

## **Environmental Planning and Assessment Amendment (Development Contributions) Bill 2004**

New South Wales

### **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* (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 public purposes. As an alternative to obtaining contributions towards public amenities and public services through the imposition of conditions of development consent (as is currently provided for under section 94 of the Principal Act), a council or other consent authority may (if authorised by a development contributions plan) impose a condition of development consent that requires applicants to pay a levy of the percentage of the proposed cost of the development. In addition, planning authorities (including the Minister) will be specifically authorised to obtain development contributions for any public purpose through voluntary planning agreements with the developer.

#### 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 on a day or days to be appointed by proclamation.

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

**Clause 4** is a formal provision giving effect to the consequential amendments to other Acts set out in Schedule 2.

#### **Schedule 1 Amendment of Environmental Planning and Assessment Act 1979**

**Schedule 1 [3]** substitutes Division 6 of Part 4 of the Principal Act (which currently makes provision with respect to section 94 contributions for public amenities and public services).

Proposed section 93C sets out definitions used in the proposed Division. In line with the existing provisions of section 94, **public amenities** or **public services** are defined to exclude water supply or sewerage services. A **planning authority** is defined to mean a council, the Minister (including the Minister as corporation sole under the Principal Act), a development corporation or other public authority prescribed by the regulations.

Proposed section 93D provides that the proposed Division does not affect the provisions of any environmental planning instrument that require satisfactory arrangements for particular public infrastructure, facilities or services before development is carried out. The provision does not affect the prohibition under proposed section 93I on making development conditional on the entry into of a planning agreement.

Proposed section 93E requires a consent authority or planning authority to hold any monetary contribution or levy paid under the proposed Division for the purpose for which the payment was required, and to apply the money towards that purpose within a reasonable time. However, money paid for different purposes (other than under planning agreements) may be pooled and applied progressively for those purposes.

Proposed section 93F provides for voluntary agreements between planning authorities and developers, 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. A public purpose includes the provision of (or the recoupment of the cost of providing) public amenities or public services, affordable housing, transport or other infrastructure, the funding of resulting recurrent expenditure, the monitoring of the impacts of development and the conservation or enhancement of the natural environment. The proposed section also sets out the persons who may be parties to a planning agreement and the matters for which provision must be made in a planning agreement.

Proposed section 93G provides for the giving of public notice, and the provision of copies to the Minister or the council (in the event that one is not party to a planning agreement), in relation to the making, amendment and revocation of planning agreements. Councils and other planning authorities are also required to include particulars of current planning agreements to which they are a party in their annual reports.

Proposed section 93H enables a planning agreement to be registered by the Registrar-General in relation to the land to which it applies and thereby to bind successors in title to the land.

Proposed section 93I provides that an environmental planning instrument or a consent authority cannot require that a planning agreement is entered into before a development application is made or development consent is granted or has effect.

Proposed section 93J prevents merit appeals under the Principal Act in connection with planning agreements (but does not affect general court remedies such as judicial review).

Proposed section 93K authorises the Minister to determine or give directions to other planning authorities as to procedures for negotiating planning agreements and other standard requirements for planning agreements.

Proposed section 93L enables the regulations to make provision with respect to the form, subject-matter, making, amendment, revocation and public inspection of planning agreements.

Proposed section 94 continues the existing provision that enables a consent authority, if satisfied that development is likely to require the provision of or increase the demand for public amenities and public services, to grant development consent subject to a condition requiring the dedication of land or the payment of a monetary contribution, or both. If a consent authority has provided public amenities and public services in preparation for or to facilitate the carrying out of development in the area, the consent authority may grant development consent to development that will benefit from those amenities and services subject to a condition requiring payment of a monetary contribution towards recoupment of the cost of providing those amenities and services (as indexed in accordance with the regulations).

Proposed section 94A enables a consent authority to impose as a condition of a 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. Money required to be paid by such a condition is to be applied towards the provision, extension or argumentation of public amenities or public services (or towards recouping the cost of their provision, extension or augmentation). A consent authority cannot impose a condition under the proposed section as well as a condition under proposed section 94 as conditions of the same development consent.

Proposed section 94B provides that a condition under proposed section 94 or 94A may be imposed only if it is allowed by, and is determined in accordance with, a contributions plan. However, if the consent authority is not a council, it may impose a condition under section 94 even though it is not allowed by, or determined in accordance with, a contributions plan, so long as it has regard to any contributions plan that applies to the area in which development is to be carried out. The proposed section also deals with appeal rights.

Proposed section 94C allows a condition to be imposed under section 94 or 94A for the benefit of an adjoining local government area and for the apportionment among the relevant councils of any monetary contribution required to be paid under the condition.

Proposed section 94D provides that, where the Minister or Director-General imposes a condition under proposed section 94 or 94A in relation to land within a growth centre or other land within one or more council areas, any monetary contribution must be paid to the corporation for the growth centre or the council of the area concerned.

Proposed section 94E continues and extends the existing provision that enables the Minister to direct a consent authority as to the matters in relation to which a condition under proposed section 94 or 94A may be imposed.

Proposed section 94EA provides that councils may prepare and approve contributions plans (including joint plans) for the purpose of imposing conditions under the proposed Division.

Proposed section 94EB provides that judicial notice is to be taken of a contributions plan and date on which the plan came into effect. The validity of any procedure followed in making or approving a contributions plan can only be questioned in legal proceedings commenced in the Land and Environment Court within 3 months of that date.

Proposed section 94EC provides that in relation to an application made to an accredited certifier for a complying development certificate, a contributions plan must specify certain matters for the purpose of imposing conditions under the proposed Division.

**Schedule 1 [1]** amends section 79C of the Principal Act to require a consent authority to take into consideration any relevant planning agreement when determining a development application.

**Schedule 1 [2]** amends section 80A of the Principal Act consequent on the enactment of proposed section 94A.

**Schedule 1 [4]** amends section 122 of the Principal Act so as to enable civil proceedings to be brought by any person in the Land and Environment Court to remedy or restrain a breach of a planning agreement under proposed section 93F.

**Schedule 1 [5]** provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act.

**Schedule 1 [6]** inserts savings and transitional provisions consequent on the enactment of the proposed Act.

#### **Schedule 2 Consequential amendment of other Acts**

**Schedule 2.1** amends the *City of Sydney Act 1988* to preserve the operation of the current development levy of 1% of the cost of proposed development in the Central Sydney area.

**Schedule 2.2** amends the *Local Government Act 1993* to update a cross-reference.

**Schedule 2.3** amends the *Sydney Olympic Park Authority Act 2001* to update a cross-reference.