2008)		28
	Omit section 116D (b).	29
		30
[5] Section 116I Councils limited to contributions for key community infrastructure (as proposed to be inserted by Act No 36 of 2008)		31
	Insert "affordable housing and other" after "being" in section 116I (1) (a).	32
		33
[6] Section 116V Council planning agreements limited to key community infrastructure (as proposed to be inserted by Act No 36 of 2008)		34
	Omit the section.	35
		36

[7] Part 5B, Division 5 (as proposed to be inserted by Act No 36 of 2008)	1
Omit the Division. Insert instead:	2
Division 5 Development contributions for affordable housing	3 4
116Y Conditions requiring land or contributions for affordable housing in relation to certain multi-dwelling buildings	5 6
(1) A local environmental plan may identify that there is a need for affordable housing within an area to which the plan applies.	7 8
(2) A consent authority must impose one of the following conditions (as determined by the consent authority) on any development consent granted by the consent authority that enables the erection of a building that contains 10 or more dwellings, or buildings that together contain 10 or more dwellings, in such an area:	9 10 11 12 13
(a) that the applicant for the development consent concerned must pay a monetary contribution to the consent authority to be used for the purpose of providing affordable housing that, in the opinion of the consent authority, is equivalent to or less than the value of the relevant percentage of the total floor area of the proposed building or buildings that is intended to be used exclusively for residential purposes (excluding common property), or	14 15 16 17 18 19 20 21
(b) that the applicant for the development consent concerned must, if the relevant percentage of that total floor area is sufficient, dedicate in favour of the consent authority, free of cost, land comprised of one or more complete dwellings with a total floor area of at least the relevant percentage, to be used for the purpose of providing affordable housing.	22 23 24 25 26 27
(3) If an applicant for a development application is required to dedicate land under subsection (2) (b):	28 29
(a) comprised of only one complete dwelling—that dwelling is to have a total floor area of not less than 100 square metres, or	30 31 32
(b) comprised of more than one complete dwelling—the dwellings are to have an average total floor area of not less than 100 square metres and each of those dwellings is to have a total floor area of not less than 50 square metres.	33 34 35 36
(4) For the avoidance of doubt, the demolition of a building, or a change of use of land, does not give rise to an entitlement to a refund of any amount that has been contributed under a condition imposed by this section.	37 38 39 40

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- (5) This section does not apply to a development consent for development proposed to be carried out by or on behalf of a social housing provider. 1
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- (6) A condition may be imposed under this section only if the condition is in accordance with a scheme for dedications or contributions set out in or adopted by the relevant local environmental plan. 4
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- (7) A reference in this section to the *relevant percentage* of the total floor area of proposed development is a reference to: 8
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- (a) an amount equivalent to 30 per cent of the total floor area of the proposed building or buildings, if the building or buildings are proposed to be erected by or on behalf of a public authority, or 10
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- (b) an amount equivalent to 25 per cent of the total floor area of the proposed building or buildings, if the proposed building or buildings are proposed to be erected by or on behalf of a person other than a public authority. 14
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- (8) In determining the value of the relevant percentage of the total floor area of a building or buildings for the purposes of subsection (2) (a), the consent authority is to consider the most recent median sales price, as documented by Housing NSW, of dwellings of a similar size to the dwellings the subject of the development consent. 18
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- (9) In this section: 24
- common property* means: 25
- (a) common property within the meaning of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*, or 26
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28
- (b) association property within the meaning of the *Community Land Development Act 1989*. 29
30
- dwelling* means a room or suite of rooms occupied or used, or so constructed or adapted as to be capable of being occupied or used, as a separate domicile. 31
32
33
- relevant percentage*—see subsection (7). 34
- social housing provider* means any of the following: 35
- (a) the New South Wales Land and Housing Corporation, 36
- (b) the Office of Community Housing of Housing NSW, 37
- (c) the NSW Aboriginal Housing Office, 38

