



New South Wales

Environmental Planning and Assessment Amendment (Development Contributions) Bill 2004

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.

First print



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New South Wales

Environmental Planning and Assessment Amendment (Development Contributions) Bill 2004

No. , 2004

A Bill for

An Act to amend the *Environmental Planning and Assessment Act 1979* with respect to development contributions; 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 (Development Contributions) Act 2004</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6
3 Amendment of Environmental Planning and Assessment Act 1979 No 203	7 8
The <i>Environmental Planning and Assessment Act 1979</i> is amended as set out in Schedule 1.	9 10
4 Consequential amendment of other Acts	11
The Acts specified in Schedule 2 are amended as set out in that Schedule.	12 13

Schedule 1	Amendment of Environmental Planning and Assessment Act 1979	1
		2
	(Section 3)	3
[1] Section 79C Evaluation		4
Insert after section 79C (1) (a) (iii):		5
	(iiiia) any planning agreement that has been entered into under section 93F, and	6
		7
[2] Section 80A Imposition of conditions		8
Insert “, 94A” after “94” in section 80A (1) (h).		9
[3] Part 4, Division 6		10
Omit the Division. Insert instead:		11
Division 6	Development contributions	12
Subdivision 1	Preliminary	13
93C	Definitions	14
	In this Division:	15
	<i>contributions plan</i> means a contributions plan approved under section 94EA.	16
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	<i>planning agreement</i> means a voluntary agreement referred to in section 93F.	18
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	<i>planning authority</i> means:	20
	(a) a council, or	21
	(b) the Minister, or	22
	(c) the corporation, or	23
	(d) a development corporation (within the meaning of the <i>Growth Centres (Development Corporations) Act 1974</i>),	24
	or	25
	(e) a public authority declared by the regulations to be a planning authority for the purposes of this Division.	26
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	<i>public amenities</i> or <i>public services</i> do not include water supply or sewerage services.	28
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93D	Relationship to planning instruments	1
	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.	2 3 4 5 6 7
93E	Provisions relating to money etc contributed under this Division	8
(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.	9 10 11 12 13 14
(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.	15 16 17 18 19
(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.	20 21 22 23
(4)	A reference in this section to a monetary contribution or levy includes a reference to any additional amount earned from its investment.	24 25 26
	Subdivision 2 Planning agreements	27
93F	Planning agreements	28
(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 <i>developer</i>):	29 30 31
(a)	who has sought a change to an environmental planning instrument, or	32 33
(b)	who has made, or proposes to make, a development application, or	34 35

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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 proposed 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,

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- (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. 1
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- (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. 4
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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. 8
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- (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). 11
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- (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. 17
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- (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. 21
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- (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. 25
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- (9) A planning agreement cannot impose an obligation on a planning authority: 29
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(a) to grant development consent, or 31
(b) to exercise any function under this Act in relation to a change to an environmental planning instrument. 32
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- (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. 34
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93G	Information about planning agreements	1
(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 3 4 5 6 7
(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.	8 9 10 11 12
(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:	13 14 15
(a)	a copy of the agreement within 14 days after the agreement is entered into, and	16 17
(b)	if the agreement is amended, a copy of the amendment within 14 days after the amendment is made, and	18 19
(c)	if the agreement is revoked, notice of the revocation within 14 days after the revocation occurs.	20 21
(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:	22 23 24
(a)	a copy of the agreement within 14 days after the agreement is entered into, and	25 26
(b)	if the agreement is amended, a copy of the amendment within 14 days after the amendment is made, and	27 28
(c)	if the agreement is revoked, notice of the revocation within 14 days after the revocation occurs.	29 30
(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.	31 32 33 34 35
93H	Registered planning agreements to run with land	36
(1)	A planning agreement can be registered under this section if the following persons agree to its registration:	37 38