(d)	an organisation for the time being registered with the Office of Community Housing, or under Part 5 of the <i>Aboriginal Housing Act 1998</i> ,	1 2 3
(e)	a registered community housing provider within the meaning of the <i>Housing Act 2001</i> (as amended by the <i>Housing Amendment (Community Housing Providers) Act 2007</i>),	4 5 6 7
(f)	an organisation prescribed by the regulations.	8
	total floor area means the sum of the areas of each floor of a building that are within the outer face of the external enclosing walls, excluding:	9 10 11
(a)	columns, fin walls, sun control devices, awnings and other elements, projections or works outside the general lines of the outer face of the external walls (other than balconies), and	12 13 14 15
(b)	ancillary car parking required by the consent authority and any associated internal vehicular and pedestrian access to that car parking, and	16 17 18
(c)	space for the loading and unloading of goods.	19
116Z	Other contributions to be taken into account	20
	A consent authority that proposes to impose a condition in accordance with this Division must take into consideration any land or other sum of money that the applicant has previously dedicated free of cost, or previously paid, for the purpose of affordable housing within the area otherwise than as a condition of a consent.	21 22 23 24 25 26
116ZA	Other conditions concerning affordable housing	27
	This Division does not prevent the imposition on a development consent of other conditions relating to the provision, maintenance or retention of affordable housing. Such conditions may require, but are not restricted to, the imposition of covenants (including positive covenants) or the entering into of contractual or other arrangements.	28 29 30 31 32 33
116ZB	Use of affordable housing contributions	34
(1)	Land dedicated in accordance with a condition imposed under this Division:	35 36
(a)	must be made available by the consent authority for the purposes of affordable housing within a reasonable time, or	37 38 39

(b)	must be transferred by the consent authority:	1
(i)	if the consent authority is a council—to a social housing provider or the council of an adjoining area, or	2 3 4
(ii)	if the consent authority is not a council—to a social housing provider or the council of the area in which the land is located.	5 6 7
(2)	Any monetary contribution paid in accordance with a condition imposed under this Division (and any additional amount earned from its investment):	8 9 10
(a)	must be held by the consent authority for the purpose for which the payment was required and applied for the purposes of affordable housing in the area or an adjoining area within a reasonable time, or	11 12 13 14
(b)	must be paid by the consent authority:	15
(i)	if the consent authority is a council—to a social housing provider or the council of an adjoining area, or	16 17 18
(ii)	if the consent authority is not a council—to a social housing provider or the council of the area in which the contribution is proposed to be applied for the purposes of affordable housing.	19 20 21 22
(3)	A council or social housing provider:	23
(a)	must make available any land transferred to the council or social housing provider under this Division for the purposes of affordable housing within a reasonable time, and	24 25 26 27
(b)	must apply any monetary contribution paid to the council or social housing provider under this Division (and any additional amount earned from its investment) for the purposes of affordable housing in the area concerned or in an adjoining area within a reasonable time.	28 29 30 31 32
(4)	In this section: <i>social housing provider</i> has the same meaning as in section 116Y.	33 34 35
116ZBA	Use of other development contributions for affordable housing	36
	Despite section 116F (1), (3) and (5), a monetary contribution (together with any additional amount earned from its investment), or land dedicated under this Part, may be applied for the purpose of affordable housing in the area concerned or an	37 38 39 40

	adjoining area even if the purpose for which the contribution or land was paid or dedicated is not related to affordable housing.	1 2
[8]	Section 157 Regulations	3
	Omit section 157 (1) (e). Insert instead:	4
	(e) the purposes, objectives, provision or maintenance of affordable housing, including enabling the Minister by order to determine matters relating to affordable housing, or	5 6 7 8
[9]	Schedule 6 Savings, transitional and other provisions	9
	Insert at the end of clause 1 (1):	10
	<i>Environmental Planning and Assessment Amendment (Affordable Housing Development Contributions) Act 2008</i>	11 12
[10]	Schedule 6	13
	Insert at the end of the Schedule with appropriate Part and clause numbers:	14
Part	Environmental Planning and Assessment Amendment (Affordable Housing Development Contributions) Act 2008	15 16 17
	Definition	18
	In this Part:	19
	<i>amending Act</i> means the <i>Environmental Planning and Assessment Amendment (Affordable Housing Development Contributions) Act 2008</i> .	20 21 22
	Application of new provisions to development applications and contributions	23 24
(1)	Section 94F, as in force immediately before the commencement of Schedule 3.1 [6] to the <i>Environmental Planning and Assessment Amendment Act 2008</i> continues to apply to a development application lodged, but not finally determined, before the repeal of that section by that Act.	25 26 27 28 29
(2)	For this purpose, a reference in section 94F:	30
(a)	to a State environmental planning policy is taken to be a reference to <i>State Environmental Planning Policy No 70—Affordable Housing (Revised Schemes)</i> , or	31 32 33
(b)	to a local environmental plan or a regional environmental plan is taken to be a reference to <i>South Sydney Local</i>	34 35

<i>Environmental Plan 1998, Sydney Regional</i>	1
<i>Environmental Plan No 26—City West or Willoughby</i>	2
<i>Local Environmental Plan 1995,</i>	3
as in force immediately before the repeal of that section by the	4
<i>Environmental Planning and Assessment Amendment Act 2008.</i>	5
(3) Section 94G, as in force immediately before the commencement	6
of Schedule 3.1 [6] to the <i>Environmental Planning and</i>	7
<i>Assessment Amendment Act 2008</i> , continues to apply in respect	8
of land dedicated, or a monetary contribution paid, in accordance	9
with a condition imposed under section 94F (including a	10
condition imposed on a development consent following a	11
determination referred to in subclause (1)) as if that Act and the	12
amending Act had not been enacted.	13
Application of repealed provisions of environmental planning	14
instruments	15
(1) Division 3 of Part 4 of <i>South Sydney Local Environmental Plan</i>	16
<i>1998</i> , as in force immediately before the commencement of the	17
amending Act, continues to apply in respect of a development	18
application lodged, but not finally determined, before the repeal	19
of that Division by the amending Act.	20
(2) Part 4 of <i>Sydney Regional Environmental Plan No 26—City</i>	21
<i>West</i> , as in force immediately before the commencement of the	22
amending Act, continues to apply in respect of a development	23
application lodged, but not finally determined, before the repeal	24
of that Part by the amending Act.	25
(3) Clause 25B of <i>Willoughby Local Environmental Plan 1995</i> , as in	26
force immediately before the commencement of the amending	27
Act, continues to apply in respect of a development application	28
lodged, but not finally determined, before the repeal of that	29
clause by the amending Act.	30

Schedule 2	Consequential amendment of Redfern–Waterloo Authority Act 2004	1
		2
	(Section 4)	3
[1]	Section 30 Development contributions for affordable housing	4
	Omit the section.	5
[2]	Section 31, heading	6
	Omit “(other than for affordable housing)”.	7
[3]	Section 31 (8)	8
	Insert “or 6A” after “Division 6”.	9
[4]	Section 32 Contributions plans and payment of development contributions	10
	Omit “sections 30 and 31” from section 32 (1). Insert instead “section 31”.	11
[5]	Section 32 (2)	13
	Omit the subsection.	14
[6]	Section 32 (4) and (5)	15
	Omit “section 30 or 31” wherever occurring. Insert instead “section 31”.	16
[7]	Schedule 4 Savings, transitional and other provisions	17
	Insert at the end of clause 1 (1):	18
	<i>Environmental Planning and Assessment Amendment (Affordable Housing Development Contributions) Act 2008</i> , but	19
	only in relation to the amendments made to this Act	20
		21

Schedule 3	Consequential amendment of environmental planning instruments	1 2
	(Section 5)	3
3.1	South Sydney Local Environmental Plan 1998	4
	Part 4, Division 3 Affordable housing at Green Square	5
	Omit the Division.	6
3.2	Sydney Regional Environmental Plan No 26—City West	7
	Part 4 Affordable housing in the Ultimo-Pyrmont Precinct	8
	Omit the Part.	9
3.3	Willoughby Local Environmental Plan 1995	10
[1]	Clause 5 Definitions	11
	Omit the definitions of <i>special needs housing groups</i> , <i>the Willoughby Local Housing Program</i> , <i>Willoughby Local Housing</i> and <i>Willoughby Local Housing Precinct</i> from clause 5(1).	12 13 14
[2]	Clause 25B Willoughby Local Housing to be provided in Willoughby Local Housing Precincts	15 16
	Omit the clause.	17