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- (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 1
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- (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. 4
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- (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: 7
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 - (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 10
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 - (b) by registering the agreement in the General Register of Deeds if the agreement relates to land not under the *Real Property Act 1900*. 13
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- (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. 16
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- (4) A reference in this section to a planning agreement includes a reference to any amendment or revocation of a planning agreement. 20
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- 93I Planning agreements cannot be required to be made 23**
 - (1) A provision of an environmental planning instrument (being a provision made after the commencement of this section): 24
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 - (a) that expressly requires a planning agreement to be entered into before a development application can be made, considered or determined, or 26
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 - (b) that expressly prevents a development consent from being granted or having effect unless or until a planning agreement is entered into, 29
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31has no effect. 32
 - (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. 33
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 - (3) A consent authority cannot require a planning agreement to be entered into as a condition of a development consent. 36
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(4)	In this section, <i>planning agreement</i> includes any agreement (however described) containing provisions similar to those that are contained in an agreement referred to in section 93F.	1 2 3
93J	Jurisdiction of Court with respect to planning agreements	4
(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.	5 6 7
(2)	This section does not affect the jurisdiction of the Court under section 123.	8 9
93K	Determinations or directions by Minister	10
	The Minister may, generally or in any particular case or class of cases, determine or direct any other planning authority as to:	11 12
(a)	the procedures to be followed in negotiating a planning agreement, or	13 14
(b)	the publication of those procedures, or	15
(c)	other standard requirements with respect to planning agreements.	16 17
93L	Regulations—planning agreements	18
	The regulations may make provision for or with respect to planning agreements, including the following:	19 20
(a)	the form of planning agreements,	21
(b)	the subject-matter of planning agreements,	22
(c)	the making, amendment and revocation of planning agreements, including the giving of public notice and inspection by the public,	23 24 25
(d)	the public inspection of planning agreements after they have been made.	26 27
Subdivision 3	Development consent contributions	28
94	Contribution towards provision or improvement of amenities or services	29 30
(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:	31 32 33 34 35
(a)	the dedication of land free of cost, or	36

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- (b) the payment of a monetary contribution, 1
or both. 2
- (2) A condition referred to in subsection (1) may be imposed only to 3
require a reasonable dedication or contribution for the provision, 4
extension or augmentation of the public amenities and public 5
services concerned. 6
- (3) If: 7
- (a) a consent authority has, at any time, whether before or after 8
the date of commencement of this Part, provided public 9
amenities or public services within the area in preparation 10
for or to facilitate the carrying out of development in the 11
area, and 12
- (b) development for which development consent is sought 13
will, if carried out, benefit from the provision of those 14
public amenities or public services, 15
the consent authority may grant the development consent subject 16
to a condition requiring the payment of a monetary contribution 17
towards recoupment of the cost of providing the public amenities 18
or public services (being the cost as indexed in accordance with 19
the regulations). 20
- (4) A condition referred to in subsection (3) may be imposed only to 21
require a reasonable contribution towards recoupment of the cost 22
concerned. 23
- (5) The consent authority may accept: 24
- (a) the dedication of land in part or full satisfaction of a 25
condition imposed in accordance with subsection (3), or 26
- (b) the provision of a material public benefit (other than the 27
dedication of land or the payment of a monetary 28
contribution) in part or full satisfaction of a condition 29
imposed in accordance with subsection (1) or (3). 30
- (6) If a consent authority proposes to impose a condition in 31
accordance with subsection (1) or (3) in respect of development, 32
the consent authority must take into consideration any land, 33
money or other material public benefit that the applicant has 34
elsewhere dedicated or provided free of cost within the area (or 35
any adjoining area) or previously paid to the consent authority, 36
other than: 37
- (a) a benefit provided as a condition of the grant of 38
development consent under this Act, or 39

(b)	a benefit excluded from consideration under section 93F (6).	1 2
(7)	If:	3
(a)	a condition imposed under subsection (1) or (3) in relation to development has been complied with, and	4 5
(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,	6 7 8 9 10
	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.	11 12 13 14 15 16
94A	Fixed development consent levies	17
(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.	18 19 20 21
(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.	22 23 24
(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.	25 26 27 28 29 30
(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.	31 32 33 34
(5)	The regulations may make provision for or with respect to levies under this section, including:	35 36
(a)	the means by which the proposed cost of carrying out development is to be estimated or determined, and	37 38
(b)	the maximum percentage of a levy.	39

94B	Section 94 or 94A conditions subject to contributions plan	1
(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 3 4 5
(2)	However, in the case of a consent authority other than a council:	6
(a)	the consent authority may impose a condition under section 94 even though it is not of a kind allowed by, or is not determined in accordance with, a contributions plan, but	7 8 9 10
(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.	11 12 13 14
(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.	15 16 17 18 19 20 21 22
(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.	23 24 25 26
94C	Cross-boundary issues	27
(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.	28 29 30
(2)	Any monetary contribution that is required to be paid under any such condition is to be apportioned among the relevant councils:	31 32
(a)	in accordance with any joint or other contributions plan approved by those councils, or	33 34
(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.	35 36 37
(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.	38 39 40

94D	Section 94 or 94A conditions imposed by Minister or Director-General in growth centres etc	1 2
(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:	3 4 5
(a)	land within a growth centre, or	6
(b)	other land within one or more council areas.	7
(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.	8 9 10
(3)	Any monetary contribution paid in accordance with a condition under section 94 or 94A:	11 12
(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	13 14 15
(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.	16 17 18
(4)	This section applies to the Minister as consent authority whether or not the Minister is the consent authority pursuant to section 88A.	19 20 21
(5)	In this section, <i>growth centre</i> has the same meaning as in the <i>Growth Centres (Development Corporations) Act 1974</i> .	22 23
94E	Directions by Minister	24
(1)	The Minister may, generally or in any particular case or class of cases, direct a consent authority as to:	25 26
(a)	the public amenities and public services in relation to which a condition under section 94 may or may not be imposed, and	27 28 29
(b)	in the case of a condition under section 94 requiring the payment of a monetary contribution:	30 31
(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	32 33 34
(ii)	the maximum amount of any such contribution, and	35
(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	36 37 38

- (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 1
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- (e) the use of monetary contributions or levies for purposes other than those for which they were paid, and 4
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- (f) the preparation of joint contributions plans by two or more councils. 6
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- (2) A consent authority to which a direction is given under this section must comply with the direction in accordance with its terms. 8
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- (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. 11
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Subdivision 4 Development contributions plans 16

94EA Contributions plans—making 17

- (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. 18
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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. 22
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- (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. 27
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94EB Contributions plans—judicial notice, validity etc 30

- (1) Judicial notice is to be taken of a contributions plan and of the date on which the plan came into effect. 31
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- (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. 33
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- (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 36
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person within 3 months after the date on which the plan came into effect.	1 2
(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.	3 4 5
94EC Contributions plans—complying development	6
(1) In relation to an application made to an accredited certifier for a complying development certificate, a contributions plan:	7 8
(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	9 10 11
(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	12 13 14
(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.	15 16 17
(2) This section does not limit anything for which a contributions plan may make provision in relation to a consent authority.	18 19
[4] Section 122 Definitions	20
Insert after section 122 (b) (v):	21
(vi) a planning agreement referred to in section 93F.	22
[5] Schedule 6 Savings, transitional and other provisions	23
Insert at the end of clause 1 (1):	24
<i>Environmental Planning and Assessment Amendment (Development Contributions) Act 2004</i>	25 26

[6] Schedule 6	1
Insert at the end of the Schedule (with appropriate Part and clause numbers):	2
Part Environmental Planning and Assessment Amendment (Development Contributions) Act 2004	3 4 5
Definition	6
In this Part, <i>2004 amending Act</i> means the <i>Environmental Planning and Assessment Amendment (Development Contributions) Act 2004</i> .	7 8 9
Application of amendments	10
The substitution of Division 6 of Part 4 of this Act by the 2004 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.	11 12 13 14 15

Schedule 2	Consequential amendment of other Acts	1
	(Section 4)	2
2.1	City of Sydney Act 1988 No 48	3
[1]	Section 61 Development contributions	4
	Omit “section 94AB” from section 61 (1).	5
	Insert instead “Division 6 of Part 4”.	6
[2]	Section 61 (4) (a)	7
	Omit “section 94AB (3) or 94A”.	8
	Insert instead “any direction of the Minister under Division 6 of Part 4”.	9
[3]	Section 61 (6) and (7)	10
	Insert at the end of the section:	11
	(6) If the <i>Central Sydney Local Environmental Plan 1996</i> is replaced	12
	by another environmental planning instrument, this section	13
	continues to apply to the land to which that Plan applied	14
	immediately before its repeal.	15
	(7) A condition authorised by this section is not affected by the	16
	enactment of the <i>Environmental Planning and Assessment</i>	17
	<i>Amendment (Development Contributions) Act 2004</i> . However,	18
	this section ceases to apply if a contributions plan is prepared and	19
	approved under Division 6 of Part 4 of the Planning Act (as	20
	amended by that Act) that authorises the imposition of a levy	21
	under section 94A of the Planning Act in relation to the land to	22
	which this section applies.	23
2.2	Local Government Act 1993 No 30	24
	Section 12 What information is publicly available?	25
	Omit “plans made under section 94AB of” from section 12 (1).	26
	Insert instead “contributions plans made under”.	27

Environmental Planning and Assessment Amendment (Development Contributions) Bill 2004

Schedule 2 Consequential amendment of other Acts

2.3 Sydney Olympic Park Authority Act 2001 No 57	1
Section 23 Contributions under sec 94 of EP and A Act	2
Omit “section 94B”. Insert instead “Division 6 of Part 4”.	3